EMPLOYMENT TRIBUNALS

Claimant **Respondent**
DEF **Blenheim CDP**

v

Heard at: Watford **On**: 18-27 January 2021

Before: Employment Judge Quill; Mr D Bean; Mr P English

Appearances

For the Claimant: In person
For the Respondent: Ms G Boorer, counsel

JUDGMENT

1. The complaints of direct race discrimination and of direct sex discrimination and of victimisation all failed and are dismissed.

2. The claim for redundancy pay failed and is dismissed.

3. The claim for unauthorised deduction from wages failed and is dismissed.

4. The complaints of discrimination arising from disability fail and are dismissed.

5. The unfair dismissal claim is well-founded and that complaint succeeds.

6. The claim for failure to make reasonable adjustments succeeded in two respects:

   6.1. The Respondent failed in its duty to make reasonable adjustments by failing to adjust its requirement that the Claimant start work at 9.30am every day Monday to Friday.

   6.2. The Respondent failed in its duty to make reasonable adjustments by failing to adjust its requirement that the Claimant work on the Health Promotion team with Ms Bell.

7. One complaint of direct disability discrimination succeeded: failure to reply to the Claimant's letters of 22 December 2017 and 17 January 2018.

8. One complaint of harassment related to disability succeeded: on 19 December 2017, the Claimant was told that her anxiety was a condition not a disability.

9. All the other complaints of failure to make reasonable adjustments, direct discrimination (because of any protected characteristic) and harassment (related to any protected characteristic fail and are dismissed).

10. There will be a remedy hearing on 16 June 2021 for one day, starting at 10am, by video.

REASONS

1. This is a claim that was brought by a former employee of the respondent. The "first claim" (case number 3307228/2018) was brought during employment. It was presented 15 May 2018 following a period of early conciliation which commenced on the 16 March 2018 and continued until the 16 April 2018.

2. Case number 3333318/2018, the "second claim", was brought after the end of employment and presented on 20 September 2018 and that followed a period of early conciliation which lasted from 26 July 2018 to 26 August 2018.

3. There were two preliminary hearings in this matter. The first was before Employment Judge Lewis on 18 July 2019. As a result of the orders made at that hearing the claimant produced, amongst other things, three documents with the title "Heads of Claim" one each for disability discrimination, race discrimination and sex discrimination and she also produced a table which showed alleged unlawful deductions.

4. The second preliminary hearing was on 7 August 2020 and that was before Employment Judge Loy. The claimant was given permission to amend her claim to include allegations of sex discrimination. As mentioned, the list of allegations had already been submitted to the respondent. The claimant confirmed that during that hearing all of her discrimination claims were contained in the "Heads of Claim" documents fpr disability, race and sex discrimination respectively. For that reason, it was not necessary to consider the claimant's Scott Schedule which she produced by that stage, and that is the approach we followed at this hearing as well. We did not use the Scott Schedule.

5. The disability discrimination claims included claims for direct discrimination because of disability, failure to make reasonable adjustments and discrimination arising from disability.

6. The Equality Act complaints also included allegations of harassment and victimisation.

7. There was also a complaint of unlawful deduction from wages.

8. The claimant alleges she was constructively dismissed and the dismissal was unfair and discriminatory and that the reason for dismissal was redundancy. She alleges that she is entitled to a statutory redundancy payment.

9. During this final hearing the claimant withdrew her complaints of indirect discrimination in relation to any protected characteristic.

10. A draft list of issues was produced by Miss Boorer for which we are grateful. It was thoroughly discussed between the parties and the Tribunal on day 2 and then it was finalised on day 6 at the outset submissions. Both parties and the Tribunal agreed that the list was accurate and contained a definitive list of all the complaints which we had to consider. We have used that list as the template for our decision making.

11. The hearing was conducted fully remotely by video. There were no significant delays or interruptions caused by the technology. Some minor problems were resolved as they arose.

12. The Tribunal had a bundle of documents which grew during the hearing. It was originally in 5 parts and contained more than 500 pages. Parts 6, 7 and 8 were added at various stages during the hearing so that the final hearing bundle was somewhere in excess of 700 pages.

13. The claimant's September 2017 payslip was provided to us on day 6 having been something that we had requested. During our deliberations we ordered additional disclosure of documents in relation to deductions in pay for one of the comparators, RL. We received a response to say that there had been no reductions in RL's pay or, at least, there were no documents that could be found to support any suggestion that there had been reductions in pay for that comparator.

14. On day 6, for the reasons we gave at the time, we declined to add to the bundle a document which the claimant said was an advertisement sent out by the respondent in late 2017 for a team leader post within HAGA. The claimant also sent a document to us today (27 January 2021) but we have not included that in our decisions in relation to liability as it was too late for an additional documents to be submitted other than those which we had asked for.

15. The claimant produced a written witness statement for this hearing and she answered questions from the respondent and the panel. The claimant also produced a signed statement from Mirco Magi who did not attend the Tribunal. We took that statement into account and gave it such weight as we saw fit.

16. The claimant was also given permission to call a late witness and that was Ms Theresa Reid. In had been intended that Miss Reid would give evidence based on a written statement but in the event we took Miss Reid's evidence during a break in her working day. She gave her evidence via mobile phone and she did not have access to a written statement of her own or to any of the other statements or the hearing bundle. Therefore, her evidence in chief

was that she answered some questions from the Judge, she was cross-examined and she was re-examined and we took her oral evidence into account.

17. The respondent had 5 witnesses, each of whom had prepared a written witness statement and each of whom attended the hearing and answered questions from the claimant and from the panel. These were Ms Okpa-iroha, Mr Campbell, Ms Choi, Ms Clough and Ms Daughter. The respondent did not produce evidence from the claimant's line manager or the line manager's line manager.

Findings of Facts

18. The respondent concedes that the claimant had a disability for the purposes of the Equality Act by way of mental impairment, namely "anxiety state" (see page 144-148 of bundle).

19. For the purposes of these proceedings the claimant describes her race as black African of Nigerian descent. The claimant is female.

20. On 27 July 2010, the claimant commenced employment with an organisation named CRI. In 2013 the claimant's contract of employment transferred from CRI to the respondent by operation of TUPE. In other words, she retained the same terms and conditions as before, there was no break in continuity of employment.

21. The claimant had been working at police stations while employed by CRI and she continued to do immediately after the TUPE transfer to the respondent and she continued to do it until January 2015.

22. Shortly after the transfer, the respondent gave the claimant a written job description for Offender Recovery Worker. The job purpose, as stated in the document, was to assess offenders in police custody. The work location was likely to be police stations. The job purpose also stated that the claimant was required to work flexibly across a broad range of criminal justice provision and, on occasion, within the broader treatment system depending on the needs of the service. The general headings in the job description from 2013 were Assessments, Case Management, Care Co-ordination and Liaising, Partnership and Joint Working, Policy Implementation, Administration and General Duties and Responsibilities. The date on the document, in a footer, suggests that it was produced around November 2013.

23. In January 2015, a new contract of employment was issued and the claimant accepted this new contract and signed it. The claimant told us, and we accept, that there were no changes to her existing general terms and conditions, including in relation to sick pay and hours of work. The reason for issuing the new contract was a change in role. Rather than being based at a particular police station, the claimant was now to be based at Highbury Corner Magistrates Court although, as stated in her contract, her contractual work location was The Grove.

24. The contract of employment states that the employer may move the normal place of work and also that the employee might be required to work at other locations within Greater London from time to time. The contract stated that the claimant's hours of work were 35 per week and she was entitled according to the contract to a lunch break of between 30 minutes and 1 hour per day, at times to be agreed with her manager. This break time was not part of the contracted 35 hours a week, which were all working time.

25. The contract stated that sick pay was in accordance with the staff handbook. A version of that staff handbook was in the bundle, and was dated October 2015. The sick pay provisions are the same as in the version that was available to the claimant at the time when she signed the contract with the respondent in January 2015. The contract and the handbook stated that sick pay was to be at the absolute discretion of the respondent. The guidelines were that up to 21 days at full pay would be paid and up to 21 days at half pay. This was based on a rolling 12 month reference period. The calculation date was the start of the relevance absence. In other words, at the start of each relevance absence it was necessary to look back to see how much absence there had been in the previous 12 months in order to decide how much of the full pay/half pay discretionary allowance remained. However, the handbook stated that the respondent might pay less than these discretionary allowance in certain circumstances and that it might pay in excess of those allowances in exceptional circumstances, such additional payments requiring the approval of a senior manager.

26. As stated in the January 2015 contract, the claimant's job title became, with effect from 1 February 2015, Court Worker. Despite the new job title, the job purpose section of the job description was identical to the previous one and the job purpose and the written job description still referred to the place of work being the local police station.

27. The remainder of the job description, as far as is visible on the copy which is in the bundle (which is not necessarily the entire document), was largely the same although with some slight changes. For example, under Assessment, point 2 had an addition which referred specifically to drug rehabilitation or DRR. There was a new point 4 which referred to the specific obligation to report unsuitability for a community order. The part of the document that was visible in the copy in the bundle was somewhat truncated which might be due to formatting errors (and there were formatting errors on copies of some other documents submitted to us). The footer was similar to the footer used for the Offender Recovery Worker (the date was said to be November 2013 even though the document was issued in 2015). Therefore, although the only headings that were visible were for Assessments and Case Management it is quite possible that the mutual intention of the parties had been to retain or replication some or all of the remaining headings from the Offender Recovery Worker job description, and there was simply some sort of copy/pasting error.

28. In any event, both the job descriptions contained an organisational chart which was near identical. One had some handwritten amendments made on it. At both these times (2013 when the Offender Recovery document was produced and 2015 when the Court Worker document was produced), the

respondent did not have its workers divided into groups (or "teams", as they were later called), and there were no groups or teams showing on the organisational chart(s). Rather there was a single large team which included (as of 2015) Court Worker, Probation Worker, several offender recovery workers, prison worker, 3 Offender Recovery Workers, 2 Prison Link Workers, 2 Criminal Justice Recovery Workers, and a volunteer co-ordinator as well as an administrator. There was a team leader and there was a team manager. The team manager was Ms Amina Lahrichi and the team leader was Ms Jackie Okpa-iroha. The team leader post was later deleted and Ms Okpa-iroha has been temporarily acting up into the team manager role given Ms Lahrichi's absence on sickness.

29. During the time that the claimant worked at the Magistrates Court she travelled there by public transport. She tended to arrive around 9.30am each day and worked until whatever time was required, usually 5.30pm although sometimes it might be later. We say in passing that there were some disagreements between the claimant and the respondent in relation to time off in lieu for the extra hours which the claimant worked whilst she was at the court, but none of that is directly relevant to the issues we need to determine.

30. On the days that the claimant was working at court she did not usually go to The Grove either before court or after court. In other words, she usually travelled directly between court and home without going via The Grove except on particular occasions when she needed to visit The Grove either to attend meetings or to deliver documents or for some other specific reason.

31. According to the documents in the bundle, both Highbury Corner Magistrates Court and The Grove were located in London N17. The claimant has lived at the same address since 2014 which is in London SW8. We accept her evidence that it took her roughly 30 minutes to travel from home to the court and perhaps takes 40-45 minutes from home to The Grove. The reason for this time difference is in the public transport connections, rather than a significant difference in straight line distance.

32. In March 2016, having suffered some recent bereavements, the claimant visited her GP. Amongst other things she reported that she was suffering from a low mood. She was prone to tearfulness and had a poor sleep pattern. Some medication was prescribed and she was referred for counselling. On 14 March 2016, there was a follow up visit. She was now suffering from excessive sleep and there was a discussion therefore about reducing the sleeping tablets which had been prescribed for her. She did not feel able to go to work and a fit note was issued for the period 14 March to 28 March 2016. It referred to stress-related problems due to recent bereavements. Something mentioned in the doctor's notes but apparently not in the fit note - and therefore not necessarily brought to the respondent's attention – was that the claimant had referred to stress at work in discussions with the GP.

33. On 17 May 2016, following the claimants return from this absence, an HR officer wrote to the claimant to say that she, the HR officer, had been told - by the claimant's line manager - to inform the claimant that a pay deduction was to be made. Payments of salary were due according to the contract and

practice to be made on the 20th of each month. This email of the 17 May 2016 was sent just before 6.00pm and informed the claimant that she had exceeded 21 days full pay in the relevant rolling 12 month period and therefore there would deductions made from her salary payment for May. The deductions were said to be in relation to 6 working days absence in March and April and the email stated that there would be a further deduction to her June salary to take account of more recent absences.

34. The claimant read the email the following day, on 18 May 2016, and upon reading it she contacted the HR officer. The HR officer asked the claimant to speak to the Claimant's line manager to see if the respondent might exercise a discretion given that the absence was connected to bereavement. The claimant did phone her manager. The claimant phoned from the court and her line manager answered the call in an office at The Grove which contained among other people Lesley Bell. Lesley Bell does not work for the respondent, she works for an NHS organisation, the BEH Mental Health Trust which shared premises with the respondent. The line manager, Ms Lahrichi, was not a witness in the proceedings and nor was Ms Bell.

35. The documents show that on the following day, the 19 May 2016, Ms Bell sent an email to the line manager. The full text of the covering email is: "*Here you go - my version of events*" and it had the subject line "Grievance".

36. The attachment to the email was a document which was one typed page. It was not written as if it were a memo or a letter to the line manager. The heading stated that it was concerning a conversation that took place on Wednesday 18 May 2016 at 9.45am, in other words some 27 hours before the email was sent. It seems inconceivable – especially given the contents of the covering email - that the attachment was written without there having been a conversation between Ms Bell and the line manager in connection to the phone call or that the conversation was simply limited to "*I asked Amina, 'Did they just hang up on you?' and Amina said 'Yes, it is not the first time this has happened.*'" as per the statement. Our inference is that Ms Bell was told by the line manager that the person on the other end of the phone had been the claimant and was told this before Ms Bell wrote her statement and sent her email. In the document Ms Bell asserted that the person speaking to the line manager [and it is agreed between the parties that the person was indeed the claimant, was speaking loudly]. Amongst other things Ms Bell wrote that the caller (i.e. the claimant) was speaking loudly and angrily verging on hysteria, ranting, aggressive, bullying and non-professional. Somewhat oddly, given that the communication was sent to Ms Lahrichi the document ended by saying;

> "I hope this incident is investigated opening concerns that no-one should ever be disregarded and bullied like this in the work place.
>
> "I have advised that in the future should Amina receive this level of aggression again she immediately put the phone onto loud speaker to enable her colleagues in the office to ensure that she is not alone in this."

37. In these proceedings the respondent has sought to portray this as a "complaint" made by an external organisation. The respondent was not able

to provide us with confirmation this was logged as a complaint at the time. It was received by the line manager and only the line manager on 19 May 2016 and there is no evidence that the line manager did anything with it until she forwarded it onto her own line manager, the area manager, on 27 July 2016. The covering email of 27 July 2016 contains no text and it followed a separate conversation between the line manager and the area manager which we discuss below.

