



EMPLOYMENT TRIBUNAL

Claimant: Ms. Lorna Morris

Respondent: Women's Pioneer Housing Ltd.

Hearing: Final Hearing

Heard at: London Central ET (via CVP)

On: 21-23 May 2024 (ET deliberation day – 28 June 2024)

Before: EJ Tinnion, Members Mr. Fryer and Ms. Moores

Appearances: For Claimant: Mr. D. Panton, Consultant
For Respondent: Ms. Musgrave-Cohen, Counsel

JUDGMENT

1. The claim of discrimination arising from disability under s.15(1)(a) of the Equality Act 2010 is well founded. The Claimant is entitled to a remedy.
2. The claim of direct disability discrimination under s.13(1) of the Equality Act 2010 is not well founded and is dismissed.
3. The claim of failure to make reasonable adjustments under ss.20-21 of the Equality Act 2010 is not well founded and is dismissed.
4. The claim of victimisation under s.27(1) of the Equality Act 2010 is not well founded and is dismissed.
5. By 4pm on 20 September 2024, the Claimant must notify the Tribunal whether (a) the parties have agreed terms resolving remedy, or (b) a remedy hearing is required.

REASONS

Claims

6. Following ACAS Early Conciliation between 13 February - 27 March 2023, by an ET1 [10-18] and Particulars of Complaint [22-41] presented on 3 May 2023, Claimant Ms. Lorna Morris presented claims against her current employer, Women's Pioneer Housing Ltd. (**WPH**), for (i) direct disability discrimination under s.13(1) of the Equality Act 2010 (**EqA 2010**) (ii) discrimination arising from disability under s.15(1)(a) of EqA 2010 (iii) failure to make reasonable adjustments under ss.20-21

of EqA 2010 (iv) victimisation under s.27 of EqA 2010.

7. By its ET3 [42-48] and Amended Response [80-96], WPH denied the claims.

Preliminary Hearing for Case Management – List of Issues

8. At a PHCM on 7 October 2023, the Tribunal (EJ Peer) made case management directions which contained a list of issues [71-74] (**LOI**). Both parties had until 11 October 2023 to write to the Tribunal if they thought that LOI was incomplete or wrong. Neither did so. At the final hearing, the Tribunal therefore treated that LOI as final and considered only those issues. Appendix A hereto sets out the issues the Tribunal had to decide, omitting the claims/issues the Claimant withdrew.

Disability

9. The Claimant relied on her longstanding impairment of Multiple Sclerosis (**MS**) as a disability. In its Amended Response, WPH accepted the Claimant was disabled because of MS [93]. WPH accepted it knew the Claimant had MS and was disabled because of it at all relevant times.

Final hearing

10. The final hearing was held on 21-23 May 2024 (**Final Hearing**). Both parties were represented. A bundle of c.524 pages was produced (references in square brackets are to relevant pages). The Tribunal heard evidence from (i) the Claimant (ii) Ms. J Page (Director of Operations, previously Director of Housing) ((iii) Ms. S Bernard (Head of HR and Corporate Services). The Tribunal was satisfied all three sought to assist by giving their honest, best recollections of events. The Claimant herself was a straightforward, credible witness, and made concessions when due. Due to time pressure (the case was listed for 4 days but the Tribunal were only available for 3 days), the Tribunal (with the parties' consent) considered and decided liability issues only. The Respondent made written and oral closing submissions. The Claimant made written submissions on the law, plus oral submissions addressing the merits.

11. For reasons given orally, the Tribunal dismissed the Claimant's application for an order compelling the attendance of Ms. Tracey Downie, WPH's Chief Executive Officer. The Claimant's representative accepted he sought her attendance for the purpose of cross-examination, unaware he would not be permitted to cross-examine Ms. Downie if, as seemed likely, she gave evidence supportive of WPH's case.

12. At the hearing, the Claimant withdrew the following claims/allegations in the LOI:

- a. Issue 2.2.1 - Claimant's GP declared Claimant not fit for work for the period 17 January – 13 February 2023 in consequence of Claimant's disability;
- b. Issues 3.2.1, 3.5.1 – reasonable adjustments claim based on allegation that Respondent required Claimant to write written reports and spreadsheets using IT software such as Excel and Word;

- c. Issue 4.3.4 – Respondent subjected Claimant to detriment by Ms. Page failing to recuse herself from conducting Stage 1 Meeting after Claimant complained of Ms. Page acting in a discriminatory manner as set out in grievance;
- d. Issue 4.3.5 - Respondent subjected Claimant to detriment by failing initially to offer Claimant an opportunity to appeal the outcome of the Stage 1 sickness absence review meeting.

Findings of fact

13. The Tribunal makes the following findings of fact, including any findings in the Discussion / Conclusions section of this Judgment, on the balance of probabilities. In the event, most of the material facts in this case were not in dispute.

Parties

- 14. WPH is a not-for-profit registered provider of social housing to women. At the time of the events, it had nearly 1,000 properties and employed around 40 people.
- 15. In March 2001, the Claimant joined WPH as a Housing Officer [100-101]. It is not in dispute that she performed well in that role. On 3 August 2020, the Claimant was promoted to the post of Housing Inclusion Manager [143-146, 151-154], a post she had been covering on a temporary basis since October 2019.
- 16. In her new role, the Claimant line managed 5 staff - 4 Scheme Managers, 1 Financial Inclusion Officer. She reported to Ms. Page (who had joined WPH in October 2018, and had previously line-managed the Claimant's line manager). Until January 2023, the Claimant and Ms. Page enjoyed a good working relationship. The Claimant made no criticisms of Ms. Page's conduct towards her before November 2022, and did not allege in her statement that before then Ms. Page had treated her (or any other member of staff) unfavourably or less favourably because of any health issue, or was unsympathetic to people with health problems. The Claimant's statement notes it was Ms. Page who asked her to consider becoming the Housing Inclusion Manager, and accepts that both Ms. Page and Ms. Bernard had held a positive opinion of her.

Sickness record

- 17. Between March 2020 and February 2022, the Claimant worked from home as an HIM. Because of her MS, she was a vulnerable worker during the 'Covid' period.
- 18. Between 14 June - 10 September 2021, the Claimant was absent due to sickness for a total of 65 days. Following her return, the Claimant was referred to WPH's Occupational Health advisers, who by a report dated 17 September 2021 [147-150] recommended a phased return to work, with the Claimant to continue working from home for a further 3 months. Those recommendations were implemented.
- 19. In 2022, the Claimant was absent due to sickness on 3 further occasions – 28 February – 4 March, 19-21 July [179-181], 12 October [183-184] – totalling 9 days.

Performance management

20. Ms. Page's 2019 appraisal of the Claimant was generally positive [103-121]. Ms. Page set out her objectives for October 2021 – December 2022 in a document.
21. In 2022, Ms. Page conducted a mid-year appraisal of the Claimant for the period January – June 2022 [168-175]. The appraisal noted both positive developments (eg, the Claimant had improved in many of the areas previously highlighted for improvement) and areas where further improvement was required (eg, the Claimant needed to be more pro-active managing staff).
22. On 16 June 2022, Ms. Page conducted a one-to-one with the Claimant where her management and health were discussed.
23. On 21 July 2022, Ms. Page told Ms. Downie in her own one-to-one that the Claimant's mid-year review outlined that the Claimant was not operating at manager level and Ms. Page was not sure the Claimant was enjoying the areas key to WPH [176]. This reflected Ms. Page genuine concerns and beliefs at the time.
24. On 3 November 2022, Ms. Page conducted a one-to-one with the Claimant [185-188]. Ms. Page relayed feedback from Ms. Downie following recent visits to sheltered housing, which showed that scheme managers needed more support on management issues and should not be managing anti-social behaviour. The Claimant was asked to reflect on how she would support the team help deliver this. The Claimant told Ms. Page her health and wellbeing were good at the moment.
25. On 17 November 2022, Ms. Page and the Claimant talked in a 'catch up' meeting [207-208]. The Claimant said she felt overwhelmed, related to a combination of personal factors in her family and the seasons turning dark. Ms. Page recommended a SAD lamp.
26. On 5 December 2022, Ms. Page conducted a one-to-one with the Claimant [194-199]. Ms. Page raised feedback she had received from Ms. Downie regarding a safeguarding meeting she attended with the Claimant (who was the Safeguarding Lead), at which Ms. Downie had felt disappointed by the information the Claimant had brought to the meeting and felt she had had to drive the meeting [196]. The Claimant updated Ms. Page on her health, noting she felt better physically and had been walking better than in the last year, and was feeling confident. At the end of the meeting, the Claimant told Ms. Page she didn't particularly enjoy the work but enjoyed talking to tenants. Ms. Page told the Claimant a Housing Officer vacancy was coming up if she wanted to move to that role, but the Claimant said she wasn't in a position to do that right now [199].
27. In December 2022, the Claimant went on 3 weeks leave. Ms. Page covered her duties in her absence. The Claimant did not provide a handover. Ms. Page discovered outstanding work and issues which, in her view, should have been resolved or flagged prior to taking leave. At the end of 2022, Ms. Page's perception was that the Claimant had multiple performance issues which had continued (despite her support) which needed to be addressed, which she noted down [31] to address

at the Claimant's next one-to-one meeting in January 2023.

28. On 9 January 2023, the Claimant returned to work from leave, and was soon busy compiling reports. On 16 January 2023, Ms. Page had a conversation with the Claimant in which she raised the performance issues she was concerned about and said the Claimant would be subject to formal performance management. Ms. Page again raised the possibility of the Claimant returning to her previous Housing Manager role. At 5:06pm, Ms. Page sent the Claimant an email summarising their discussion [266]. It recorded her intent to begin formal performance management in the current role. Her email ended by asking the Claimant to *"keep talking to me if you're feeling overwhelmed or anxious, and we can plan a way forward."* The Tribunal accepts Ms. Page was trying to balance her need to performance manage the Claimant with the need, as her line manager, to offer support.
29. Understandably, the Claimant was upset by what Ms. Page had just told her. She understood formal performance management to not be a good thing which could potentially lead to her dismissal if there was a failure to meet standards. She had a sleepless night, and woke up the next day with blurred vision, difficulty mobilising, and tingling over her body. She recognised the stress had caused her MS symptoms to relapse.

Absence management

30. On the morning of 17 January 2023, the Claimant and Ms. Page had two phone conversations, during which the Claimant said she had been unable to sleep thinking about their discussion, this had been bad for her MS, and she was unable to work. That afternoon, Ms. Page sent an email to Ms. Bernard memorialising her conversations that day with the Claimant [275].
31. On 18 January 2023, the Claimant left a voicemail message for Ms. Page saying she was unwell, feeling very stressed and not coming in. Ms. Page called her back, and they agreed to refer the Claimant to Occupational Health for advice. Ms. Page said that as it was work-related the best way forward was for her and the Claimant to talk it through and come up with a plan so she could return to work. At 09:18, Ms. Page sent Ms. Bernard an email memorialising that conversation [283]. Ms. Bernard replied by email [284], suggesting the best way forward would be agreeing a plan for the Claimant's return to work. She noted it would be difficult for her, but said the risks were her increasing anxiety bringing on MS symptoms and a period of absence. Ms. Page replied by email [285], and said when the Claimant called tomorrow to tell her she was off sick she would push to get a meeting set up to discuss issues.
32. On 19 January 2023, the Claimant visited her GP and obtained a fitnote certifying her as unfit for work due to a possible relapse with MS which signed her off work until 13 February 2023 [297], which she forwarded to Ms. Page via WhatsApp. Between 09:05 and 09:57, Ms. Page exchanged emails with Ms. Bernard, in which Ms. Page asked [288] whether it would be appropriate for the meeting with the Claimant to discuss her absence be a 'Stage 1' sickness absence meeting (**S1M**) under WPH's sickness absence policy – her email stated that if Ms. Bernard felt that an S1M would not be appropriate at this stage then an informal meeting could be held instead. Ms. Benard replied [289] agreeing the meeting should be an S1M, and

stated that if the Claimant remained absent any further meetings to discuss that must be a formal Stage 2 meeting.