38. As a result of the claimant's 18 May discussion with her line manager, the respondent reviewed the deductions and on 19 May 2016 a different HR officer wrote to the claimant with copies to the line manager and to the area manager and to the Head of HR, Diana Clough, to confirm that the claimant had had 23 days of sickness rather than 27 therefore the deductions in relation to 6 days of half pay was wrong and it should have been 2 days at half pay. The respondent agreed to make a payment to correct the error.

39. On 3 June 2016, the claimant sent an email to the respondent that she wanted to speak to somebody about issues that she believed were impacting her working relation to her line manager. She had hoped for a reply from Janice Gittens but instead she got a reply from Ms Theresa Zlonkiewicz who was the area manager and Ms Lahrichi's line manager.

40. The claimant preferred to speak to somebody else and therefore she did not reply straightaway, but on 7 July 2016 she did send a reply to the area manager to say that she liked to discuss some issues that she was having with Ms Lahrichi. That meeting took place on 19 July 2016. Amongst the matters discussed were the claimant's opinions about her line manager's management style and training and the difficulties of planning work while based at the court, with nobody to provide cover for her if she needed to attend other matters such as going on training or attending The Grove for team meetings and other things.

41. On 27 July 2016, following a conversation between Ms Lahrichi and Ms Zlonkiewicz about the Claimant's remarks, Ms Lahrichi sent a series of emails to Ms Zlonkiewicz. She forwarded some emails from October 2015 in relation to some training. Ms Lahrichi explained her version of events in relation to training in the previous October and stated that she was not happy that the claimant had missed some training and not happy that the claimant had implied an external provider that training for her, the claimant, had not been approved. At 10.48 on 27 July 2016 she sent the email referred to above, in other words, some 2 months after she had received it, she forwarded Lesley Bell's email and attachment of the 19 May 2016 without comment in the covering email. There were further emails sent the same day by Ms Lahrichi (spread out over the course of the day, rather than all at once) including some October 2015 emails between the claimant and Jackie Okpa-iroha and another worker (Amy Coates) about difficulties in reading faxes of important documents sent to The Grove by the Claimant from the court location, and the Claimant being asked to hand deliver copies of those documents.

42. Our inference therefore is that after the area manager spoke to the line manager that morning (about what the claimant had sent on the 19 July

2016), the line manager decided to forward some emails which she thought portrayed the claimant in a poor light. In other words, she was seeking to persuade her own manager, Ms Zlonkiewicz, that she, Ms Lahrichi, had been acting reasonably and that the claimant was a difficult person to manage.

43. The claimant's evidence is that her relationship with her line manager deteriorated after this time and that is consistent with the line manager's reaction – the documents she sent to Ms Zlonkiewicz - on 27 July 2016.

44. On 4 August 2016, the area manager informed the claimant that she had decided that Ms Lahrichi had not done anything wrong and that in the course of her enquiries she had found some things about the claimant which might require further investigation. This email was followed up 3 months later, on 7 November 2016. The area manager wanted to speak to the Claimant about – amongst other things - the emails of October 2015 and the conversation of 18 May 2016. At the meeting on 7 November 2016, the area manager read out from Ms Bell's account without telling the claimant that it was Ms Bell's account. She quoted the words that the Claimant had been accusatory, aggressive, bullying and non-professional. This November meeting was approximately 6 months after 18 May 2016 and it was the first time the conversation had been raised with the claimant. She was not immediately able to bring to mind which particular conversation was being referred to. She did come to realise that it was a reference to the discussion she had had with Ms Lahrichi on or around 18 May 2016 in relation to the errors which the respondent had made in her pay for that month. We accept the claimant's evidence that she did realise during the 7 November 2016 meeting itself that that was the conversation in question.

45. The claimant alleges that she asked the area manager during this meeting whether the area manager was stereotyping the claimant due to the Claimant's race. Our finding is that the claimant is mis-remembering what was actually said at this meeting - which was more than 4 years before this hearing. We accept that the claimant did later genuinely come to the view that Ms Lahrichi's actions were motivated, perhaps unconsciously, by the claimant's race. However, that is not an opinion that she voiced at the time on 7 November 2016. Had she done so it is a comment that she would have referred to again either in the subsequent disciplinary hearing itself or in her August 2017 email to Mr Noonan or in her grievance letter which she sent in August 2017.

46. On 7 December 2016, Ms Zlonkiewicz, the area manager, recommended disciplinary action. In April 2017 the claimant's line manager, Ms Lahrichi, wrote a statement about the 18 May 2016 conversation. In other words, her first written statement was 11 months after the conversation had taken place. Her statement was much shorter than Ms Bell's. In it, she stated that the claimant had been rude and had spoken to her in a raised voice and put the phone down on her. The person who had been appointed to conduct the disciplinary hearing was Mr Robert Noonan. It was Mr Noonan who noted that the line manager had not given a version of the 18 May 2016 conversation and so it was he who asked - via Ms Hoda Ali of HR - for Ms Lahrichi to produce such an account. In order to assist Ms Lahrichi to prepare

a statement, she was supplied with: a copy of the disciplinary recommendation that Ms Zlonkiewicz had produced; a copy of the meeting notes between Ms Zlonkiewicz and the claimant; a copy of the statement from Ms Bell, and a draft letter that was going to be sent to the claimant inviting the claimant to a disciplinary hearing.

47. The request to Ms Lahrichi to prepare a written statement was made on the 7 April 2017 and a chaser for it was sent on the 19 April 2017. Her statement was eventually produced on the 21 April 2017.

48. On 25 May 2017, there was a supervision meeting between the claimant and her line manager. There was a discussion about the claimant working to support the Assessment and Engagement team. This was a reference to the fact that in 2017 the respondent, in collaboration with its NHS partner organisation, BEH Mental Health Trust, had decided to create four teams with each team including NHS staff and respondent's staff as its members. The four teams were the Assessment and Engagement team, the Health Promotion team, the Opiates team and the Non-Opiates team. The proposal in May was also that the claimant work at The Grove three days a week, Tuesday, Thursday and Friday and be at court the other two days. This was later changed to be three days at court and two at The Grove.

49. Also on 25 May 2017, a letter was sent to the claimant inviting her to a disciplinary hearing to take place on the 30 May 2017. The allegation was failure to behave with servility towards fellow employees. The fourth paragraph of the letter stated that one of the outcomes would be a final written warning. The final paragraph of the letter stated that if the claimant did not attend the hearing it might take place in her absence and stated that the meeting might result in dismissal.

50. The letter referred to the allegation as being one of misconduct as opposed to gross misconduct and the letter included a copy of the disciplinary procedure. The hearing was rearranged in part so that the claimant could arrange for a union representative to accompany her.

51. A letter dated 30 May 2017 inviting her to a hearing on 21 June 2017 was sent. The letter was similar to the first one. However, the final paragraph did not refer to possible dismissal and referred to possible final written warning if the hearing went ahead in her absence. This change followed a conversation between the claimant and Ms Ali in which the claimant pointed out the reference to dismissal in the final paragraph of the first letter. Ms Ali realised there was an accidental error and therefore made a change to the letter was sent for the new hearing date. The hearing was rearranged again for the 29 June 2017 and the invitation letter for the third hearing was identical to that of the second (other than the changes of dates).

52. The disciplinary hearing took place on the 29 June 2017 and the claimant was represented by a union representative. Her union representative noted that Ms Bell's statement had referred to another NHS employee, Will Davies, as having been present in the room. Mr Davies is more senior than Ms Bell. The union representative asked why Mr Davies had not been interviewed. At this

time the claimant and her union representative were not officially informed that the statement had been written by Ms Bell, but the claimant correctly deduced that Ms Bell had written it.

53. In response to questions about when Ms Lahrichi had written her statement, Mr Noonan did confirm that the discussions about the issue – one 27 July 2016 or at all - between Ms Lahrichi and Ms Zlonkiewicz had not been minuted. He also confirmed that Ms Lahrichi's statement had only been prepared recently. The outcome of the meeting was that on 10 July 2017 a letter of concern was issued by Mr Noonan. In it he stated that he was not taking disciplinary action in relation to the claimant but he did believe she had "failed to act with civility towards fellow employees" and that improvements in her communication and behaviour were required. He stated, amongst other things, that the claimant should have fortnightly supervisions with her line manager and suggested that there was the possibility of a formally disciplinary process in the future if improvements were not made.

54. On 9 August 2017, the claimant wrote to Mr Noonan stating that she believed that the allegations against her were fabricated and that they only came after her complaint to the area manager about the line manager. Mr Noonan acknowledged this the following day but he did not change his mind about the decision which he had made.

55. The claimant was absent from 20 July to 3 August 2017 and her doctor's notes stated that this was because she was not fit for work due to anxiety. On 3 August 2017 an updated fit note was produced stating that she might be fit for work from 3 August to 31 August 2017 with adjustments such as a phased return to work altered hours and provided the details were discussed and agreed between the claimant and her employer.

56. On 4 August 2017, the claimant returned to work and she had a return to work interview with her line manager. It was agreed that the claimant would attend therapy on Friday morning, but subject to that she was to return to work normally and was expected to work her full hours the remainder of the week. The possibility of a phased return to work was something which Ms Lahrichi said that she would discuss with her own line manager. Subsequently, on 11 August 2017 Ms Lahrichi told the claimant that the arrangement would in fact be that the claimant work as usual except when seeing her therapist in the morning. Ms Lahrichi told the claimant that this is what Ms Zlonkiewicz and HR had advised her, Ms Lahrichi, was appropriate. The timetable was to be at court Mondays, Wednesdays and Fridays with Tuesdays and Thursdays at The Grove.

57. On 11 August 2017 the claimant wrote to Ms Lahrichi noting that these were the arrangements that she had been told about and also noting that she was required to phone daily to speak to either Ms Lahrichi or Ms Zlonkiewicz. The claimant said that she was not happy about having to make these phone calls and she preferred to send emails but that option had been rejected by the Respondent and so she would, as instructed, telephone instead.

58. The claimant acknowledged that she had been told there was going to be a welfare meeting. The welfare meeting was booked for the 23 August 2017. It was a meeting at which the claimant and Ms Lahrichi were to meet with HR to discuss support which might be available for the claimant.

59. On 11 August 2017, the claimant sent a document which we will call Grievance 1. There were five numbered paragraphs. Paragraph 1 it referred to delays in approving annual leave in the period April 2015 onwards. Paragraph 2 referred to an injury which the claimant said she had suffered at court the previous year and alleged that she had been treated insensitively in relation to that injury, including in relation to pay deductions. Paragraph 3 referred to alleged failure to follow sickness procedures, both in relation to the amount paid and in relation to notification of deductions. Paragraph 4 referred to the disciplinary action just discussed (ie ending with Mr Noonan's meeting and letter). Paragraph 5 stated that the claimant believed she had been discriminated against contrary to the Equality Act. Although she did not use the exact words the Equality Act it is clear that that is what she meant. She alleged that she had been victimised, harassed and bullied by senior management for raising issues and for referring to difficulties she had in the past with her line manager. The claimant stated that her physical and mental health had been affected as a result of the way she had allegedly been treated at work.

60. Pausing there, it should be said that while the claimant had sent several communications to the respondent prior to 11 August 2017 in relation to her health, by this stage none of the documents showed that she had raised any concerns about her treatment being connected to either race or sex.

    60.1 The claimant does not allege that in her discussions with the area manager, Ms Zlonkiewicz, in July 2016, that she had said that the treatment by the line manager had been because of sex or race.

    60.2 As mentioned the claimant does allege that she said to Ms Zlonkiewicz on 7 November 2016 that she thought she might be stereotyped because of race. However, we have found that she did not say that on that date.

    60.3 The notes of the meeting with Mr Noonan do not record that the claimant alleged that her treatment in relation to the disciplinary was because of either sex or race.

    60.4 In the claimant's email of 9 August 2017 to Mr Noonan, she does not allege that either that the allegations against her had been made in the first place because of sex or race, and does not say that the decision to follow the disciplinary process, or Mr Noonan's decision, had been because of sex or race. She does not allege in that document that she had previously suggested to any of the respondent's employees that the allegations against her had been connected to sex or race.

61. Grievance 1 itself referred to the Claimant's health, but did not mentioned (directly or indirectly) anything about sex or race.

62. In August 2017, the instruction that the claimant was required to telephone either Ms Lahrichi or Ms Zlonkiewicz each day, but, in practice, she always phoned Ms Lahrichi. The requirement was that the Claimant was supposed to report on her wellbeing each day. The arrangement continued until the 17 August 2017. On that day, the team leader Ms Okpa-iroha, was asked to pass on a message from Ms Lahrichi. The message was that Ms Lahrichi was not going to be in work the following day the claimant should phone and speak either to the receptionist at The Grove or speak to Will Davies (who, as mentioned above, was a manager in the NHS organisation, BEH). The claimant was annoyed and upset by this instruction to (as she perceived it, at least) to discuss her wellbeing with the receptionist, or an external person, and she did not wish to discuss it further with Ms Okpa-iroha and she left to go as arranged to a hospital appointment. The claimant remained very upset whilst she was at the hospital. The hospital noted this and referred her for a further psychological appointment.

63. The claimant had a further period of sickness and absence in August. Because of that, the welfare meeting planned for 23 August did not take place. The period of absence (based on the contemporaneous documents) was 22 August to 7 September 2017.

64. On 8 September 2017, the claimant had a return to work interview with her line manager. Her doctor had provided a note which said that the claimant was potentially fit for work with adjustments including amended duties and hours as part of a phased return to work to smoothly transition her back to work. Again, the GP said the details should be negotiated between the employee and employer.

65. On 8 September 2017 Ms Lahrichi arranged for a welfare meeting to take place on 11 September 2017. Ms Lahrichi was acting from the advice from Ms Ali to arrange this meeting. The advice is contained in an email dated 29 August 2017. The email informed the line manager that she should tell the claimant that the claimant was now on half pay and to ask if there should be any reasonable adjustments, and that "*working at another site or anything along those lines are not reasonable adjustments*".

66. In an email dated 8 September 2017, the line manager described the meeting that day as having been positive. The claimant was asked about this email during the tribunal hearing and she (even though she had not been included in the email recipients at the time) she agreed with the description of the meeting as having been positive. The email also recorded details of a phased return to work and amended duties had not been discussed in any detail on the 8 September 2017 as they were to be discussed the following Monday.

67. The welfare meeting took place on 11 September 2017 and a member of HR was present at the claimant's request. The area manager did not attend the meeting. The claimant said that her sleep patterns were awful and that she would benefit from coming back to work initially at 11.00 or 12.00 start times and gradually working her way back to full time. She said she would start work at half days and initially concentrate on her days working in the court

rather than The Grove. It was agreed that the claimant would do four half days at court in the first week and then five half days the second week.