33. At 17:09, Ms. Page sent an email to the Claimant's personal email address [294] attaching a letter inviting the Claimant to attend an S1M on 24 January [295-296]. The letter referenced the Claimant's right to be accompanied at that meeting by a union representative or work colleague. The letter also mentioned the agreement to make a further Occupational Health referral. The SAP did not set out a precise timeline for the holding of an S1M, which was therefore left open as a matter of management discretion. The Tribunal accepts the Claimant's evidence that this was the first time that the Claimant knew that the meeting Ms. Page had mentioned to her on 18 January 2023 was to be a formal S1M.
34. WHP's Sickness Absence Policy & Procedure [128-137] (**SAP**) in effect at the time stated that WHP wanted to ensure that the reasons for sickness absence were understood in each case and investigated where necessary. Under the heading 'Monitoring Attendance', the SAP noted that WPH routinely monitors staff attendance and where this appeared to be unsatisfactory it would investigate the reasons for this using the procedure set out below. The first step was to hold an S1M to discuss the reason(s) for absence, how long any long-term absence was likely to last, determining (where someone had been absent on a number of occasions) the likelihood of further absences, whether medical advice was required, what measures might improve the employee's health/attendance, and agreeing a way forward [135, para. 15.1]. Depending on the outcome of the S1M, a Stage 2 Sickness Absence Meeting might be necessary, which might also discuss considering the staff member's ability to remain in their job in light of their capabilities, and possible redeployment [136, para. 16.1]. Where the staff member had now been warned they were at risk of dismissal, a Stage 3 Final Sickness Absence could be held to review the meetings that had already taken place, where the staff member remained on long-term sickness absence to consider whether there had been any changes since the Stage 2 Meeting, to consider any matters the staff member wished to raise, to consider whether there was a reasonable likelihood of the staff member returning to work or achieving the desired level of attendance in a reasonable period, and to consider the possible termination of employment [136, para. 17.1].
35. The Claimant reacted adversely to the letter inviting her to attend an S1M on 24 January 2023. She disputed the accuracy of parts of what it said, sought legal advice, and by email on 23 January 2023 [305-308] sent Ms. Page a detailed response in which she (1) challenged the proportionality of requiring her to attend an S1M within the first week of her sick note period (2) implied her stress levels had increased following receipt of the invitation letter (3) stated the requirement to attend the S1M arose as a direct consequence of her MS (4) contended it was a reasonable adjustment for her not to be required to attend an S1M while she was certified as unfit for work (5) contended she was not well enough to attend the S1M on 24 January 2023 (6) confirmed she would not attend. Her email ended noting its submission was a protected act under s.27 of the Equality Act 2010.
36. Ms. Page considered the Claimant's email. She continued to believe it was necessary to hold a sickness absence meeting to see how WPH could support the Claimant and facilitate her return to work. She considered whether the meeting

should be a formal S1M under the SAP or an informal meeting to discuss the same matters, and concluded it should be an S1M as the Claimant's absence fell under the terms of the SAP and she did not see any reason not to follow WPH's policy, especially given Ms. Downie's focus on ensuring WPH followed its policies.

37. On 23 January 2023, Ms. Page emailed Ms. Bernard seeking advice [305], who advised her that the S1M could be held (if appropriate) even if the Claimant chose to not attend. Ms. Page chosen to go ahead with the S1M on 24 January 2024. An important factor in Ms. Page's decision was the fact that she was scheduled to begin a period of maternity leave on 23 February, and thought – the Tribunal finds reasonably – that she would be better placed than her interim replacement to speak to the Claimant, discuss the situation and identify and agree the best way forward.
38. By email on 24 January 2023, Ms. Page sent the Claimant a detailed letter [318-321]. After saying she was sorry that her 19th January letter had added to her stress, Ms. Page stated (1) her concerns about the Claimant's performance were separate from the Claimant's absence (2) explained why a meeting was necessary and in the Claimant's interests (3) denied the S1M was punitive (4) stated the S1M was a proportionate means of achieving the legitimate aim of understanding the Claimant's work-related stress factors (5) accepted the Claimant was not fit to attend the S1M on 24 January, but confirmed it was important that they hold an S1M during the Claimant's 4 week absence period, and proposed the S1M be held during the week beginning 6 February.
39. By email on 26 January 2023 [328], the Claimant agreed to be referred to Occupational Health subject to agreeing the questions to be asked.
40. On 2 February 2023 [338-343], the Claimant submitted a grievance to Ms. Downie in which she claimed the decision to subject her to an S1M under the SAP constituted unlawful disability discrimination under ss.13 and 15 of the Equality Act 2010, and was a result of WPH failing to make reasonable adjustments required contrary to ss.20-21 of the Equality Act 2010. Her letter stated: *"I should add that I do not attribute motive to the decision of Jess Page in seeking to subject me to a S1M. She has been courteous in her dealings with me on this particular matter."* [339]. The Claimant's grievance was likely drafted by her legal adviser.
41. On 3 February 2023, Ms. Bernard acknowledged receipt of the Claimant's grievance [338] and on 7 February emailed the Claimant a letter [344-345] setting out her response. In sum, it stated WPH would not be conducting an investigation into the Claimant's grievance because it concerned the application of the SAP and para. 4.2 of WPH's grievance policy stated it should not be used to complaint about formal action taken under the SAP; there was no reason to pause the SAP as the Claimant attributed her work environment to causing her absence; and subject to the recommendations of the OH report WPH intended to continue managing the Claimant's absence in accordance with the SAP by holding an S1M which the Claimant would be given notice of.
42. By email on 13 February 2023 [346-348] to Ms. Downie, cc-ing Ms. Page and Ms. Bernard, again likely drafted by her legal adviser, the Claimant complained about the refusal to consider her grievance on the grounds that the grievance policy ruled out

using it to complain about matters taking place under the SAP. Ms. Downie replied by email on 20 February 2023 [362-363] stating that she had reviewed Ms. Bernard's decision not to investigate the Claimant's grievance and the grievance policy and believed her interpretation of the policy was correct.

43. On 14 February 2023, the Claimant called Ms. Page and they discussed her latest fitnote certifying her as unfit for work until 13 April 2023 because of a possible relapse of MS triggered by stress at work. The Claimant spoke about being stressed and feeling attacked because of the performance supervision meeting previously discussed and the S1M invitation. Ms. Page told the Claimant Nahar Choudhury would be taking over Ms. Page's role on 1 March 2023, and said the next step was the S1M, which could be held without the Claimant if she was unable to attend. Ms. Page sent Ms. Bernard an email that day memorialising their conversation [349-350].
44. By email on 15 February 2023 [356], Ms. Page sent the Claimant a letter requesting her attendance at a meeting under the SAP (via Teams) on 22 February 2023 [358-359]. In addition to reminding her of her right to be accompanied by a union representative or colleague, the letter added that at their discretion the Claimant might be permitted other companions (eg, a family member) where this would help overcome difficulties caused by a disability. The Claimant asked whether this meeting was to be an S1M [352], Ms. Page confirmed it was [352].

Occupational Health

45. On 10 February 2023, the Claimant attended a telephone assessment with WPH's Occupational Health advisers, who prepared a report dated 10 February 2023 [368-372]. The report noted the Claimant had some impairment of cognitive functioning (particularly concentration) but her memory remained intact. Increased mobility problems were noted. The report advised the Claimant was fit to attend a meeting with management provided she was given at least 2 weeks' notice and a friend or family member was present at the meeting [369].
46. On 20 February 2023, the Claimant emailed Ms. Page a copy of the OH report [367]. This was the first time Ms. Page had seen this report. Referring to the recommendations, the Claimant's email complained the S1M scheduled on 22 February fell foul of the requirement to be given at least 2 weeks' notice of such meetings, and said it would need to be postponed.
47. Ms. Page considered delaying the S1M but decided not to, as the Claimant had known of the plan to hold an S1M since 19 January 2023, and if the meeting was not held Ms. Page would then be on maternity leave. Ms. Page believed holding the S1M was in the Claimant's own best interests, and decided to proceed (via Teams) on 22 February 2023. By email on 21 February 2023, Ms. Page notified the Claimant of her decision [373]. Her email noted the Claimant could bring a friend or family member to the S1M, and asked who she would be accompanied by. Ms. Page's email confirmed that if the Claimant did not attend the S1M would be held in her absence.
48. By email on 21 February 2023 [374-375], the Claimant confirmed she would not attend the S1M on 22 February. She repeated her complaint that she had not been

given 2 weeks' notice of the meeting.

49. On 22 February 2023 (just before her maternity leave began), Ms. Page conducted the S1M. True to her word, the Claimant did not attend, and the meeting proceeded in her absence. By a detailed letter dated 23 February 2023 [378-382], Ms. Page set out an action plan to help the Claimant return to work, consisting of fortnightly meetings with her line manager (Ms. Choudhury) to discuss her health and wellbeing and the support to be offered, and a learning and development plan ahead of her return to work. The Claimant was informed of the dates of her meetings with Ms. Choudhury (9 March, 23 March, 6 April) with a target return to work date of 14 April. Ms. Page noted these meetings were not formal meetings as part of any process, so the Claimant would not be entitled to bring a companion.
50. 23 February 2023 was Ms. Page's last day before she began maternity leave. From 1 March 2023, the Claimant was line managed by Ms. Choudhury. Ms. Page emailed Ms. Choudhury [459] a detailed handover note [418-435], which stated "*Was an HO for about 20 years and promoted into management about two years ago, has not done as well in this role and has consistently told me she doesn't like the job, she is overwhelmed and despite an awful lot of hand holding still doesn't know how to do the job. Is currently off sick. There's a folder with detailed notes for [t]he subject because she needs to go through sickness procedure and also performance management if/when she returns to work*" [421].
51. On 27 February 2023, the Claimant contacted ACAS to commence Early Conciliation in respect of her ongoing dispute with her employer. On 27 March 2023, ACAS issued its Early Conciliation certificate.

Informal meetings: 9 March, 23 March, 6 April 2023

52. By email to Ms. Bernard on 7 March 2023, cc-ing Ms. Choudhury, the Claimant stated she would not be attending the meeting on 9 March 2023 because she was not allowed to bring a family member or friend. By email on 8 March 2023 [386], Ms. Choudhury acknowledged receipt of that email. By email on 8 March 2023, the Claimant repeated she would not be attending the 9 March meeting. No meeting on 9 March 2023 took place.
53. On 10 March 2023, Ms. Choudhury emailed the Claimant stating she was looking forward to speaking to her at the meeting on 23 March to discuss how WPH could support her in getting back to work and supporting her in work when she was feeling better [385]. On 21 March 2023, the Claimant replied stating she would not attend that meeting because she was not allowed to be accompanied by a family member or friend. As a result, no meeting on 23 March 2023 took place either.
54. By email on 28 March 2023 [393-394], Ms. Choudhury invited the Claimant to attend a keeping in touch meeting on 6 April. Ms. Choudhury asked whether the Claimant would prefer it to be held in person or via Teams, and stated she would be happy to consider a family member or friend accompanying her. The Claimant replied by email on 29 March 2023 [391-392], this time indicating her intention to attend.

55. On 6 April 2023, the Claimant attended the keeping in touch meeting with Ms. Choudhury, accompanied by her daughter. The meeting was audio recorded by the Claimant's daughter (without Ms. Choudhury's knowledge), and a broadly accurate transcript prepared [464-473]. The meeting was productive and business-like, at it the Claimant spoke about the issues and problems she felt she was facing.
56. On 14 April 2023, the Claimant provided a 3 month fitnote for the period 14 April – 13 July 2023 with her condition diagnosed as “possible MS relapse triggered by work related stress.”

Appeal against S1M outcome: April 2023

57. On 5 April 2023, the Claimant asked Ms. Downie to confirm that she could appeal against the outcome of the 22 February 2023 S1M. Ms. Downie replied that she could [490], and by email on 13 April 2023 to Ms. Downie and Ms. Choudhury [405] the Claimant lodged an appeal on three grounds: (i) by giving the Claimant 1 weeks' notice of the 22 February 2023 S1M, Ms. Page had failed to implement Occupational Health's recommendations and committed an act of disability discrimination (ii) it was wrong and an act of victimisation for Ms. Page to conduct the S1M on 22 February 2023 (iii) Ms. Page's action plan did not follow the Occupational Health recommendation for the Claimant to be allowed to be accompanied for the follow up meetings on 9 March and 23 March, which was a further act of disability discrimination
58. Having heard nothing about her appeal, on 24 April 2024 the Claimant chased a response [409]. By email that day, Ms. Choudhury acknowledged receipt of the appeal and stated “*we will respond to you as soon as possible.*”
59. By 1 May 2023, however, the Claimant had still not heard what was happening with her appeal. That evening, the Claimant emailed Ms. Downie and Ms. Choudhury, cc-ed to Ms. Bernard, withdrawing her appeal, and claiming the failure to deal with her appeal in a timely and reasonable manner was an of victimisation [407-408].
60. In para. 54 of her witness statement, Ms. Bernard stated WPH intended to hear the Claimant's appeal and any delay was an erroneous oversight, not a deliberate act against the Claimant. Having heard Ms. Bernard's evidence under cross-examination on this point, the Tribunal accepted that evidence.
61. On 3 May 2023, the Claimant presented her ET1 [10].

Relevant law:

Direct disability discrimination (s.13 Equality Act 2010)

62. Under s.13(1) of EqA 2010, 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.

Discrimination arising from disability (s.15 Equality Act 2010)

63. Under s.15(1) of EqA 2010, a person (A) discriminates against a disabled person (B) if (a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show the treatment is a proportionate means of achieving a legitimate aim.

Failure to make reasonable adjustments (ss.20-21 Equality Act 2010)

64. Under s.20(3) of EqA 2010, where a provision, criterion or practice of employer A puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, A is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage.

Victimisation (s.27 Equality Act 2010)

65. Under s.27(1) of EqA 2010, 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 B has done, or may do, a protected act.

66. Under s.27(2) of EqA 2010, each of the following is a protected act: (a) bringing proceedings under that Act (b) giving evidence or information in connection with such proceedings (c) doing any other thing for the purposes of or in connection with that Act (d) making an allegation (whether or not express) that A or another person has contravened that Act.

Burden of proof

67. Section 136(2) of EqA 2010 provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that person (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred. Under s.136(3) of EqA 2010, s.136(2) does not apply if A shows that A did not contravene the provision.