68. There was a further discussion about the therapy sessions which the claimant had started and the fact that she had been approved to have six sessions. The requirement to phone in every day was reiterated. Ms Lahrichi stated that she wanted to hear the claimant's voice in order to check that the claimant was fine rather than simply receiving an email. Ms Lahrichi stated that after a total of 4 weeks on adjusted working, the expectation was that the claimant would return back to being at court some of the week but at The Grove some of the week as well. At the time, the Claimant said that she thought that would be fine.

69. The respondent's policy in relation to working reduced hours during a phased return to work is that the employee will only receive payment for the actual hours that they work. That is subject to the fact that if the level of sick pay which the employee would have received by staying absent would have been greater than that, then the sick pay equivalent is the minimum level of pay that they will receive during the phased return to work.

70. On 20 September 2017, there was a reduction to the claimant's pay. The payslip for this month was not disclosed to the claimant as part of the litigation and it was received on day 6. The payslip showed that the claimant's entitlement for basic pay had been calculated as £1383.65 and it also showed that there was a deduction in relation to sick pay of £1126.23. As result of the deductions the claimant was left with the net pay of £377.82.

71. By email dated 28 September 2017, the claimant wrote to HR stating that she believed that the only deduction that should have been made was that she knew there were 11 days for which she should have been paid at half pay rather than full pay.

72. A subsequent email from payroll dated 19 October 2017 stated that in relation to the first week of September the claimant had had a deduction of 5 days half pay where she should have instead been paid 5 days at half pay and therefore to correct this error there was a requirement to pay her 5 days at full pay. In separate emails from HR about the later weeks of September, (from 11 Sep onwards) it was noted that there were some days of overpayment and some days of underpayment and that the net result was that a further separate sum was owing to the Claimant for those later weeks, being a total of 13 hours' pay. In other words the total amount that was wrongly deducted on 20 September 2017 was an aggregate amount equivalent to 5 days' full pay plus 13 hours full pay. A copy of the October payslip is in the bundle page 390. The claimant was paid £772.28 that month as a reimbursement for past underpayments. Neither party produced any arithmetical calculations other than the emails just mentioned to show if this amount did or did not correspond to 5 days' plus 13 hours' full pay. Therefore, the claimant has not proved as a fact that she was entitled to a reimbursement that was greater than either (a) 5 days plus 13 hours full pay or (b) £772.28.

73. In each of October, November and December 2017 the claimant was paid basic pay and the same amount in each month of £2440.17 and in each of these months there were no allegedly unlawful deductions.

74. The claimant's 11 August 2017 grievance had been acknowledged by Ms Clough and further information had been requested. The claimant supplied that by letter dated 3 October 2017. At paragraph 3g of this letter, the claimant alleged that when the area manager had spoken to her (and it is clear that she means on 7 November 2016), the conversation had left the claimant feeling stereotyped "as an aggressive black person". The letter also said she believed white colleagues would have been treated differently. This 3 October 2017 letter also alleged breaches of the Equality Act and the claimant said that she believed she suffered discrimination, victimisation and harassment. Again, she refers to the effects on her physical and mental health. Other than what is just mentioned the letter did not refer to any particular protected characteristic.

75. The 3 October 2017 letter says: "*Theresa has also being selective on what information she documents following meetings or instruction such as when I raised question of her stereotyping me as an aggressive black person, which she did not document.*" Subject to that, the letter does not claim that the Claimant had said to Ms Zlonkiewicz or Ms Lahrichi at any time prior to the 3 October 2017 that she felt stereotyped based on her race or that white colleagues would have been treated differently.

76. On 24 October 2017, the claimant attended a supervision meeting with Ms Lahrichi. One of the points discussed was that the claimant informed her line manager that she was waiting for a further psychological intervention referral. The claimant mentioned that she was taking medication and that she would supply further information to her line manager about that in due course. Ms Lahrichi said that she would take advice about this from her area manager and from HR. In other words that she would speak to head office. This was not said as a threat; it was just a statement of fact in response to the points which the claimant was making. The claimant's account to the tribunal was that – generally, not just in relation to this specific meeting - she thought that Ms Lahrichi was potentially willing to listen to the claimant, and to be sympathetic during meetings, but (from the claimant's perspective), the problem was that Ms Lahrichi, while sympathetic face-to-face, did not have authority to make decisions without conferring with more senior colleagues.

77. During the meeting on 24 October 2017, Ms Lahrichi informed the claimant that there were to be changes to the way that the claimant was carrying out her work. It had been decided that the claimant would work at The Grove 5 days a week and therefore all court work that would now become on call. In other words, the court work was not ceasing, but it would be done on an as and when required basis, rather than as a set number of days per week.

78. The claimant was informed that she was now going to be placed on the Health Promotion team because it was considered that that would allow flexibility for her to attend court. The claimant said that rather than return to The Grove full time she would prefer to resume her former role at the police station. She

was told that that was not an option as the police station function was working well with its current allocation of staff. The claimant said that she did not want to work at The Grove as she did not want anyone fabricating stories about her. On 24 October 2017, the claimant said she did not feel well and therefore the meeting terminated.

79. On 27 October 2017, Ms Lahrichi drafted an email which was going to be sent to the claimant. She sent it to the area manager to approve. The email contained instructions to the claimant to attend The Grove on Monday 30 October to commence working on the Health Promotion team. It stated that handovers were due to start at 9.30am each day followed up by a sub-team meeting and followed after that by the commencement of daily duties. The draft was later sent to the claimant without significant amendments having been made. It was sent on 27 October 2017.

80. The claimant was very concerned about these changes for two reasons. Firstly, in her opinion, there had been no consultation with her about changing her from the Assessment and Engagement team to a different team. Secondly, the Health Promotion team contained Lesley Bell and Will Davies. Contrary to the union representative's submission on 29 June 2017 (which had implied that Mr Davies ought to have been interviewed as somebody who could potentially give favourable evidence to the claimant), the claimant had come to regard Mr Davies as somebody who had been part of the complaint against her which had led to the disciplinary hearing. As mentioned above, the claimant had correctly inferred that it was Lesley Bell who had written the document which had been used in the disciplinary proceedings.

81. This a convenient point to summarise some of the evidence from the claimant's medical notes before returning to events after 27 October 2017:.

    81.1 On 7 October 2015 visited her GP and reported that she had been sleeping poorly.

    81.2 On 20 July 2017, the claimant visited her GP in relation to anxiety. She reported feeling stressed at work and feeling bullied and an email had been sent stating that she was aggressive, rude and hysterical.

    81.3 In July, her therapy sessions started.

    81.4 On 3 August 2017, the claimant had a discussion with her GP about potentially not wishing to go back to work the following day but her GP persuaded her to attempt to do so on a phased return to work informing her that if it did not work out successfully then a sick note could potentially be issued. The sick note, as we have discussed above, saying that the claimant was fit for amended duties was actually issued and she returned to work on 4 August 2017.

    81.5 On 15 August 2017, the claimant reported to her GP that she was having a difficult sleep pattern and medication was given to assist this as well as a discussion with her GP about practices that might help her with her sleeping.

81.6 On 24 August 2017, the claimant discussed with her GP that she believed she would need some absence from work and that she would continue with counselling.

81.7 On 8 September 2017, the claimant visited the GP in relation to anxiety and at a follow up visit she was feeling a bit happier but because of the salary issues she needed to return to work and so a note approving her return to work was issued.

81.8 On 6 October 2017, the claimant visited her GP and discussed stress at work generally feeling stressed and having a poor sleep pattern. She was still seeing a therapist and a sick note was issued to say that she was not fit for work from the 6 October to 30 November 2017. In actual fact she did continue to go into work after the 6 October, and did not supply a copy of the note, at the time, to her manager.

81.9 On 5 December 2017, the claimant saw her GP. This was described by the GP as a difficult consultation and the claimant was very emotional throughout, she was tearful and there was almost no eye contact. She was still going to work despite the sick note issued on 6 October. She had not given that sick note to the respondent. The claimant was doing this because she would not get sick pay if she was absent. The diagnosis was of depression. A sick note to cover the period 5 December to 19 December 2017 was issued.

81.10 On 12 December, the claimant went to see her doctor again. The condition was reported as being the same and she described that she was being made to work with the person who had raised a grievance against her. (We note that this was a reference to Lesley Bell). The claimant said that she believed that management had been ignoring her pleas to stop working with that person and she felt that she wanted to die when she was at work. She believed that the employer was deliberately putting her out of her comfort zone in order to frustrate her. There was a review of her depression medication.

81.11 A fit note dated the 12 December was issued to cover the period 12 December to 19 December. In other words it was an amendment to the note of 15 December which had said that she was not fit at all. The 12 December one stated that the claimant was potentially fit for work with reasonable adjustments, that would be adjustments being not working in the location or with staff that had made her absent. There was a request that the employer negotiate with her on amended hours and duties.

81.12 There was a follow up by telephone on the 19 December. On the phone the claimant reported to her GP that she still felt the same as before.

81.13 On 19 January 2018, the claimant was referred to talking therapy and a sick note was issued to cover the period upto the 28 February 2018. The claimant reported at that time that she did not feel that she would be able to return to work. She reported to her GP that her employer did not consider her anxiety to be a disability and that they had told her that they

would not make adjustments. She told her GP that she had been in touch with Citizens Advice Bureau and she had drafted a letter with assistance from an employment lawyer.

81.14 On 27 February 2018, the claimant attended the GP. She believed her condition had worsened. She was still awaiting her appointment in relation to talking therapy so a new fit note was issued.

81.15 On 5 March 2018, in a discussion which concluded a discussion about physical condition in relation to anxiety it was noted that the claimant had suicidal thoughts but no plans to act on them. At that stage she was given a number for a crisis line and was prescribed Citalopram.

81.16 On 19 March 2018, some improvement was noted. The Citalopram appeared to have been working and an increased dose was prescribed.

81.17 On 9 April 2018, there was a slight improvement. The claimant wished to continue with the Citalopram. She had counselling later in April and was seen again by the GP on 30 April 2018. The claimant believed she suffered a setback because, according to her, the respondent was not willing to make concessions. The GP believed the claimant would benefit from more counselling but the claimant did not have the money for that. She continued to take Citalopram.

81.18 On 18 May, the claimant attended her GP. She stated that she was anxious on occasions and she was envisaging having getting an appointment with occupational health. She did not want all of her records divulged in connection with the occupational health referral and she was issued with a repeat prescription.

81.19 On 18 June 2018, the claimant started to feel more depressed and sought an increase of dose of medication. She was given copies of her previous notes and medication was increased. There was an appointment on 27 July and the claimant reported still having poor sleep.

81.20 On 10 October 2018, at a further appointment, the claimant was still not sleeping and was still awaiting counselling.

82. Turning back now to the events with the respondent after October 2017, the Respondent had appointed Ms Jo Choi to deal with Grievance Once. She is an assistant director and is more senior than both Theresa Zlonkiewicz and Amina Lahrichi.

83. On 16 November 2017, Ms Choi interviewed Ms Lahrichi. The grievance meeting with the claimant took place on 21 November 2017. The claimant said that her grievance was in relation to the area manager and to her line manager and to HR. Ms Choi asked the claimant to describe the discrimination that the claimant had said that she suffered. The claimant stated that the examples were all contained in her letter and Ms Choi read out paragraph 3g. The claimant alleged that management had abused their power in various ways.

84. After the meeting, the claimant submitted what we will call Grievance Two on the 23 November 2017. This referred to the treatment she had received on 17 August (when told to call the receptionist) and also to what the claimant described as the abrupt and inconsiderate way of imposing job location changes with insufficient notice. The claimant referred to her anxiety condition. She referred to allegedly unreasonable wage deductions and alleged that she was being treated differently to colleagues who (she said) did not have deductions made from their pay when they were off sick. She alleged breach of duty of care and alleged disability discrimination and said that there was a failure to make reasonable adjustments in her case and that adjustments were made for other people.

85. The claimant said that she had raised these issues before and that the resolution that she sought was a formal apology and to be treated equally with her colleagues as she wanted reasonable adjustments to be made and she wanted the wage deductions to be, in her words, rectified. She said she wanted the victimisation, harassment and bullying to stop. In the document the claimant mentioned that placing her with managers who may have raised concerns about her in the past was causing her anxiety. This was a reference to Lesley Bell and also to Will Davies.

86. On 27 November 2017, the claimant had a supervision meeting with Ms Lahrichi. It was recorded in the notes that the claimant was stating that she had a disability because of her anxiety and was stating that the anxiety had lasted for more than a year. The claimant said that working at The Grove was key to her anxiety and that she felt that she had been discriminated against. There was also a discussion in the meeting about dyslexia. Dyslexia is not part of this claim, as the claimant confirmed that during her evidence (and as is also clear from the list of issues and from the pleadings).

87. On 27 November in the evening, having drafted the supervision notes before sending them to the claimant, Ms Lahrichi sent the notes to Ms Ali to Ms Diana Clough (the then HR Manager, and line manager to Ms Ali) and to Ms Sharon Daughter (the respondent's CEO) and to Ms Zlonkiewicz. Ms Lahrichi brought attention to the fact that the claimant was referring to herself as having disabilities in the form of anxiety order and dyslexia and said:

> I planned to look at her induction plan as we have just started week (2)-as you will see [DEF[is now referring to herself as having a disabilities in the form of anxiety disorder and dyslexia. This is the first time [DEF] has referred to herself as disabled or mentioned dyslexia-I will be at Central Office tomorrow, so it would be good if I could speak to someone about this as I find this concerning.

88. The claimant commenced a period of sickness absence on the 5 December. The claimant wrote to Ms Lahrichi stating that she could not come to work due to extreme anxiety and stated that she was experiencing this due to changes to work. The claimant stated that the cause of her absence was being placed in the Health Promotion team with Mr Davies and Ms Bell. The claimant asked for reasonable adjustments to be made and she said that reasonable adjustments would be for a change of her work location either to the court or to the police station and not to be placed with Mr Davies and Ms Bell. The claimant said that she was concerned that if she worked with people

who had raised concerns in the past then they may raise concerns about her in the future. As mentioned in the discussion of her medical records, the absence lasted until 12 December when an amended fit note was supplied stating that she could come back to work with adjustments.

89. On 6 December 2017, Hoda Ali had sent an email to the Claimant's line manager and area manager and to Ms Clough stating that the claimant should be referred to occupational health upon her return from sickness absence. This advice was in response to an email from Ms Lahrichi which stated that Ms Lahrichi had told the claimant that the claimant would stay on the Health Promotion team and would be trained in prescribing (prescribing was a matter about which the claimant had expressed particular anxiety) but that the Claimant had phoned in sick with anxiety and depression.