68. The initial burden of proof rests on a claimant to establish primary facts from which a Tribunal could decide, in the absence of any other explanation, that a contravention occurred. Only once the claimant discharges that initial burden does the burden of proof shift to the employer to prove the treatment was "*in no reason whatsoever*" because of the protected characteristic. Igen v Wong [2005] ICR 931.

Discussion / Conclusions

Claim #1: Direct disability discrimination (s.13(1) Equality Act 2010)

69. For the reasons set out below, the Tribunal concludes this claim is not well founded.

70. First, it is not in dispute that the relevant conduct occurred – by letter dated 19 January 2023 [294-295], Ms. Page did notify the Claimant that she was invited to an S1M on 24 January 2023 (Issue 1.2.1).

71. Second, the Tribunal accepts Ms. Page's reasons for sending this invitation to the Claimant at this time, which (summarising) were as follows:

- a. Ms. Page believed – correctly – that the cause of the Claimant's illness at this time was work-related (this is what the Claimant told her);
- b. because the absence was work-related (ie, something over which WPH could exercise some control), Ms. Page believed the best way forward was to have a meeting with the Claimant as soon as possible to discuss and create a plan for the Claimant's return to work;
- c. Ms. Page believed – correctly - that holding an S1M with the Claimant on 24 January 2023 was consistent with the terms of the SAP;
- d. Ms. Page believed – correctly – that nothing in the SAP prevented WPH from holding the S1M on 24 January 2023 – that policy did not set any specific timeline for the holding of that meeting;
- e. Ms. Page was acutely aware she was about to go on maternity leave in February 2023, and believed – reasonably – that it was in the Claimant's best interests for the S1M to be conducted by her, ie someone who knew the Claimant and her health issues, not by her maternity leave cover (whoever they were) who might have no personal knowledge of the Claimant.

72. Third, the Tribunal does not accept Ms. Page would have treated a hypothetical comparator – someone in the same post as the Claimant, absent from work due to work-related stress, but not disabled – any more favourably than the way she treated the Claimant (Issue 1.3). Nothing in the evidence supported a finding to that effect. The Claimant sought to rely on the way actual comparators had historically been treated to show that she had been treated less favourably than them, but what was missing from that evidence was any evidence that Ms. Page had been personally involved in any of the relevant management decisions. A contrast between how Ms. Page had treated the Claimant versus how Ms. Page had treated those comparators simply did not arise on the facts. Moreover, it was accepted that Ms. Page had not line managed the line managers who had made the relevant decisions.

73. Fourth, Ms. Page did not treat the Claimant less favourably because of her disability (Issue 1.4). In addition to the matters noted at paras. 71 above, the Claimant accepted at the time that Ms. Page had no discriminatory motive. There was no evidence Ms. Page treated the Claimant less favourably in any other respect before or after this invitation because of her disability, or treated any other staff member poorly because of any disability or impairment. The Tribunal accepts Ms. Page acted in good faith without conscious or unconscious discriminatory motive or bias.

74. In respect of this alleged contravention, the Tribunal concludes the Claimant failed to establish primary facts from which it could decide, in the absence of any other explanation, that the Respondent breached s.13 of EqA 2010. If that is wrong, and she did, the Tribunal concludes the Respondent has discharged its burden of proving that the treatment was not because of the Claimant's disability.

Claim #2: Discrimination arising from disability (s.15(1)(a) Equality Act 2010)

75. For the reasons set out below, the Tribunal concludes this claim is well founded and the Claimant is entitled to a remedy.
76. First, it is not in dispute that the relevant conduct occurred – Ms. Page did decide to invite the Claimant to an S1M on 24 January 2023, and duly did so by letter dated 19 January 2023 [294-295] (Issue 2.1.1). It is also not in dispute that WPH knew at this time that the Claimant was disabled because of MS.
77. Second, the Tribunal accepts that Ms. Page’s decision to invite the Claimant to an S1M on 24 January 2023, with the S1M invitation letter which followed, constituted unfavourable treatment of the Claimant (Issue 2.1). The holding of an S1M was the first formal stage in WPH’s sickness absence process which potentially might lead (eventually) to the Claimant’s dismissal. No employee, given the choice, would likely choose to be invited to such a meeting. The Claimant was upset and stressed by Ms. Page’s invitation to attend the S1M on 24 January 2023, and the Tribunal accepts that was an understandable, reasonable reaction on her part.
78. Third, Ms. Page’s decision to invite the Claimant to attend an S1M on 24 January 2023 was because the Claimant had been absent from work since 17 January 2023 (Issue 2.3). Had the Claimant attended work on 17-19 January 2023 and not been absent on ill-health grounds, there would have been no need for the S1M meeting, and Ms. Page would not have decided to invite the Claimant to an S1M at this time.
79. Fourth, the Tribunal accepts the Claimant’s sickness absence on 17-19 January 2023 was something which arose in consequence of her disability (Issue 2.2). It accepted the Claimant’s evidence that on 16 January 2023, after Ms. Page had told her she was going to be subject to formal performance management, she was unable to sleep that night, was tearful, upset and stressed, all of which aggravated her MS, causing her to wake up on 17 January 2023 with blurred vision, tingling on her body, and impaired mobility, meaning she was incapable of working on ill-health grounds.
80. Fifth, based on the foregoing, the Claimant satisfied the Tribunal that she has a prima facie valid claim of discrimination arising from disability under s.15(1)(a) of EqA 2010. That being the case, the next issue was whether the Respondent had satisfied its burden of showing it had a valid defence under s.15(1)(b).
81. Sixth, to justify its treatment of the Claimant, WPH relied on the following aims: (i) managing and reducing staff absence (ii) considering and offering support to employees with disabilities and health conditions including considering reasonable adjustments (iii) ensuring consistent, proportionate and lawful treatment of staff absent from work.
82. At trial, the Claimant accepted these were all legitimate aims for WPH to pursue. That being so, the burden remained on WPH to show that the treatment – Ms. Page’s decision to invite the Claimant to attend an S1M on 24 January 2024 - was a proportionate means of achieving one (or more) of these aims. In deciding that question, the agreed list of issues required the Tribunal to consider (a) whether the treatment was an appropriate and reasonably necessary way to achieve those aims

(b) whether something less discriminatory could have been done instead (c) the appropriate balance of the Claimant's and Respondent's needs.