90. Following her return from that early December absence, Ms Ali's advice about a referral to occupational health was not followed. The claimant had a back to work meeting which took place with Ms Clough and Ms Zlonkiewicz on 19 December 2017. Ms Clough was the HR manager for the respondent between January 2011 and January 2020. She was the manager of Hoda Ali and Margarita Cavallaro. During the 19 December meeting, Ms Clough stated that the claimant did not have a disorder but rather she had a condition. Although Ms Clough told the tribunal that she does not think she would have said such a thing during the meeting, the claimant's recollection is that Ms Clough definitely said it and the claimant asserted that in writing to Ms Zlonkiewicz and Ms Clough in an email of the following day, to which there was no refutation or reply at the time. Ms Clough's written witness statement did not give her own version of events for the 19 December meeting and she expressly said in her written statement that she had a poor recollection of events in January and February 2018. Therefore, we are satisfied that she did make that comment during the meeting.

91. During the meeting, the claimant also asked for things that she said were reasonable adjustments. She asked for her start time to be varied from 9.30 until 10.00 or 10.30 and she said that she would make up the time by taking lunch breaks of 30 minutes and by working later in the evening rather than finishing at her normal time of 5.30. The claimant also asked to work at either the court or the police station rather than at The Grove and the claimant also asked to be put in another group rather than the Health Promotion team. The respondent said "no" to both of these requests.

92. Ms Zlonkiewicz wrote to the claimant on 19 December 2017 acknowledging that the claimant's GP had said that the claimant's fitness to return to work would be with adjustments including change of location, change of co-workers and a change in hours and a change in duties. The letter of 19 December acknowledged the claimant's letter of 5 December. The 19 December letter stated that it had been "explained" to the claimant that anxiety is not considered to be a disability and therefore the is no duty to make reasonable adjustments. The letter added that the suggestions of the GP and those in the claimant's letter were not compatible with the needs of the service and the requirements of the respondent's contract with its commissioner. The letter stated that the respondent's "*expectation is*

therefore that you continue to work at the Grove, as a member of the Health Promotion Team and attending court as and when required, working with all managers based at the service". In other words this was in reference to the NHS managers such as Mr Davies as well as the respondent's managers.

93. The letter stated that the claimant could suggest other things that might help lessen her anxiety about working at The Grove and the respondent noted that the claimant was receiving regular counselling. The letter referred to the possibility of changing start and finishing time and said that the Respondent would update her on that. On 21 December 2017, Ms Ali wrote to the claimant to say that Ms Lahrichi had looked into the possibility of changing working hours and had decided that it was not possible.

94. A draft of the 19 December letter had been sent to Ms Clough to comment on it. Ms Clough approved the letter and Ms Clough told the Tribunal that, in fact, she had not intended that the letter would say that anxiety could not amount to a disability but only that it not yet filled the requirement of being a long-lasting condition. We reject that assertion, because it is not what the letter approved by Ms Clough says, and it is not what was said during the meeting.

95. Ms Clough told us that she was not aware at the time that the claimant's supervision notes included any discussions about historic anxiety or depression. We accept that Ms Clough either does not remember reading Ms Lahrichi's 27 November 2017 email (and the attached supervision notes), or that, alternatively, she did not read it. However, in any event, Ms Clough did not ask either Ms Zlonkiewicz or Ms Lahrichi - both of whom had access to the supervision records - what those records said about anxiety or depression or health generally. Ms Clough did not advise Ms Lahrichir or Ms Zlonkiewicz or anyone else to make further enquiries. Despite Ms Ali's 6 December 2017 email, Ms Clough did not advise either the respondent or the claimant that medical evidence might be sought to help assess whether the condition had already lasted or else was already likely to last for 12 months. Ms Clough did not have any detailed discussions with Ms Zlonkiewicz as to why Ms Zlonkiewicz decided that none of the claimant's requested adjustments could be offered by the respondent. Ms Clough regarded it as an operational decision for the area manager to make.

96. The claimant wrote to the respondent on 22 December 2017 to express dissatisfaction of the outcome of the back to work meeting. The letter said that the claimant had suffered a mental impairment for over 12 months and asserted that the respondent was aware of this. The letter alleged victimisation, discrimination and abuse of power by Ms Zlonkiewicz and Ms Lahrichi. It referred to the fact that the claimant had previously complained about this but had received no outcome. [It is correct, of course, that at this point she had not received any outcome to Grievance One.] The letter referred to the fact that the claimant had particular concerns about working with Mr Davies and Ms Bell given the previous disciplinary hearing. The letter stated that the claimant would like to remain in a court role and/or be part of the rotation for the police station role. The claimant repeated that she regarded her mental health impairment as a disability under the Equality Act

and stated it significantly affected her ability to go to The Grove and her ability to sleep and her ability to focus. That letter was addressed to Human Resources (Ms Clough) and to Ms Zlonkiewicz. Ms Clough says she does not recall the letter. She believed that had such a letter been received it would have been the area manager's responsibility to reply to it because of the 19 December meeting had been the area manager's meeting, not Ms Clough's. Ms Clough does not believe that she told Ms Zlonkiewicz to reply to the letter.

97. The claimant also sent an email dated 17 January stating that she had not received a response to her December letter (and our finding is that this is in reference to the 22 December rather than the 5 December letter, the 5 December letter having received its reply by way of the 19 December 2017 response from Ms Zlonkiewicz). In the 17 January email the claimant stated that if the respondent required any medical evidence from a doctor she would be happy to provide consent, and again she requested reasonable adjustments to enable her to return to work without damaging her health.

98. Immediately following the 19 December meeting, the claimant was on holiday with the last day of her holiday being 17 January 2018. From the 18 January 2018 onwards, the claimant was absent due to sickness. She did not return to her work duties prior to the end of her employment. The fit note for the 19 January stated that she was not fit to work until the 28 February and referred to anxiety states.

99. On 22 January 2018, Ms Ali wrote to Ms Choi asking about the outcome for the grievance. The email informed Ms Choi that the claimant had been in contact to say that she was concerned that she had still not received the outcome. It also went on to say that there were potential job losses at The Grove to take place soon and that it would be sensible for there to be a gap between the date on which the claimant received a grievance outcome and the date on which consultation in relation to potential redundancies began. It stated that it was important to be clear that these were separate processes. Other than that it was the 17 January 2018 email which prompted Ms Ali to chase Ms Choi to provide the grievance outcome. There was no specific response from the respondent to either the claimant's 22 December 2017 or 17 January 2018 communications.

100. By letter dated 16 February the claimant received the Grievance One outcome letter and a copy of Ms Choi's investigation report. She did not receive the appendices which are referred to in the report at that time and she did not receive those at all until disclosed to her as part of this litigation, after the end of her employment.

101. Ms Choi's outcome letter referred to the claimant's letters of 11 August and 3 October and noted that Grievance One was being treated as a grievance against Ms Lahrichi and Ms Zlonkiewicz. Eight bullet points were used to express Ms Choi's findings of fact and her decisions.

    101.1 In relation to errors in relation to sick pay payments, Ms Choi's finding was that mistakes had been made in relation to the claimant's pay and also that there had been a failure to give reasonable notice before making the

deductions from salary. Ms Choi's decision was that the wrongful deductions in September 2017 had been corrected in October 2017. In other words, they had been corrected before the grievance hearing on the 21 November. Ms Choi's appendix 6 (which the claimant did not see at the time but in the hearing bundle), included the email of the 19 October 2017 timed at 15:17 from Silvia Hill to the claimant explaining that the claimant would be paid 5 days to correct the error for the first week of September 2017 and the email from Hoda Ali on the 12 October 2017 at 10:32 to explain that the claimant would be paid 13 hours to correct the underpayment for the remainder of September 2017.

101.2 Ms Choi decided that it had been inappropriate in August 2017 for the claimant to have been told that she should report to the BEH receptionist in relation to her well-being.

101.3 The grievance was rejected in relation to the suggestion that inadequate support had been given in connection with return to work interviews.

101.4 In relation to the previous disciplinary and the allegations of victimisation, harassment, bullying and abuse of power Ms Choi did not uphold those allegations specifically. Ms Choi's finding was that in relation to the issue of the emails from around October 2015 it had probably been unnecessary for that to go as far as the disciplinary hearing and that had not been ideally managed. However, Ms Choi believed - in relation to the 18 May 2016 conversation between the claimant and Ms Lahrichi, as commented upon by Ms Bell - that it had been appropriate to have a disciplinary hearing. Ms Choi's conclusion was that the disciplinary process itself was not unfair and nor was the outcome unreasonable.

102. Amongst the recommendations that Ms Choi made were that there should be a discussion about how the claimant and her managers should move forward, including about the claimant's role and responsibilities. Ms Choi's suggestion was that a neutral manager might be involved in that. Ms Choi also suggested that if both sides agreed there should be mediation between, on the one hand, the claimant and, on the other hand, Ms Lahrichi and Ms Zlonkiewicz.

103. The claimant responded on 21 February to say that she wished to appeal but was too ill to do so. She still remained off sick at this time. The claimant was contacted by Ms Okpa-iroha either in late February or early March to invite the claimant to come in to The Grove for consultation in relation to potential re-organisation. The claimant said that she was not well enough to do that and she would like to be consulted once she was well enough.

104. On 6 March 2018, Ms Clough wrote to the claimant stating that the respondent would like to hold a welfare meeting to consider what steps could be taken to enable the claimants return to work, stating that there would be a referral to occupational health.

105. The claimant had asked about Group Income Protection Scheme, and Ms Clough informed her that if approved the payment would be 50% of her salary

for a maximum of 2 years. This was something that was potentially available to employees with a long-term illness. The policy was intended to be used by employees who would unlikely be able to work for a considerable period of time. The process described by Ms Clough was that the application would be completed jointly by the employee and the employer, but it was the insurers' decision rather than the employer's decision whether the request would be approved. If it was approved the payment method would be that the insurer would pay the respondent and the respondent in turn would pay the claimant. Ms Clough did not provide the claimant with an application form or any further information but she did offer to discuss it further at the welfare meeting. There was no further progress on the claimant's request in relation to the insurance scheme.

106. The claimant was contacted by Ms Ali on 12 March 2-18 seeking to arrange a welfare meeting for 16 March 2018. On 16 March, an offer of a rescheduled meeting for 19 March was made. The claimant was offered the opportunity of having it take place at her home but she rejected that suggestion. The claimant's position was that the meeting should not take place in March as she believed she was not well enough. She was signed off until 30 April and she believed the meeting should not take place until her health had improved.

107. On 23 April, the claimant wrote to the respondent to indicate that she was feeling slightly better. She implied that she might be well enough to attend the welfare meeting and expressly asked about an occupational health referral.

108. On 27 April, the claimant raised Grievance Three by writing to Ms Clough. The claimant alleged that the respondent was failing to make reasonable adjustments and that this alleged failure was preventing her from returning to work and that in turn was affecting her salary. The letter stated that the claimant's doctor had given a professional opinion that she was suffering work-related stress, anxiety and depression. She stated that she was feeling tired all the time and that was affecting her. She said that should would like to have advice from occupational health in order to determine what reasonable adjustments could be implemented to assist her returning to work. She referred to bullying, harassment, victimisation and discrimination. She stated that she would not wish to attend a welfare meeting with Ms Zlonkiewicz. She said that she was not able to work either with Ms Zlonkiewicz, Mr Davies or Ms Bell. She was willing to work with Ms Lahrichi, provided there was prior mediation in order to resolve any disputes.

109. The letter did not allege discrimination or any other breaches of the Equality Act in connection with either sex or race. It did allege unfavourable treatment because of disability, failure to make reasonable adjustments and discrimination arising from disability. The claimant's communications in April 2018 suggested the possibility of returning to work at the expiry of her fit note on the 30 April. The claimant did not receive a reply from the respondent within April and a new fit note dated 30 April was produced, which stated the claimant was unfit to work until 23 June 2018.

110. By letter from Ms Clough dated 4 May, the respondent invited the claimant to a welfare meeting to take place on the 15 May. That meeting was to be chaired by Mr Chris Campbell. The letter said he was a senior person in the organisation who was outside the claimant's line management chain. In fact, he is a senior person, being an assistant director. However, he is also Ms Zlonkiewicz's line manager, so not outside the line management chain. He had had no prior involvement in the matters discussed above.

111. Mr Campbell prepared for the meeting by discussing with Ms Zlonkiewicz and Ms Clough. Mr Campbell was made aware that the claimant was signed off until late June and had been absent since January. He was aware the purpose of the meeting was to discuss potential return to work arrangements.

112. The 4 May letter stated that, at the welfare meeting, the claimant would be asked to sign a consent form so that the respondent could make an Occupational Health referral and that Occupational Health advice would be vital in assisting the claimant's return to work by identifying any actions the respondent needed to take. Ms Clough added that the respondent would also consider any other matters relating to the claimant's return to work. These included the grievance sent to Ms Clough the previous week.

113. The meeting went ahead and the claimant was supported by a friend, rather than a work colleague or a union representative, with the respondent's permission. Ms Clough accompanied Mr Campbell.

114. The claimant was given a form during the meeting to provide consent for the Occupational Health referral. The claimant sent that form back by recorded delivery and a date stamp shows the respondent received it on 18 May. Ms Clough also accepted that the date of 18 May was correct.

115. For some reason, the version of the meeting notes that was in the bundle at 343 was different to one which the respondent's witnesses had used while preparing their witness statements. The alternative version of these notes was added to the bundle by consent on Day 6. In the revised notes there is an additional paragraph which says the subject of the claimant's Grievance One appeal was discussed, and it was stated that the Grievance One appeal should be dealt with prior to addressing either Grievance Two or Grievance Three. The notes record that the claimant was asked to provide her full grounds of appeal for Grievance One when she felt ready to do so, but no later than three weeks after her return to work. It was noted that once she had provided the full grounds of appeal the respondent would appoint somebody to deal with the appeal. The bullet points that summarised the outcome of the meeting are consistent with all of that having been discussed and the claimant does not reject the accuracy of the revised version of the note which was submitted on Day 6.

116. During the meeting:

    116.1 It was discussed that it would not be possible for the claimant to return to being placed at the court five days a week because the respondent no longer required a court worker to be at the court five days a week. The

respondent did not state that the claimant was redundant or that there was no job for the claimant to return to.

116.2 The claimant was informed that a reorganisation had taken place in her absence and that two posts no longer existed. Effectively what the claimant was told was that the redundancy consultation had taken place and was now concluded and that the claimant was not at risk of redundancy.

116.3 The claimant was provided with a job description. She was told that it was her job description. In fact, it was that one that had been given to her in 2013 following the TUPE transfer rather than the court worker job description which had been issued to her in February 2015. However, as discussed above, our finding is that the 2013 and 2015 job descriptions are largely similar. To the extent (if at all) that allocation to work on the Health Promotion team would have required a new written job description, no such new job description was produced or supplied to the claimant on 15 May 2018 or at all. The Respondent's position is that no new job description would have been required.

117. Our finding is that the word "dissolved" was not mentioned at the 15 May meeting. There was a discussion about the fact that the court worker role was not required (as in there was no requirement for someone to work set hours in the court) but it was not suggested that there was no job for the claimant.

117.1 In connection with both the court work and the police station work, the primary focus of the respondent's work was in relation to drug abuse. There is an organisation called HAGA that had similar functions to the respondent but it was focused on alcohol abuse specifically and it was also based more locally in the Haringey area, whereas the Respondent covered a wider geographical area.

117.2 On 1 April 2018 HAGA had been taken over by the respondent and its staff had transferred via TUPE to the respondent. HAGA had some employees who worked at the police station and some employees who performed work at court.

117.3 To the extent that the claimant alleges that the HAGA employees did identical work to her we reject that assertion. Our finding is that there was at least one difference, namely that the claimant's work had been in connection with drugs and HAGA's was more focused on alcohol. We do note that Ms Nichola Stewart worked for HAGA some of the time and also worked for the respondent some of the time. Her work for the respondent was as a member of bank staff and she did some work for the Respondent at Highbury Corner Magistrates Court while the Claimant was off sick. This is not inconsistent with what the respondent told the claimant in October 2017 and subsequently, namely that the respondent would sometimes require her to attend court even though there was no longer a designated number of days per week that she would be there.

117.4 Although we have taken account of Ms Reid's evidence we do not think Ms Reid is in a position to know on which days - prior to 1 April 2018 - Ms Stewart was attending court as a worker for HAGA and on which days she was attending court as a worker for the respondent. Our finding is that Ms Stewart was doing both (on different days) and the fact that she was able to do both demonstrates that there were transferrable skills between the roles. The claimant herself argues the same point (ie that she could have done, at court, some of the work which had been done by HAGA pre-takeover). However, the fact that Ms Stewart sometimes attended court on behalf of the Respondent does not prove that the respondent's witnesses were being dishonest or inaccurate. We accept their evidence that the Respondent's finances were such, and its contractual arrangements with BEH were such, that its requirements to have a full-time court worker no longer existed and similarly it no longer required four people working on the custody rota for Police Station work.

118. One action point from the meeting was that Mr Campbell would investigate the possibility of the claimant starting late and finishing late and of working from either the court or the police station. In particular, as the Claimant had been told that it was not possible to combine working on the Assessment and Engagement Team with as and when required court duties, she wanted to know if she could return to the police station role, and work there as often as possible.

119. Another action point was the provision of the signed consent form by the claimant so the Occupational Health referral could be made. As discussed, the claimant did her part. On receipt of the medical consent form - on 18 May 2018 - the respondent did not require any further information prior to making the referral to her Occupational Health provider.

120. The referral was not made soon after 18 May. The claimant sent some chasers by email and eventually she submitted Grievance Four on 13 June 2018. It seems that it was Grievance Four which prompted the respondent to commence drafting the Occupational Health referral because the referral form refers to Grievance Four having been received that same day.

121. On 18 June 2018 (so one month after receiving the Claimant's consent), the respondent sent the completed referral form to its Occupational Health provider. On 20 June, the respondent authorised the provider to proceed. On 20 June, the Claimant was told that the appointment would be for 29 June. In other words, the appointment was arranged by the provider 9 days after receiving the authority to proceed. However, 29 June was three days after the claimant was due to return to work on 26 June. Based on this it seems probable that if the respondent had made the referral promptly after 18 May then an OH appointment prior to the return to work date would have been possible.

122. By a letter dated 17 May the claimant submitted her full grounds of appeal in relation to Grievance One. She referred to discrimination, breaches of the Equality Act and harassment. As part of this appeal she suggested she wished to commence a new grievance. She also referred to case law.

122.1 As part of her challenge against her previous grievance decision in upholding the disciplinary outcome, the claimant referred to the fact that a white woman made a malicious allegation against her as a black woman and was automatically believed.

122.2 Under the heading Other Relevant Information, the claimant stated that she would like to be treated like other colleagues, especially white colleagues, and asserted that white colleagues were receiving more favourable treatment than her. She commented on the fact that it had been three months between issuing Grievance One in August 2017 and the grievance interview in November and then a further three months until the grievance outcome was sent to her in February 2018.

123. On 15 May, Mr Campbell had said he would investigate the requested adjustments. After the meeting Mr Campbell delegated this task to Ms Zlonkiewicz. He did not inform the claimant that he was doing that. On 18 May, Ms Zlonkiewicz wrote to Mr Campbell, Ms Clough and Ms Ali to state that it was not possible for the claimant to go on the Assessment and Engagement Team and the only "vacancy" that the claimant could return to was on the Health Promotion Team. It was also said not to be possible for the claimant to work seven hours per day if she started at 10:00 to 10:30. According to Ms Zlonkiewicz's email the service closed at 5:30pm (except on Wednesday) and there were no other staff in the building after that. It was also stated that the claimant needed to work with managers at the respondent and the NHS organisation who worked in the building. Ms Zlonkiewicz stated that she discussed this with a senior employee of BEH (Ms McCabe) but Ms Zlonkiewicz did not make clear which parts of the answers which she gave were her own opinions and which were Ms McCabe's.

124. Later, on 18 May, Mr Campbell sent - to Ms Zlonkiewicz and to Ms Clough and to Ms Ali – a draft of the response which he intended to send to the Claimant. Commenting on the draft Ms Zlonkiewicz stated that Lesley Bell does not manage the team but Mr Davies does and hinted at the possibility that Mr Davies might be due to leave his post in the foreseeable future, but that he was currently the manager of the Health Promotion Team. The respondent clearly understood that the claimant was suggesting that she did not wish to work with either Ms Bell or Mr Davies.

125. On 13 June, shortly before 7pm, the outcome letter from 15 May welfare meeting was sent to the claimant. It was largely the same as the draft that had been produced on 18 May. It is possible that the issuing of Grievance Four might have prompted the respondent to send the outcome letter, but, even it did, it did not cause there to be any changes to the draft of the 18 May. The exact timings of the different letters on 13 June is not clear.

125.1 The notes of the meeting from 15 May were included in the outcome letter.

125.2 Mr Campbell responded on four key areas which he had noted the claimant said were impacting on her health.

125.3 She was told that it was not possible for her to work permanently at court as there was no longer such a worker. It was said that with one person based at the police station, the respondent did not wish to change that arrangement. (We note in passing that historically there had been up to four people on a rota at the Police Station, but we accept that the respondent had genuinely – for reasons not connected to the Claimant's dispute – that it was not necessary to keep that many people on the rota). Mr Campbell said in his evidence and we accept it, that the claimant would potentially have been somebody who could have done a good job in the police station. The reason for not offering it to her was the fact that offering it to the claimant for some or all of the time would have required changes to another person's role as well (so that that person did something else other than the Police Station role some or all of the time) and the Respondent did not wish to make that change.

125.4 Mr Campbell agreed that the claimant could have a phased return to work. His view was that the precise arrangements would be worked out by the claimant and her line manager. However, the respondent's position was that the phased return to work would not involve reduced hours on any given day. So, on the days that the claimant would be working she would start at 9:30am and finish at 5:30pm. The phased return to work was that there was a reduced number of days per week on which she would be required to work for the phased period.

125.5 Mr Campbell asserted in his letter that it was the decision of the NHS partner that the claimant could not work after 5:30pm Monday, Tuesday, Thursday or Friday and this was Mr Campbell's genuine interpretation of what the area manager had told him in her email. However, he did not speak to the NHS himself and, as we have said, Ms Zlonkiewicz's email did not expressly state that it was the partner organisation which had said that nobody could work after 5:30pm. In any event the respondent rejected the claimant's suggestion that she maintain a 35 hour week by starting late and making up hours after work. The letter did not address the possibility of the claimant doing extra hours on a Wednesday evening or doing extra hours at lunchtime by taking a 30 minute lunch break (as permitted by her contract) or doing extra hours on a Saturday.

125.6 In Mr Campbell's evidence, in relation to taking 30 minute lunch breaks he said that he thought this sounded reasonable but it would be a matter for the claimant to discuss with Ms Lahrichi on her return to work. Mr Campbell also thought this one possible adjustment might be for the claimant to have hours to be reduced so that she started work but still finished at 5:30pm. He suggested that this was also something for the claimant to discuss with her line manager and his view was that it could potentially be something that was requested by a formal flexible working request. To the extent that Mr Campbell believed that this would have to be requested as a formal flexible working request during a phased return, we find that that is not the case. The claimant was not required to fill out a formal flexible working request either in September 2017 or indeed in May 2018 in connection with the reduced number of days per week. So, the

possibility of the claimant starting late during (at least) the phased return to work is something that could have been offered to her without the necessity for her to fill out a particular form. Furthermore, if a form was required the Claimant was not asked, on 15 May, to complete it so that a decision could be made prior to her return to work.

125.7 The outcome letter stated that the claimant could not work in the Assessment and Engagement team as there were no vacancies.

126. It was agreed that the claimant's appeal in relation to the Grievance One would be heard by Sharon Daughter, chief executive. The appeal hearing was due to take place on the 21 June. The claimant's fit note was due to expire on the 25 June. In other words 25 June was the last day for which she was certified as being off sick and so the respondent made preparations for the claimant to return to work with effect from the 26 June.

127. On 20 June, Ms Clough wrote to Ms Lahrichi to suggest a program for the phased return to work and that it would potentially be 3 days per week for the first two weeks and then 4 days per week in weeks 3 and 4 and with week 5 being a return to full-time work. The email also suggested that there would be a meeting with the claimant to discuss adjustments once the occupational health report had been produced.

128. At the 21 June meeting, the claimant was allowed to be accompanied by her sister, who is not an employee or a union rep. Ms Clough accompanied Ms Daughter. There are notes in the bundle are a summary of what each person said. Ms Daughter asked the claimant to show her where race discrimination was mentioned in either the 11 August or 3 October 2017 letter. The claimant's suggestion was that Ms Zlonkiewicz stereotyped her and had not treated her the same way others were treated and had not been treated the same had she been a white woman. There was a discussion about the fact that the claimant sought to raise a new grievance as part of the appeal and also about grievances two and three, and by this stage four, having all been submitted. Ms Daughter suggested that she would write to the claimant with the appeal outcome and that potentially the other grievances could be combined into one document, although stating that they would be dealt with separately if that was the claimant's preference.

129. The claimant resigned by letter dated 25 June. The appeal outcome letter was prepared towards the end of July. The appeal outcome was sent out by the respondent. It was not received by the claimant. The respondent sent one copy of the letter to the claimant's work email address (which had no chance of reaching her as she had left employment by then and, in any case, she was unable to access emails remotely even during her employment). According to what we were told, another copy was sent by mail. Although there is no clear evidence on the point, from what we have heard, it does seem possible that what happened is that it was sent by recorded delivery and was returned to the Respondent unopened. In any event, the claimant did not receive the item and did not receive a card from the Royal Mail notifying her that there was an item for her to collect, and she did not receive the appeal outcome letter prior its disclosure in this litigation.

130. The claimant's resignation letter stated that she was resigning with immediate effect and stated that she was resigning in response to what she described as cruel treatment received over the previous three years. She said that the conduct that was relying on was as outlined in Grievances One, Two, Three and Four and also referred to matters as per her first claim to the Employment Tribunal.

131. In fact that first claim, although presented in May 2018 was not served on the respondent, not until that done by the Tribunal's letter of 2 July 2018. The reason for that time gap was that the claimant had requested that the Tribunal delay service on the respondent. The Respondent therefore received the claim form only after the Claimant had resigned.

132. The resignation letter referred back to the 19 December 2017 letter and the comments in it mentioned above. There were 13 numbered paragraphs referring to a number of different issues and events and stating that the claimant had suffered unlawful disability discrimination. Amongst other things the claimant suggested that there had been breaches of her contract and failure to pay the correct amounts that were due to her. She also alleged failure to make reasonable adjustments and referred to the delay in occupation health referral and the fact that the Respondent was not willing to make reasonable adjustments until after she had seen occupational health. She referred to the fact that she had been expected to work with Ms Bell and that immediately upon her return to work she was required to do 9:30 until 5:30 four days during her phased return. She referred to delays in relation to the grievance process. She referred to a failure to progress requests in relation to insurance protection. She said that being on the Health Promotion team placed her at a substantial disadvantage and she referred to race discrimination and disability discrimination. We should point out that the letter did not refer to sex discrimination.

133. There was no specific response from the respondent to the claimant's resignation letter. Likewise, there was no specific response to Grievance Four dated 13 June, other than what was discussed on 21 June.

134. The appeal outcome letter did not comment on the claimant's resignation letter. The appeal outcome letter stated that Ms Daughter had looked into the delays in connection to the disciplinary and in relation to the 18 May 2016 phone conversation and had been satisfied that the delays were adequately explained. It also stated that Ms Daughter had looked into the fact that other people, two white team members, had been granted reasonable adjustments and the claimant had not and the letter said that one member of staff had requested reduced hours when he returned to work and now worked part-time. Our finding is that that is a reference to JV for whom there is evidence in the bundle that he formally reduced his hours to part-time. The other member of staff referred to in Ms Daughter's letter is RL and the letter refers to changes in his work place and a change in the part of the building in which he worked. There was no mention in the letter of RL having a change of hours or a reduction in his pay. We note from the occupational health referral in connection with RL that apparently his hours were reduced to 10:00 to 4:00.

135. In relation to the composition of the four teams that we mentioned earlier, the reasons for, and details of, the 2017 reorganisation were not demonstrated to us by the written witness statements or by reference to documents in the bundle that were submitted to the claimant at the time. However, Ms Okpa-iroha was able to give some helpful evidence to the Tribunal about those issues. Her evidence, which we accept, was that when the teams were first created it was comparatively easy for an employee to request a change and to be moved to a different team, from one team to another. When the teams were created it seems that the respondent did not take the organisation chart (the one that appears in the job descriptions that we have mentioned earlier), and then reach its decision about which posts from the organisation chart should go onto which team. Rather the approach was to consider which current employees had the skills and experience which were best suited to work on each of the four teams. If an employee were to leave (or an employee were to go on long-term sickness absence) then potentially the respondent might use an agency worker to make up the numbers. However, the agency worker might have different skills and experience to the person that they were covering for, and so the agency worker would not necessarily go straight into the same team as the person they were temporarily replacing. Instead the Respondent might put the agency worker on a different team and swap one of the respondent's employees to provide the cover. Ms Okpa-iroha told us that another reason that the composition of the teams might be changed from time to time is if the work load was reviewed and it decided that one of the teams needed an extra person. That might lead to someone being taken from another team and assigned to the team that had the requirement. That is something that happened at least once Ms Okpa-iroha's direct experience: one of the claimant's suggested comparators, NC, came to work on Ms Okpa-iroha's team because of an increased requirement for workers for that particular team.