83. For the reasons set out below, the Tribunal was not satisfied that WPH satisfied its burden of showing that Ms. Page's decision to invite the Claimant to an S1M on 24 January 2023 was a proportionate means of achieving one or more of those aims:

- a. an S1M on 24 January 2023 was not reasonably necessary - everything Ms. Page wished to discuss with the Claimant on 24 January (reasons for absence, medical advice, measures that might improve Claimant's health and attendance, way forward) could have been discussed with the Claimant at an informal meeting on 24 January instead;
- b. nothing in the SAP required an S1M to be held on 24 January 2023 – the SAP was not specific as to the timing of that meeting, giving management considerable leeway and discretion on timing issues;
- c. it was reasonably foreseeable that the Claimant would be more stressed and upset being invited to attend an S1M on 24 January 2023 than she would have been had she been invited to attend an informal meeting to discuss the same matters;
- d. on 19 January 2023, Ms. Page was aware she was not obliged to hold the meeting on 24 January 2023 as an S1M (*"The alternative to holding the meeting under the policy as a Stage 1 sickness absence meeting would have been to hold the exact same meeting but informally, not under the policy"* - JP w/s para. 46] – having a less formal discussion with the Claimant was therefore an option Ms. Page knew was open to her at the time;
- e. had Ms. Page invited the Claimant to attend an informal meeting on 24 January instead of an S1M, the Tribunal considers it more likely the Claimant would have felt fit and well enough to attend, and more likely to have attended;
- f. holding an informal meeting with the Claimant on 24 January rather than a formal S1M would have achieved a better balance of WPH's need to meet the Claimant to discuss her absence from work, health issues, and plan a way forward and the Claimant's need not to subject to additional stress and anxiety unless absolutely necessary.

84. Regarding WPH's legitimate aims, the Tribunal concluded that deciding to hold an informal meeting with the Claimant on 24 January 2023 to discuss her absence from work, health issues, and plan a way forward (and then inviting the Claimant to same) rather than hold a formal S1M then would have been:

- a. a better way of managing, and hopefully reducing, the Claimant's absence;
- b. a better way of supporting this particular disabled employee; and

- c. a better way of providing proportionate treatment to a disabled member of staff, who WPH might reasonably treat in a manner different from the way it might treat its non-disabled staff.

Claim #3: Failure to make reasonable adjustments (ss.20-21 Equality Act 2010)

85. For the reasons set out below, the Tribunal concludes this claim is not well founded.

PCP #1: Giving Claimant less than 2 weeks' notice of the Stage 1 Meeting originally scheduled on 24 January 2023

86. First, while the Tribunal accepts Ms. Page gave the Claimant less than 2 weeks notice of the S1M to be held on 24 January 2023, the Tribunal does not accept this was an instance of WPH applying a 'provision, criterion or practice' (**PCP**) to the Claimant either at all or one which WPH did or would apply to other staff members (Issue 3.2.2). This was a one-off event not constituting a PCP.

87. The SAP was non-specific as to the timing of holding formal Stage 1 Meetings, and said nothing about the notice staff were to be given of same. In the Claimant's case, the urgency of holding the S1M with the Claimant on 24 January was driven by the fact Ms. Page was heavily pregnant and shortly to go on maternity leave, hence wanted to meet the Claimant as soon as possible before she did so. While the Tribunal accepted the submission that a single event can as a matter of law constitute the application of a PCP, the Claimant was unable to provide a satisfactory answer to the question why the Tribunal should treat this particular instance as one.

88. Second, if this was a PCP applied to her, the Tribunal was not satisfied it put the Claimant to a substantial disadvantage in comparison to any non-disabled member of staff to whom it was or would also have been applied (conspicuously absent from the list of issues was the disadvantage relied upon) (Issue 3.3). If the Claimant was disadvantaged by getting less than 2 weeks' notice of the S1M on 24 January 2023, non-disabled members of staff likely would have been as well.

89. Third, if the Claimant was put to a disadvantage which other staff members would not have been by getting less than 2 weeks notice, the Tribunal is not satisfied WPH either knew or ought reasonably to have known the Claimant was put to that disadvantage (Issue 3.4). The Occupational Health report which advised that the Claimant was fit to attend a virtual meeting with management provided she was given at least 2 weeks' notice was not prepared until 10 February 2023 [368-369] and not sent to Ms. Page until 20 February, so WPH could not have been aware of this advice on 19 January at the time Ms. Page invited the Claimant to the S1M on 24 January.

90. Fourth, the adjustment the Claimant contends WPH should have made in respect of this PCP was giving her at least 2 weeks' notice of the S1M held on 22 February 2023 (Issue 3.5.2). On its own terms, this adjustment would have made no difference to the S1M scheduled for 24 January 2023 and would not have remedied any disadvantage the Claimant suffered from short notice of that meeting. So far as the S1M on 22 February is concerned, the Claimant had notice on 19 January that WPH wished to conduct an S1M with her, and knew on 19 January what Ms. Page wished to discuss at that S1M. At no point between 19 January and 22 February did Ms.

Page ever indicate she did not wish to have an S1M with the Claimant before she left on maternity leave.

91. The Tribunal is satisfied the Claimant had more than adequate notice to prepare for the S1M on 22 February, even if it is technically correct that she was only given notice of the date of that meeting on 15 February. In her email to Ms. Page on 20 February 2023 [367], the Claimant did not identify a single matter she would have been better able to prepare for had she received notice of the 22 February S1M on 8 February, nor did she claim her preferred companion would not be available on 22 February. The Tribunal infers the real reason, and only reason, why the Claimant insisted upon receiving a minimum 2 weeks' notice was because Occupational Health made a recommendation to that effect. The Tribunal has no doubt that had the Claimant felt well enough to attend the 22 February S1M in the absence of 2 weeks' notice, Occupational Health would not have advised against her attendance.

PCP #2: Not allowing Claimant to bring a friend or family member to the meetings on 9 March 2023 and 23 March 2023 that were organised as part of the outcome of the Stage 1 meetings

92. First, the Tribunal accepts (a) the Claimant was not allowed bring a friend or family member to the informal meetings on 9 March and 23 March 2023 organised as part of the outcome of the S1M on 22 February 2023 [379] (b) in doing so, WPH was applying a PCP to the Claimant which it also applied to all staff at the time under which they were not permitted to bring any type of companion (union representative, colleague, family member, friend) to attend informal work meetings (Issue 3.2.3).

93. Second, the Tribunal does not accept the application of this PCP put the Claimant to a substantial disadvantage either at all or in comparison to any non-disabled members of staff (Issue 3.3). Because the Claimant was not willing to attend without a friend or family member, the informal meetings on 9 March and 23 March 2023 were simply cancelled. No decisions affecting the Claimant were made in her absence by Ms. Choudhury or anyone else. The Claimant did not put to either of the Respondent's witnesses the disadvantage(s) alleged. The Claimant's first informal meeting with Ms. Choudhury took place on 6 April 2023, and at that meeting the Claimant was permitted to be accompanied by her daughter. The transcript makes clear the Claimant was fit and well enough to attend that meeting and fully participated. The Tribunal is not satisfied the Claimant suffered any disadvantage by the fact her first informal meeting with Ms. Choudhury took place then, not earlier.

94. Third, because the 9 March and 23 March 2023 meetings were cancelled and no decisions affecting the Claimant were made in her absence, the Tribunal accepts WPH did not know, and it was reasonable for it not to know, that the Claimant would suffer a substantial disadvantage by the application of the PCP to her (Issue 3.4).

95. Fourth, if a duty to make a reasonable adjustment arose, the Tribunal is satisfied WPH reasonably and timely discharged that duty by permitting the Claimant to be accompanied by her daughter at the informal meeting with Ms. Choudhury on 6 April 2023, a right she exercised (Issue 3.5.3). The Tribunal is not satisfied WPH was under a duty to *have to* permit a friend or family member to accompany the Claimant

at the 9 March and 23 March meetings – it was also reasonably open to WPH to cancel those meetings after the Claimant indicated she would not attend.

Claim #4: Victimisation (s.27 Equality Act 2010)

96. For the reasons set out below, the Tribunal concludes this claim is not well founded.

Protected acts

97. First, it is not in dispute that the Claimant engaged in the five instances of conduct she alleged were protected acts (Issues 4.1.1 – 4.1.5), in chronological order:

- a. on 23 January 2023, the Claimant sent an email [305-308] to her line manager regarding her sickness absence meeting titled 'sickness absence meeting on Tuesday 24 Jan' (**Act #1**);
- b. on 2 February 2023, the Claimant submitted a grievance [338-343] to WPH's CEO (**Act #2**);
- c. on 13 February 2023, the Claimant sent an email to Ms. Downie titled 'Please forward this email to the Chair of the Board for Women's Pioneer Housing Ltd, Kim Vernau' [346-348] (**Act #3**);
- d. on 21 February 2023, the Claimant sent an email to Ms. Page at 11:12 titled 'Re: CHL 2028820 – Please Review This Report of Your Occupational Health Consultation' [374-375] (**Act #4**);
- e. on 13 April 2023, the Claimant submitted an appeal against the outcome of the Respondent's Stage 1 sickness absence review [405] (**Act #5**).

98. That conduct was done in writing in documents submitted to her employer. In its response, WPH accepted the Claimant did these acts (paras. 111.9.1–111.9.5).

99. Second, it is also not in dispute that by that conduct, the Claimant did five separate acts, each qualifying for protection under s.27(2) of EqA 2010 (Issues 4.1.1 – 4.1.5). This was accepted by WPH in its amended response, and reflected in the list of issues [74, para. 4.2].

Detriments

100. First, the Tribunal accepted the Claimant's case that (a) on 7 February 2023 WPH decided not to investigate the Claimant's grievance (Issue 4.3.1), which Ms. Bernard communicated to the Claimant by letter dated 7 February 2023 [344-345] (b) that decision subjected the Claimant to a detriment (Issue 4.4).

101. Second, for the reasons already given above the Tribunal did not accept the Claimant's case that (a) WPH failed to give the Claimant 2 weeks' notice of the S1M on 22 February 2023 (Issue 4.3.2) or (b) that if it did fail to give 2 weeks' notice of that S1M, that the Claimant was subjected to a detriment (Issue 4.4).

102. Third, the Tribunal accepted the Claimant's case that (a) WPH did not allow her to bring a friend or family member to the informal meetings on 9 March and 23 March 2023 (Issue 4.3.3) (b) that decision subjected the Claimant to a detriment (Issue 4.4).
103. Fourth, the Tribunal accepted her case that (a) WPH failed to deal with the Claimant's appeal submitted on 13 April 2023 in a reasonable and timely manner (Issue 4.3.6) (b) the Claimant was thereby subjected to a detriment (Issue 4.4).
104. In para. 119.4.6 of its Amended Response, WPH accepted it had not dealt with the Claimant's 13 April 2023 appeal in a reasonable and timely manner, but denied this constituted a detriment. The Respondent offered no factual or legal basis for making a finding that this failure did not constitute a detriment, and the Tribunal finds there is none – leaving aside causation, that failure was quite obviously a detriment.

Causation

105. First, the Tribunal rejected the Claimant's case that Ms. Bernard's decision not to investigate the grievance the Claimant submitted on 2 February 2023 was because the Claimant did Act #1 or Act #2 (the acts preceding this detriment). The Tribunal accepted the evidence in para. 32 of Ms. Bernard's witness statement that Ms. Bernard's genuine view at the time was the Claimant could not raise a grievance about the applicability of WPH's sickness absence policy and procedure where the process was ongoing and there had not yet been any outcome detrimental to her. Ms. Bernard's 7 February 2023 letter to the Claimant [344-345] set out in detail her genuine contemporaneous reasoning, and quoted the relevant terms of the sickness absence and grievance policies, which made clear that the grievance policy was not to be used to complain about formal action taken under the sickness policy. This detriment was not in any sense because the Claimant had done Acts #1-2.
106. Second, the Tribunal rejected the Claimant's case that WPH (Ms. Page) failed to give the Claimant 2 weeks' notice of the S1M to be held on 22 February 2023 because the Claimant did Act #1, Act #2 or Act #3. The Tribunal has found that the Claimant had more than 2 weeks notice of the S1M on 22 February 2023 as she had known since 19 January 2023 that Ms. Page wanted to hold an S1M. Even if that is incorrect, and the Claimant was given less than 2 weeks notice of the 22 February S1M, the reason for that was because Ms. Page was imminently about to go on maternity leave, and Ms. Page reasonably believed that it was in the Claimant's best interests for the S1M to be conducted by her rather than her maternity cover who might know much less about the Claimant. The Occupational Health report advising that the Claimant be given at least 2 weeks notice of meetings with management was only provided to Ms. Page on 20 February 2023. There was no way Ms. Page could read that advice and adhere to it before she went on leave. This detriment, even if it occurred, was not in any sense because the Claimant had done Acts #1-3.
107. Third, the Tribunal rejected the Claimant's case that she was not allowed to bring a friend or family member to the informal meetings with Ms. Choudhury scheduled on 9 March and 23 March 2023 because she did Act #1, Act #2, Act #3 or Act #4. The reason why she was not allowed to bring a friend or family member to these meetings was because they were informal work meetings which she had no right to bring a companion to under the terms of any WPH policy or pursuant to any statutory

right. In not permitting the Claimant to bring a friend or family member to those informal meetings (neither of which took place), WPH was applying its normal workplace policies, and treating the Claimant the same way it likely would have treated any other staff members who made the same request. Had WPH subjected the Claimant to this detriment because of Acts #1-4, the Claimant needed to explain why WPH allowed her to bring her daughter to the informal meeting on 6 April 2023. This detriment was not in any sense because the Claimant had done Acts #1-4.