136. The service has a management team. Its member are managers employed by the Respondent and managers employed by BEH Mental Health Trust. Ms Okpa-iroha was able to speak about the operation of the team, because she is a member of the management team of both now, whilst she is covering Ms Lahrichi's role, and previously when she was a team leader. Ms Okpa-iroha's understanding is that after the teams had been in existence for a while, BEH expressed the view that it would be better to have more stability and that people should not move between teams as regularly as they had done in the past. It expressed a preference that people should be on a team for at least 6 months before being allowed to move.

137. Ms Okpa-iroha told us that there was a process by which individuals who wanted to have a move could request one (even if they had not been on the team for 6 months). The process was that they speak to their line manager about the reasons for wanting a move and that line manager would bring the request to the management team meeting and it would be discussed between the two partner organisations and might be approved. Ms Okpa-iroha's recollection is that it was not something that happened frequently, but she was aware that there was a process there for it to happen when necessary.

138. There was no evidence presented to us that the claimant's request for a change away from the Health Promotion team was taken to the management team meeting for discussion. Likewise, there was no evidence presented to us about the precise reason that the claimant was told in May that she would go onto the Assessment and Engagement team or that she was told in October that she would go onto the Health Promotion team. Our finding is that the claimant's job description was not a deciding factor in relation to what team she was allocated to. As mentioned, the respondent allocated people to different teams based on their skills and experience rather than based on what their particular written job description said. Again, as mentioned earlier it does not seem that the respondent, according the evidence that we have seen at least, felt the need to draw up or revise new job descriptions in connection with the changes that came about in 2017 when the teams were created, or when it moved people between teams.

139. In relation to Nichola Stewart, after Ms Okpa-iroha had given her evidence, some documents were produced which we have taken into account. It seems that between the end of 31 March 2017 and the 1 January 2018 Ms Stewart did not work for the respondent. She did work for the respondent between the 1 January 2018 and the 31 March 2018. We have discussed that above. The TUPE transfer took place on 1 April 2018. Therefore, as a HAGA employee immediately before the transfer, she became a permanent employee (rather than bank staff) of the respondent with effect from 1 April 2018.

Law

140. There are time limits for Equality Act complaints that are dealt with in S.123 of the Equality Act 2010.

> (1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
>
> (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (3) For the purposes of this section—
>
> (a) conduct extending over a period is to be treated as done at the end of the period;
>
> (b) failure to do something is to be treated as occurring when the person in question decided on it.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a) when P does an act inconsistent with doing it, or
>
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

141. The early conciliation provisions affect the potential time limit. Subject to that, the claim should be brought within 3 months of the date of the act to which the complaint relates or it may be brought within such other period that the tribunal thinks is just and equitable.

142. As we mentioned the first claim was issued on 15 May 2018 and early conciliation was 16 March to 16 April 2018. So, because the claim was issued less than 1 month after the end of early conciliation then claims relating to acts or omissions within 3 months of the start of the early conciliation are in time. In other words, allegations about acts or omissions from 17 December 2017 onwards are in time provided they are mentioned in the first claim. In relation to the second claim, allegations connected with the alleged dismissal are in time because the claim was presented on the 20 September, less than one month after the end of early conciliation which commenced on 26 July. Allegations about acts or omissions that were stated in the second claim, but not the first, are in time if they occurred on or after 27 April 2018.

143. In applying S.123(3)(a) of the Equality Act the Tribunal must have regard to the guidance in *Commissioner of Police Metropolis v Hendricks* and also *Lyfar v Brighton and Hove University Hospital Trust*. Applying that guidance the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period, one relevant factor (but not a conclusive factor) is whether it is the same individuals or different individuals involved in those incidents. The Tribunal must consider all the relevant circumstances and decide whether there was an act extending over a period of time. If the acts are unconnected then time runs from the date on which the specific act was committed.

144. A finding that complaints are out of time is subject to the Tribunal's ability to extend time in accordance with S.123(1)(b). The tribunal had a broad discretion. The onus is on the Claimant to show why time should be extended, and the onus is not on the Respondent to show why it should not. There is no presumption that time should be extended unless it can be shown that there is a specific reason not to do so.

    144.1 The Claimant's reasons for missing the time limit are potentially a relevant factor. However, it does not follow that the mere fact alone that the Claimant has unsatisfactory reasons for missing the deadline does not mean that it cannot be just and equitable to extend time.

    144.2 The effects on the Respondent of extending time must be considered. There will always be some disadvantage to the Respondent if time is extended, in comparison to the complaint simply being resolved in its favour on procedural grounds. However, it is important to consider if there are specific problems (such as unavailability of witnesses or documents) caused by the Claimant's delay. The mere fact that a witness is not deceased or untraceable does not mean that there is no disadvantage. The witness's ability to remember events from long ago can also be a consideration.

144.3 The discretion is too broad to seek to provide a comprehensive list of the factors that might be relevant. The ultimate question is to take all relevant considerations into account (and ignore irrelevant one) and to consider whether it is just and equitable to extend time, taking into account both the prejudice to the Claimant if the decision is "no" and the prejudice to the Respondent if the decision is "yes".

145. In relation to the burden of proof for Equality Act complaints S.136 of the Equality Act deals with burden of proof it is applicable to all the Equality Act claims in this action. Namely, all the claims of harassment or victimisation which rely on the definitions in S.26 and 27 and also the disability discrimination claims and the direct discrimination claims.

> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

146. So, it is a two stage approach. At the first stage the Tribunal considers whether the claimant's proved facts on the balance of probabilities from which the Tribunal could conclude in the absence of an adequate explanation from the respondent that the contravention has occurred. At this stage is not sufficient for the claimant simply to prove that what she alleges happened did in fact happen. There also has to be some evidential basis from which the Tribunal could reasonably infer that the proven fact did amount to the contravention. The Tribunal can of course look at all the relevant facts and circumstances and make reasonable inferences where appropriate.

147. If the claimant succeeds at the first stage then that means the burden of proof shifts to the respondent and the claim should be upheld unless the respondent proves that the contravention did not occur. Where the claimant fails to prove on the balance of probability that a particular alleged incident did actually happen then the claim is based on that alleged incident fail. Section 136 does not require a respondent to prove that the alleged incidents did not happen.

148. Section 26 of the Act deals with harassment

> (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 in subsection (1)(b), each of the following must be taken into account—
>
> (a) the perception of B;

(b) the other circumstances of the case;

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

149. For the purpose of section 26(1) each of race and sex and disability is a relevant protected characteristic.

150. For the purposes of section 26(1), the claimant need to establish on the balance of probabilities that she has been subjected to unwanted conduct which had the purpose or effect of violating her dignity etc. It is not sufficient for the claimant to prove that the conduct was unwanted, or even to prove that it had the purpose or effect described, the conduct also has to be related to the particular protected characteristic. Because of s.136 the claimant does not need to prove on the balance of probability that the conduct was in fact related to, as the case may be, race or sex or disability; however, to shift the burden of proof to the respondent she needs to prove facts from which we might infer that the conduct could be so related.

151. In *HM Land Registry and Grant* the Court of Appeal said that when considering the effect described in s.26(1) and when looking at s.26(4) it is important not to "cheapen" the words that are used in s.26. The Court of Appeal said even if in fact the conduct was unwanted and the claimant was upset by, the words used in section 26(1)(b) "are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment" and that a tribunal too readily finding that the effect of the unwanted conduct was to create a humiliating, etc, environment risks brings discrimination law into disrepute.

152. When assessing the effects of any one incident - where the allegation is actually that there were several incidents- it is not sufficient for us to just consider each incident in itself by isolation. We should of course consider each incident one by one. However, the impact of separate incidents can accumulate and so the effect on the work environment might potentially exceed the sum of the individual episodes. That is something we should also consider. Taking too piecemeal an approach, when analysing a set of incidents - each of which is said to amount to harassment in its own right - rather than – additionally - taking the allegations as a whole could lead to the wrong result and could mean that the Tribunal fails to draw appropriate inferences.

153. In relation to victimisation s.27 of the Equality Act reads:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

> (d) making an allegation (whether or not express) that A or another person has contravened this Act.
>
> (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

154. There is victimisation as described in s.27 if the claimant has been subjected to a detriment and she was subjected to that detriment because of a protected act. The alleged victimiser's improper motivations might be unconscious or conscious. A person subjected to a detriment if they are placed at a disadvantage. There is no need to prove that the treatment was less favourable than somebody else's treatment. As s.27(2)d makes clear an act might be protected where the allegation is express or if it is implied; there is no requirement for a claimant to specifically use the phase Equality Act or to have used any specific words at all, such as discrimination, etc. However, to be a protected act in accordance with s.27(2)d the allegation relied on must assert facts which, if true, could amount to a breach of the Act. Where an employee makes an allegation of wrongdoing but without asserting (even by implication) that the wrongdoing was a breach of the Act then the allegation does not fall within s.27(2)d.

155. To succeed in a complaint of victimisation the claimant has to show that she was subjected to the detriment because of the protected act (or because, alternatively, the employer believed that she had done or might do a protected act). The mere fact alone that there may have been a detriment and that there has also been a protected act that is not sufficient in itself. The Tribunal has to consider the reason for the claimant's treatment and decide what consciously or subconsciously motivated the employer to subject the claimant to the detriment; that requires identification of both the decision makers and then consideration of the thought processes of those decision makers. If the necessary link between the detriments suffered and the protected act is established then the complaint succeeds. The claimant does not succeed simply on a "but for" test. In other words, it is not enough just to show that but for the protected act she would not have been subjected to whatever detriment.

156. The claimant does not have to prove to the Tribunal that the protected act was the only reason for the detriment. If the employer has more than one reason for its conduct then the claimant does not have to establish if the protected act was the principal reason either. She has to show that the protected act was a significant influence on the decision making. For an influence to be significant does not mean that it has to be of great importance, but it has to be something that more than a trivial influence.

157. Section 136 applies to victimisation complaints and means that the initial burden is on the claimant's to prove facts from which the Tribunal could decide in the absence of any other explanation from the respondent that the respondent has indeed victimised the claimant. If the claimant does that then the burden passes to the respondent to prove that the victimisation did not occur.

158. In relation to direct discrimination s.13 of the Equality Act states that a person A discriminates against another B if it is because of a protected characteristic A treats B less favourably than A treats or would treat others.

159. The characteristics of which are protected under s.13 include disability and include sex and include race. So, the definition in s.13(1) incorporates two elements; whether A has treated B less favourably than others ("the less favourable treatment question") and whether A has done so because of the protected characteristic ("the reason why question"). So, for the first of these, the less favourable treatment question, the comparison between the treatment of the claimant and the treatment of others can potentially require decisions to be made about the circumstances of a hypothetical comparator (taking into account the requirements of section 23 of the Equality Act 2010). However, the two questions are intertwined, sometimes the Tribunal will approach the reason why question first. If the Tribunal decide the protected characteristic was not the reason, even in part for the treatment complained of then it will necessarily follow that the person whose circumstances were materially different to the claimants would have been treated the same. There is no need, in that case to undertake the task of constructing a hypothetical comparator.

160. When we consider the reason that the claimant was treated in a particular way and/or the reason for different treatment to the claimant and that of a comparator we must consider whether the treatment was because of a protected characteristic or not. That means we must analyse both the conscious and the subconscious mental processes or motivations for actions and decisions. Again, s.136 of the Equality Act regulates the burden of proof. Whether the comparator that is used, if one is used, is an actual person or a hypothetical person the comparator's circumstances must be the same as the claimants, other than the protected characteristic in question.

161. In relation to comparators in relation with disability the EHRC Code gives useful guidance. Paragraphs 3.29 and 3.30 in particular, and the example which follows:

> 3.29 The comparator for direct disability discrimination is the same as for other types of direct discrimination. However, for disability, the relevant circumstances of the comparator and the disabled person, including their abilities, must not be materially different. An appropriate comparator will be a person who does not have the disabled person's impairment but who has the same abilities or skills as the disabled person (regardless of whether those abilities or skills arise from the disability itself).
>
> 3.30 It is important to focus on those circumstances which are, in fact, relevant to the less favourable treatment. Although in some cases, certain abilities may be the result of the disability itself, these may not be relevant circumstances for comparison purposes.
>
> Example:A disabled man with arthritis who can type at 30 words per minute applies for an administrative job which includes typing, but is rejected on the grounds that his typing is too slow. The correct comparator in a claim for direct discrimination would be a person without arthritis who has the same typing speed with the same accuracy rate. In this case, the disabled man is unable to lift heavy weights, but this is not a requirement of the job he applied for. As it is not relevant to the circumstances, there is no need for him to identify a comparator who cannot lift heavy weights.

162. In relation to disability, in this case the claimant relies on a mental impairment (anxiety state) and therefore the relevant comparator would have to be somebody who did not have that condition. [As mentioned above it is not relevant that the claimant told the respondent that she had dyslexia; that is not a disability relied on this claim.] Thus, if we find that the reason for particular treatment of the claimant was that the claimant was absent from work, for example then the relevant comparator would have to be someone who was also absent from work for a similar amount of time but who did not have the mental impairment of anxiety.

163. In relation to sex discrimination, the relevant comparator would be someone whose circumstances were the same as the claimant's, but who was a man. In relation to race discrimination the relevant comparator would be someone whose circumstances were otherwise the same as the claimants, but who was not a person who is a black African person of Nigerian descent.

164. In relation to discrimination arising from disability, s.15 of the Equality Act states that:

> (1) 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 that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

165. The elements that must be proven in order for the claimant to succeed are: there must be unfavourable treatment; there must be something that arises in consequence of the claimant's disability; and the unfavourable treatment must be because of, in other words caused by, the something that arises in consequence of the claimant's disability. Furthermore, the alleged discriminator must be unable to show at least one of the following: either that the unfavourable treatment was a proportionate means of achieving a legitimate aim, or else they did not know and could not have reasonably been expected to know that the claimant had a disability.

166. The word unfavourably is not separately defined by the legislation. It is a word that needs to be interpreted consistently with case law taking account of the Equality and Human Rights Commission's Code of Practice for employment. s.15 does not require the claimant to show that her treatment was less favourable than that of a comparator and the fact that a particular policy has been applied to the disabled person in circumstances in which the same policy would have been applied to a non-disabled person does not in itself mean that there has been no unfavourable treatment. In other words, the decision that adversely affects the claimant could potentially still amount to treating the claimant unfavourably even if the decision was based on a policy applied to other people as well.