108. Fourth, the Tribunal rejected the Claimant's case that WPH failed to deal with the appeal she submitted on 13 April 2023 in a reasonable and timely manner because she did Act #1, Act #2, Act #3, Act #4 or Act #5. The burden of proving primary facts from which the Tribunal could have decided, in the absence of any other explanation, that this contravention occurred rested on the Claimant. She did not discharge that burden. If that is incorrect, and she did, the Tribunal accepted Ms. Bernard's explanation that the failure to timely progress the Claimant's appeal was down to (in terms) the Respondent's negligence, for which she – as Human Resources head – must take primary responsibility. This detriment was not in any sense because the Claimant had done Acts #1-5.

109. Reviewing these detriment claims in the round, the Tribunal noted the Claimant did not seek to 'tie' any specific detriment to any specific protected act. Instead, her case was put on the 'maximalist' basis that every detriment was because of every protected act which preceded it, with the Tribunal left to determine the precise causal connection. In the event, the Tribunal was not able to discern a causal connection between any protected act and any specific detriment, and the Tribunal concludes that is because there was none.

110. In respect of this contravention, the Tribunal concludes the Claimant failed to establish primary facts from which it could decide, in the absence of any other explanation, that WPH breached s.27 of EqA 2010. If that is wrong, and she did, the Tribunal concludes WPH has discharged its burden of proving that the detrimental treatment alleged was not because of any of the Claimant's protected acts.

Remedy hearing

111. The Claimant's claim has succeeded in part in respect of one claim of discrimination relating to one incident of unfavourable treatment in circumstances where the Tribunal accepts the relevant employee, Ms. Page, acted in good faith. The Tribunal hopes the parties, acting reasonably, will be able to agree terms resolving remedy relating to that claim. If not, a remedy hearing will be required.

Employment Judge Tinnion

Date of signature: 30 July 2024

Date sent to parties: 2 August 2024

For the Tribunal: M PARRIS

APPENDIX

Claim #1: Direct disability discrimination (s.13 Equality Act 2010)

1. Issues 1.2, 1.2.1. Did the Respondent do the following thing – notify the Claimant on 19 January 2023 [294-295] that she was invited to a Stage One sickness review meeting, originally scheduled for 24 January 2023 (the Stage 1 Meeting).
2. Issue 1.3. Was that less favourable treatment? The Claimant relies on a hypothetical comparator.
3. Issue 1.4. If the Claimant was treated less favourably, was that because of disability?

Claim #2: Discrimination arising from disability (s.15 Equality Act 2010)

4. Issues 2.1, 2.1.1. Did the Respondent treat the Claimant unfavourably by deciding to invite the Claimant to the Stage 1 Meeting?
5. Issues 2.2, 2.2.1. Did the following thing arise in consequence of the Claimant's disability – the taking of sickness absence from 17 January 2023?
6. Issue 2.3. Was the unfavourable treatment because the Claimant took sickness absence?
7. Issue 2.4. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says its aims were:
 - a. managing and reducing staff absence (Issue 2.4.1);
 - b. considering and offering support to employees with disabilities and health conditions including considering reasonable adjustments (Issue 2.4.2);
 - c. ensuring consistent, proportionate and lawful treatment of staff who are absent from work (Issue 2.4.3).
8. Issue 2.5. The Tribunal will decide in particular:
 - a. was the treatment an appropriate and reasonably necessary way to achieve those aims (Issue 2.5.1);
 - b. could something less discriminatory have been done instead (Issue 2.5.2);
 - c. how should the needs of the Claimant and Respondent be balanced (Issue 2.5.3)?

Claim #3: Reasonable adjustments claim (ss.20-21 Equality Act 2010)

9. Issue 3.1. The Respondent knew the Claimant had the disability.
10. Issue 3.2. Did the Respondent apply the following PCPs to the Claimant:

- a. giving the Claimant less than 2 weeks' notice of the Stage 1 Meeting originally scheduled for 24 January 2023 (Issue 3.2.2);
 - b. not allowing the Claimant to bring a friend or family member to the meetings on 9 March 2023 and 23 March 2023 that were organised as part of the outcome of the Stage 1 Meeting (Issue 3.2.3).
11. Issue 3.3. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability?
12. Issue 3.4. Did the Respondent know or could it reasonably have been expected to know the Claimant was likely to be placed at the disadvantage.
13. Issue 3.5. What steps could have been taken to avoid the disadvantage? The Claimant suggests:
- a. giving at least 2 weeks' notice of Stage 1 Meeting held on 22 February 2023 (Issue 3.5.2);
 - b. allowing her to bring a friend or family member to the meetings organised by the Respondent on 9 March 2023 and 23 March 2023 (Issue 3.5.3).
14. Issue 3.6. Was it reasonable for the Respondent to have to take those steps and by when?
15. Issue 3.7. Did the Respondent fail to take those steps?

Claim #4: Victimisation (s.27 Equality Act 2010)

16. Issue 4.1. Did the Claimant do a protected act as follows:
- a. on 2 February 2023 submit her grievance [338-343] to the Respondent's CEO (Issue 4.1.1);
 - b. on 23 January 2023 email [305-308] the Claimant's line manager regarding her sickness absence meeting titled 'sickness absence meeting on Tuesday 24 Jan' (Issue 4.1.2);
 - c. on 13 February 2023 send an email to Ms. Downie titled 'Please forward this email to the Chair of the Board for Women's Pioneer Housing Ltd, Kim Vernau' [346-348] (Issue 4.1.3);
 - d. on 21 February 2023 send an email to Ms. Page at 11:12 titled 'Re: CHL 2028820 – Please Review This Report of Your Occupational Health Consultation' [374-375] (Issue 4.1.4);
 - e. appeal against the outcome of the Respondent's Stage 1 sickness absence review submitted on 13 April 2023 [405] (Issue 4.1.5).

17. Issue 4.2. The Respondent accepts the above were protected acts for the purpose of s.27(1) of the Equality Act 2010.

18. Issue 4.3. Did the Respondent do the following things:

- a. decide on 7 February 2023 not to investigate the grievance (Issue 4.3.1);
- b. fail to give the Claimant 2 weeks' notice for the Stage 1 Meeting held on 22 February 2023 (Issue 4.3.2);
- c. fail to allow the Claimant to bring a friend or family member to the meetings of 9 March 2023 and 23 March 2023 (Issue 4.3.3);
- d. fail to deal with the Claimant's subsequent appeal of the 13 April 2023 in a reasonable and timely manner (Issue 4.3.6).

19. Issue 4.4. By doing so, did it subject the Claimant to a detriment?

20. Issue 4.5. If so, was it because the Claimant did a protected act?