167. For s.15, the unfavourable treatment has to be shown to be because of something arising in consequence of the disability as opposed to being

because of the disability itself. If the treatment is because of the disability itself then that may or may not be a breach of a different section of the Equality Act, but it would not be a breach of s.15. There is a need to consider two separate steps when considering causation. The first step is whether the disability caused the "something", and that is an objective test. The second step is that the claimant was treated unfavourably because of that something, which requires the consideration of the decision maker's thought processes and motivation both conscious and subconscious. The Tribunal must undertake both parts of the analysis if the claim is to succeed. However, it can take them in any order and if the claimant fails under one of them then the claim fails.

168. When considering whether the claimant was treated unfavourably because of the something then the something need not necessarily be the sole reason for the treatment but it must be more than trivial. It does not matter if the "something" was something that the respondent did not know was connected to the claimant's disability.

169. Complaints of discrimination under this head will not succeed if the respondent is able to show that the unfavourable treatment is a proportionate means of achieving a legitimate aim. Simply demonstrating that one course of action was less costly than another is not necessarily going to be sufficient. However, business needs and economic efficiency can potentially be a legitimate aim.

170. In relation to proportionality it is not necessary for the respondent to go as far as proving that the course of action which it chose was the only possible way of achieving its legitimate aim. However, if less discriminatory measures could have been taken to achieve the same objective then that might mean that the treatment was not proportionate. It is necessary to carry out a balancing exercise which takes into account the importance to the respondent of the legitimate aim (and looks at the means adopted to pursue that aim) and compares that to the discriminatory effect of the treatment on the claimant. It does not matter whether the respondent carried out such a balancing exercise itself at the time; it is a matter for the Tribunal to do during its deliberation.

171. If there has been a failure to make reasonable adjustments and the reasonable adjustment is something that would have prevented or minimised the unfavourable treatment, then it will be difficult for the respondent to show that the treatment was a proportionate means of achieving a legitimate aim.

172. When considering what the respondent knew (and what it could have been expected to know), the relevant time is the time at which the alleged unfavourable treatment occurred. It follows from that that if there are different alleged examples of unfavourable treatment then different decisions about the respondent's knowledge might be reached in relation to the different allegations.

173. In relation to failure to make reasonable adjustments s.20 the Equality Act says in part:

> (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.

174. Paragraph 20 of schedule 8 states the respondent is not subject to a duty to make reasonable adjustments if the respondent does not know and could not reasonably be expected to know that the person had a disability and is likely to be faced with the disadvantage referred to.

175. The expression provision, criterion or practice is often shortened to PCP. It is not expressly defined in the legislation. We have to have regard to the guidance given by the Equality and Human Rights Commissions Code of Practice for employment. That suggests that the expression should be construed widely so as to include, for example any formal or informal policies, rules, practices or arrangements, criteria, conditions, pre-requisites, qualifications or provisions. It may also include decisions to do something in the future. Potentially one off discretionary decisions can be PCPs, subject to appropriate analysis of whether the decision in the Claimant's case would have been the same in other cases had there been other cases.

176. The claimant has to clearly identify PCPs to which it is asserted adjustments ought to have been made and we, the Tribunal, can only consider those PCPs identified by the claimant. That does not mean that we would be overly pedantic about the exact words used by the Claimant when describing a PCP, but it does mean that we would not be free to select just any PCP and analyse whether it placed the Claimant at a disadvantage.

177. When considering whether there has been a breach of the duty, we must precisely identify the nature and extent of each disadvantage to which the claimant was allegedly subjected. Furthermore, we must consider whether there is a substantial disadvantage by the application of the relevant PCP to the claimant in comparison to when the same PCP is applied to persons who are not disabled. It is the claimant who bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen. If the claimant does so, then we need to identify the step or steps, if any, that the respondent could have taken to prevent the claimant suffering the disadvantage in question. If there appears to be such steps then the burden is on the respondent show that the disadvantage either would not have been reduced by the potential adjustment and/or the adjustment was one that is was not reasonable for the respondent to have had to make.

178. In relation to dismissal, s.39(2)(c) and section 39(4)(c) of the Equality Act make it a contravention of the Act for an employer to discriminate or victimise against an employee by dismissing the employee.

179. Section 39(7)b makes clear that a dismissal includes so called constructive dismissal. In other words, a resignation by the employee "in circumstances such that the employee is entitled, because of the employer's conduct, to terminate the employment without notice.

180. In order to prove that there was a constructive dismissal the claimant must prove that there was a breach of contract by the employer and that breach was be sufficiently serious to justify the employee resigning. In other words, it must a repudiatory breach of contract. Further, the employee must prove that they resigned in response to the breach (even if it was not their only reason for resigning) and not for unconnected reasons. The employee must not delay too long in terminating the contract in response to the employer's breach or else they may be deemed to have affirmed the contract.

181. It is an implied term of an employment contract that the employer shall not, without reasonable and proper excuse, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. If the trust and confidence term is breached by the employer, that is potentially a repudiatory breach. Not every breach of contract amounts to a repudiatory breach and not all unreasonable conduct amounts to a breach of the implied term. That being said, if there is a breach of the implied term, then the more unreasonable an employer's conduct then the more likely it is that it will be found to have been a repudiatory breach.

182. A claimant may succeed in proving that they were dismissed if they resigned in response to a series of actions by the employer which cumulatively justified the employee's leaving. These are often referred to as last straw cases. Even if a Tribunal finds that an employee resigns in response to a breach of the Equality Act it is not inevitable that the Tribunal will find that a constructive dismissal has occurred and see for example, *Amnesty International and Ahmed*. If an employee can prove they were constructively dismissed then it does not in itself prove that the dismissal was a breach of the Equality Act and nor does it prove that the dismissal was unfair contrary to Part X of the Employment Rights Act. If a constructive dismissal is proven, then it is the conduct of the employer which caused the employee to resign will treated as the reason for the dismissal and therefore will determine whether the dismissal was unfair (and also whether dismissal was discriminatory, in an appropriate case, though that is not something alleged by the Claimant in this case).

183. If an employee succeeds in showing that the conduct that caused the resignation amounted to harassment contrary to the Equality Act, then the employee will also be able to show that the conduct amounted to a breach of trust and confidence. However, even in that scenario, it is still a requirement for the employee to be able to show that it was the employer's conduct (and not for example that of an employee acting outside the course of their employment) that caused the termination as well as proving that the breach was not waived and the contract was not affirmed.

184. A failure to deal with an employee's complaints and grievances might be discriminatory if the failure is because of a protected characteristic and in some circumstances such failure might be a breach of contract (either if there is a breach of an express term in the contract or if the failure amounts to a breach of the implied term requiring trust and confidence).

185. A refusal to allow a change of contractual hours to different hours (either different weekly working time, or different start/finish times) might in some circumstances be discriminatory and/or it might be a breach of trust and confidence, even if there was no express contractual term allowing the employee to vary their contractual hours. It is not always enough for the employer to simply say that the employee was contractually obliged to work the required hours. A Tribunal should not automatically assume that failure to make reasonable adjustments necessarily amounts to a breach of trust and confidence; however, in some circumstances a failure to make reasonable adjustments may be a breach of trust and confidence.

186. In terms of unfair dismissal s.98(4) of the Employment Rights Act 1996 says:

> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case.

187. In determining whether a dismissal is fair or unfair, it is for the employer to show what was the reason (or principal reason, if more than one) for the dismissal, and that that reason is either a reason falling within the list of specific reasons in s98(2) or else is a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Section 98(4) directs us to take into account, amongst other things, the size and administrative resources of the employer and the substantial merits of the case and whether the employers acted reasonably.

188. Unauthorised deduction from wages Part 2 of the Employments Rights Act is dealt with in sections13 to 27. Section 13 deals with the right not to have unauthorised deduction from wages. Wages is defined in the legislation and time limit applies.

Analysis and Conclusions

189. We will start now with our analysis and will cross-reference the list of issues ("LOI"). LOI has a list of factual allegations, 8.1 to 8.11, and the question in each case is: "Did the following matters occur as a matter of fact". Drawing on our detailed findings above, our answers are as follow.

8.1. On 11th August 2017 C was informed by AL that she had been instructed by TZ that she is expected to return to normal work duties [DD 1] [RD 2] [SD 1]

190. It is true that the claimant was informed by Ms Lahrichi that she would be expected to return to normal work duties. This was going to be subject to a welfare meeting which was due to take place later. The claimant had further time off sick in August and that meant that the welfare meeting was deferred. The welfare meeting took place on the 11 September at which a phased return to work was agreed.

8.2 On 24th October 2017 C was informed by AL that she will speak to head office [DD 2] [RD 3] [SD 2]

191. It is accurate that there were conversations between the claimant and her line manager on 24 October in which the claimant did inform her manager that she was feeling anxious and did not feel able to work full-time. We accepted that the claimant was told by Ms Lahrichi that she would speak to her senior managers and that she used the phrase "head office", but we do not accept that this was said in any threatening way, if that is the implication.

8.3 On 27th November 2017 C was told by AL to continue to work in the same situation and the concerns she raised were ignored [DD 2] [RD 3] [SD 2]

192. On 27 November, the claimant was told by Ms Lahrichi that she should continue to work at The Grove and on the Health Promotion team as she had been doing since 30 October. There was no change in the respondent's position at this time in comparison to what the claimant had already been told on the 24 and 27 October 2017.

8.4 On 19th December 2017 C was told by TZ and the Respondent's HR director that her anxiety was a condition not a disability and that reasonable adjustments would not be made [DD 3, 4] [RD 5] [SD 3]

193. It is true that the claimant was told at the meeting with the area manager and the HR manager that the claimant's condition was not regarded as a disability by the respondent. The claimant was told that none of the specific requests for adjustments that she had asked for would be approved. The respondent stated that the claimant could request different adjustments. The respondent stated that they had considered the claimant's requests for adjustments even though they did not acknowledge that they had an obligation under the Equality Act to make reasonable adjustments as required by that Act.

8.5 C's letters of 22 December 2017 and 17 January 2018 were ignored by R [DD 3, 4] [RD 5] [SD 3]

194. It is true that the claimant sent letters dated 22 December 2017 and 17 January 2018, and it is also true to say that the respondent did not reply to either of them. As noted in our findings of fact Ms Clough's opinion was that if such letters had been received then it would have been the area manager's responsibility to reply to them rather than Human Resources. We are satisfied that both were received.

8.6 On 15th May 2018 C was refused reasonable adjustments, no Occupational Health assessment was made, and she was informed her role had been dissolved whilst she was off sick [DD 5] [RD 6] [SD 4]

195. At the meeting on 15 May, the exact word "dissolved" was not used in connection with what the claimant was told about her role. There was discussion that two posts had been deleted but neither of those were the claimant's posts. The claimant was told was that the Respondent no longer required a worker to be based permanently at the court, or to attend court every day, or to attend court on any fixed schedule. In other words, the court work itself was no longer a full-time job and she, the Claimant, was not going to be doing court work full-time in the future. She was going to be an Offender Recovery Worker and would attend court on an as and when required basis. This is the same information about her role that she had been given in the previous October.

196. The claimant was handed a written job description during the meeting and it was the same job description that she had from 2013 (shortly after the TUPE transfer) through to January 2015, when she had been issued with the Court Worker job description.

197. In other words, in May 2018, she was told that her day to day role was going to be different to what she had performed between early 2015 and early 2017, but she was not being told that a further change to her role had occurred during her sickness absence.

198. The claimant was told at the meeting that Mr Campbell would write to her about reasonable adjustments and that is what he did. As per our findings, on behalf of the respondent he did not make adjustments subject to the fact that (a) he did say that there could be a phased return to work and that (b) there could be further discussion between the claimant and the respondent about whether she would amend her hours (perhaps, by way of her submitting a flexible working request) so that she would start later potentially but still finish at 5:30pm. He did not agree to implement any change of the daily hours - even on a temporary basis – in advance of a return to work.

199. It is also true that no occupational health assessment was made and the reason for that is that: the referral was made to the provider on the 18 June; the claimant was told on the 20 June that the appointment had been fixed for the 29 June; the claimant resigned before the 29 June and so the appointment did not happen and the assessment report was (therefore) not produced.

8.7 C received no response to her letters of 13 and 15 June 2018 [DD 6] [RD 7] [SD 5]

200. It is true that the claimant got no written response to Grievance Four dated 13 June. It was discussed at the grievance appeal meeting as we have mentioned. In the bundle there is an email sent on the 15 June at 7:40 replying to Ms Clough's email of 13 June. We have not been directed to any particular letter from the claimant dated 15 June and so we are not sure what was attached to that particular email. If there is reference to the resignation

letter and it is just a typo and it should be 25 June rather than the 15 June then it is true that the claimant did not receive a response to the 25 June resignation letter.

8.8 Diana Clough said to C in a meeting on 21 June 2018 'no adjustment will be made and you are expected to work in the health and promotion team with Lesley and Will and you are to be at the Grove at 9.30 and work till 5.30, which is normal working hours like everyone else, and if you don't actions will be taken against you' [DD 7] [RD 8] [SD 6]

201. The claimant was told by Ms Daughter, during the meeting of 21 June, that the response given by Mr Campbell in his letter dated 13 June (following the meeting on 15 May) represented the respondent's position in relation to reasonable adjustments. In other words the claimant was told on 21 June that she was still expected to remain on the Health Promotion team and to work with Lesley Bell and Will Davies and that her finish time would be 5:30pm.

202. The respondent rejected the claimant's suggestion that she come back to work on 25 June because she was still signed off sick for that day.

203. On 20 June, the hours of work that Ms Clough suggested to Ms Lahrichi that the Claimant should work were full-time hours for each day that the claimant was to work, but the Respondent did not intend to require that she work every day of the week.

204. For the avoidance of doubt, on 21 June, no offer was made to the Claimant that she could work reduced daily hours (either as part of a phased return to work or at all) and she was not offered a start time any later than 9:30am.

8.9 C was invited to an allegation complaints meeting on 29 July 2017 without R carrying out a proper investigation and without carrying out proper process [RD 1]

205. It is true that the claimant was invited to a meeting with Robert Noonan. That meeting took place on 29 June 2017, not 29 July. The disciplinary meeting that took place on the 29 June followed earlier invitation letters. There were three invitation letters in total. There had been a series of emails sent by the claimant to Ms Lahrichi, Amy Coates and Jackie Okpa-iroha in around October 2015. The disciplinary related to those and it also related to the conversation between the claimant and Ms Lahrichi on the 18 May 2016 as described by Ms Bell on 19 May 2016. There is no evidence before us that any of those matters were being actively investigated until after the claimant complained about Ms Lahrichi to Ms Zlonkiewicz in July 2016. It was only after the area manager spoke to the line manager about the complaints that the claimant made about the line manager that Ms Lahrichi sent documents to the area manager which subsequently led to the disciplinary action.

206. Although the claimant was told in August 2017 that there was potentially cause for concern, she was not given details of any allegations at the time, and there was a delay until November 2016 that is not adequately explained. The first time that the claimant was asked about (a) correspondence that had

been sent more than a year previously in October 2015 and (b) about the conversation that had taken place 6 months earlier in May 2016, was in November 2016.

207. There is then a further delay from November to December 2016, which is when the recommendation for disciplinary action was made. There is a further delay until around April 2017 when – after Mr Noonan had been appointed to deal with the disciplinary – he took the remarkable step of asking having her supplied with copies of Ms Bell's statement (which she already had), the recommendation from the area manager, the notes of the conversation between the claimant and the area manager and the draft letter inviting the claimant to an investigation, and had Ms Lahrichi prepare a statement and so that a written statement from Ms Lahrichi could be presented to the claimant as part of the disciplinary.

208. All that being said, Mr Noonan was candid at the disciplinary meeting – when asked – about when Ms Lahrichi's statement had been created.

209. It does not seem to us that the delays are adequately explained. There is passing reference to the fact that the claimant, and perhaps Mr Noonan had had some sickness absence but that does not seem to adequately explain why there was such a long time after December 2016 until the first invitation to the disciplinary meeting was sent. The outcome was given to the claimant around 10 July and the outcome was that formal disciplinary action would not be taken. The claimant queried that on 9 August and the issue was concluded on the 10 August 2017 when Mr Noonan made it clear that he was not going to change his mind.

8.10 A deduction was made from C's wage on 20 September 2017 [RD 4 – also refers to sex discrimination and disability discrimination]

210. A deduction was made from the claimant's wages. As discussed above, the respondent later accepted that part of the deduction was incorrect and agreed to reimburse the claimant. The payment was made in October 2017.

8.11 Series of wages deductions carried out from C's wage on 21 June 2018 [SD 7 – also refers to race discrimination and disability discrimination]

211. The claimant's wages for the months of January 2018 through to June 2018 contained deductions. She was paid a mixture of half pay and then SSP and,, when appropriate, bank holiday pay for those months.

212. The next sections in the list of issues are about harassment.

9. If the events above are found to have occurred as a matter of fact, did the conduct [1, 2, 3, 4, 5, 6, 7, 8] relate to C's disability?

13. If the events above are found to have occurred as a matter of fact, did the conduct [1, 2, 3, 4, 5, 6, 7, 8, 9] relate to C's race?

213. The numbers in brackets refer to factual allegation 8.1 to 8.8 and 8.1 to 8.9 respectively. First we make some comments which apply to allegations 8.1 to 8.8 in relation to both protected characteristics.

214. Factual allegation 8.2 was not unwanted conduct. Ms Lahrichi saying that she was going to speak to head office to see what could be done about the matters that the claimant had raised with her was not, in itself, unwanted. Although we accept that the Claimant's first preference would have been for Ms Lahrichi to simply and straightforwardly resolve matters the way that the Claimant wanted them to be resolved, without the need to involve anybody else, her second preference was for Ms Lahrichi to have discussions with more senior employees, as opposed to simply letting matters lie.

215. The other allegations at 8.1 and 8.3 to 8.8 were all unwanted conduct. It was not the respondent's purpose to have the forbidden affect identified in s.26(1) of the Equality Act and so therefore it is necessary for us to consider item by item whether the unwanted conduct did have the effect of violating the claimant's dignity or creating an intimidating, hostile or degrading environment for her. We also need to consider the overall effect.

216. In relation to item 8.1, bearing in mind the need not to cheapen the words, and bearing in mind there was a phased return and that the Claimant was told that there would be a welfare meeting shortly, we do not think it was reasonable for the information the claimant was given on the 11 August 2017 to have the forbidden effect as per s.26(1) of the Equality Act.

217. In relation to item 8.2, as mentioned we do not find this to be unwanted conduct, but even if it was unwanted conduct it would not be reasonable for an employee to feel that a hostile environment etc had been created or that their dignity being violated if their line manager says that she is going to speak to a more senior manager or to HR about matters the employee has raised.

218. In relation to item 8.3, again it is important that we do not cheapen the words. The Claimant was told that there was not going to be a change and she was going to have to keep to the arrangements that she was told about the previous month and she was going remain on the Health Promotion team. We do not think in those circumstances that it would be reasonable for that conduct to have the effect of violating the claimant's dignity or creating a hostile etc environment for her. Employees must accept that sometimes their requests for a prior decision to be reversed will be refused. Ms Lahrichi was not aggressive or hostile in the meetings themselves and the Claimant accepts she demonstrated sympathy.

219. In relation item 8.4 our decision is that this did have the effect of violating the claimant's dignity. The letter stated that anxiety was not considered a disability. The letter used the word "explains" to say that it was not a disability and added that what she was asking for was not compatible. The tone of this letter did have the forbidden effect on the Claimant, and it was reasonable for her to perceive it as having violated her dignity.

220. In relation to item 8.5 the respondent's conduct of failing to specifically respond to the letters does not meet the high hurdle of having the effect of violating the claimant's dignity.

221. In relation to 8.6 there are three things there.

221.1 The claimant was not told that her role had been dissolved, so that requires no further analysis.

221.2 Mr Campbell did not agree to make the adjustments requested by the claimant and that was a decision he did not actually make on the 15 May; it was communicated to the claimant after the meeting by his letter of the 13 June. No doubt the outcome of was disappointing to the claimant but again we do not think that it is reasonable for this conduct to be perceived as having the effect of violating the claimant's dignity or creating a hostile etc environment for her. She was being told that the respondent was still sticking to the decision it had previously made.

221.3 In relation to the lack of occupational health assessment, it is certainly disappointing and surprising that the respondent took so long to make the referral. They did not do it until around the 18 June and did not confirm the appointment to the claimant until around the 20 June and this was more than a month after they had received the consent form from the claimant (having previously told the claimant that the welfare meeting was necessary in order to have the referral take place). However, the respondent did tell the claimant that they were going to make the referral and therefore we do not think that their delay crosses the high threshold to the extent that it would be reasonable for the Claimant's perception to be that the delay had effect of violating her dignity.

222. In relation to item 8.7, there was a period of approximately 12 days between the 13 June 2018 and the claimant's resignation. The claimant had been told at the appeal meeting on 21 June (as well as by Mr Campbell on the 15 May) that the respondent's proposal was to deal with the Grievance One appeal hearing first and then subsequently look at the later grievances. Therefore the fact that there was no specific response to the 13 June letter does not meet the threshold of being conduct which it would be reasonable to perceive as having violated the claimant's dignity.

223. In relation to 8.8, the Claimant was told on 21 June that the Respondent was standing by the information given to her previously by Mr Campbell (in his 13 June 2018 letter) that she was still expected to work at The Grove, and on the Health Promotion team and – subject to the possibility of reducing her weekly hours – with the same start/finish times. Employees must accept that sometimes their requests for a prior decision to be reversed will be refused. It would not be reasonable, and would cheapen the meaning of the words in section 26(1)(b), for the words used on 21 June to be perceived as having the effect of violating the Claimant's dignity or creating a hostile etc environment for her.

Harassment related to disability

224. The fact that the claimant was told on the 19 December in the meeting and in the letter that her anxiety was not a condition that was regarded as a disability is something that was related to her disability. Therefore, in relation to factual allegation 8.4, the claim of harassment related to disability succeeds.

225. In relation to the other items above we have not found that they had the forbidden effect on the claimant. We have considered them collectively as well as individually. The overall context was that there were discussions in which the claimant was informing her employer that for health reasons she needed adjustments to be made and her employer was stating what duties they required her to perform and that they were not willing (and did not believe that they were under a legal obligation) to make the requested adjustments. Therefore, all the other complaints of harassment related to disability fail.

Harassment related to race

226. In relation to items 8.1 and 8.3 to 8.8, we do not find that any of that unwanted conduct by the respondent was related to race. Therefore, allegation 8.4 is not harassment related to race, because the conduct was not related to race. The other allegations referred to in this paragraph fail both because the conduct did not have the effect referred to in para 26(1)(b) and because it was not related to race.

227. Relied on for harassment related to race is allegation 8.9 (the disciplinary issue). The claimant's allegation is described fully at 1.1 on page 106.

    on 29th July 2017 the Claimant was invited to: allegation complaints meeting against her; no proper investigations were carried out to determine the truth, nor did R follow own potential misconduct to resolve matters, rather R sent invitation letter with possible dismissal of C.

228. It is true that the claimant was invited to a disciplinary meeting on the 29 June having had two earlier invitations to meetings and it is true that the first of the three invitation letters did refer to possible dismissal. We do not think that it is reasonable for that first letter to have had the forbidden effect on the claimant given that the letter was corrected promptly once the claimant drawn Ms Ali's attention to it.

229. The claimant also made clear in her oral evidence that she did not have a problem with the fact that the respondent commenced the investigation based on the contents of Ms Bell's letter. Her argument is specifically that additional matters had been brought up as well.

230. As pleaded by the claimant what she alleges is that the meeting (she means on the 29 June 2017, not July) took place without the respondent having carried out a proper investigation and without carrying out a proper process. It is not clear what the claimant means by a "proper investigation". Our decision is that there is no more "investigation" that needed to be done. In terms of "proper process", as we have already commented, the length of time

that it took from the alleged incidents until the hearing has not been adequately explained. However, that delay in itself is not something that – in our judgment – had the effect of violating the employee's dignity or creating a hostile environment. It is not reasonable (in all the circumstances, including that the outcome was a letter of concern and nothing else) for the conduct to have the effect described in section 26(1)(b) Equality Act 2010. Employees must expect that potentially their written communications with others, or their oral communications with managers, might be the subject of a formal procedure. Even where the employee strongly disagrees that such a formal procedure was appropriate, it would cheapen the words in s26(1)(b) to hold that this particular process violated the Claimant's dignity, etc.

Direct discrimination (disability)

LOI para 17: If Factual Allegations 8.1 to 8.8 are found to have occurred as a matter of fact, has R treated C as alleged less favourably that it treated or would have treated the comparators NC, JJ, JV and or a hypothetical comparator?

231. In relation to allegation 8.1, the correct comparator is somebody who

    231.1 had similar levels of sickness in the period running up to 11 August and

    231.2 had been given fit notes from the doctor dated 20 July saying that they were not fit for work between the 20 July and 3 August and

    231.3 was given a fit note from the doctor saying that they might be fit for work for the period 3 August to 31 August 2017 (potentially with the return to work being on a phased return to work to be negotiated with the employer) and

    231.4 had had a return to work interview on the 4 August at which there had been a discussion about altering hours and phased return to work.

    The comparator has to be somebody who did not have the claimant's disability. In other words, whose absence was for a reason other than anxiety states. We do not think that any of the named comparators are valid actual comparators because their circumstances are not sufficiently similar and we therefore rely on a hypothetical comparator.

232. We do not think that any of the named comparators are valid actual comparators because their circumstances are not sufficiently similar and we therefore rely on a hypothetical comparator.

233. The reason why the claimant was told she had to work normally, apart from attending therapy sessions - at least until the time the welfare review meeting - was that the respondent was not persuaded by the claimant's account or by her GP's notes that the claimant did need to work reduced hours on a temporary basis. The Respondent would have given the same information to a non-disabled employee (or an employee with a different disability) in the same circumstances, that is if they had not been satisfied by the evidence, that a reduction in hours or a change of duty was required.

234. In relation to item 8.2, none of the actual comparators stated by the claimant are relevant. An actual comparator would be somebody who had a meeting with Ms Lahrichi and had raised issues with Ms Lahrichi about which she could not make a decision without speaking to the area manager or speaking to HR. In similar circumstances, Ms Lahrichi would have made the same comments that she made to the claimant to any non-disabled colleague of the claimants. The reason why Ms Lahrichi made those comments is it was true that she needed to speak to head office.

235. In relation to item 8.3, on 27 November, Ms Lahrichi did not agree to change the claimant's team or her location and the reason that she made this refusal was not because of the claimant's disability. She would have made the same refusal for a comparable person who did not have the same disability as the claimant or somebody who had no disability at all. The reason why Ms Lahrichi told the claimant to carry on working was she believed it was appropriate for the claimant to be a member of the health promotion team and to continue working with BEH colleagues and to work from The Grove (except when required to go to court). She did - in fact - inform HR and her line manager and Ms Daughter that the claimant had stated that the claimant had a disability, but she did that because she thought that they needed to know what the Claimant was saying. The disability (or the alleged disability, given that was how the Respondent was treating it at the time) was not the reason for telling the Claimant that her requests for adjustments was refused.

236. In relation to 8.4 the relevant comparator in this case is a person who is not disabled, or who did not have the same impairment as the claimant, who had received a fit note which said on 5 December that they were not fit for work until the 19 December and later had received a revised fit note dated 12 December which stated that they might be fit for work (with altered hours or amended duties or work place adaptations and potentially working in a different location and not with staff that they were unable to work with). The decisions which the respondent made at the meeting on the 19 December, and as per its 19 December letter, were not decisions which it made because of the claimant's disability. They would have made the same decisions in relation to somebody who did not have the claimant's disability but who put forward similar reasons for wanting to have a change of location, change of team, change of hours or a change of duties.

237. In relation to allegation 8.5, the respondent has not proved to us what the reason was for its failure to respond to these letters. We have found that they were received by the Respondent. It is more likely than not that each of Ms Clough and Ms Zlonkiewicz (the two addressees) each saw the correspondence at the time. Ms Clough says that it was not HR's responsibility to reply (so, by extension, that means that the Respondent did not regard it as Ms Ali's responsibility, as well as not being Ms Clough's). During the course of the hearing, it was suggest by the Respondent's representative that no reply was actually necessary because the 19 December letter from Ms Zlonkiewicz, and 21 December follow up from Ms Ali said everything that needed to be said. However, the Respondent called no witness to say that that was the reason for the non-reply.

237.1 It was suggested by Ms Clough that it would have been the area manager's responsibility. However, the Respondent did not call Ms Zlonkiewicz to explain the non-reply, or to comment on what discussions she had had with HR (Ms Clough not recalling any, and not recalling the letters at all).

237.2 In cross-examination, it was put to the claimant that there was no requirement for the respondent to reply to these letters because she had been given the reply by letter of the 19 December which had also been followed up by Ms Ali's email of the 21 December. However, in fact, the Claimant's 22 December 2017 and 17 January 2018 letters did give additional information which had not been addressed in the meeting of 19 December 2017, or the Respondent's two letters after that meeting.

237.3 Ms Clough's account was that she doubted that the claimant's impairment had had a long-lasting effect, whereas the 22 December 2017 specifically stated "I have suffered from mental impairment for over 12 months and you/Blenheim are fully aware of this" and the 17 January 2018 specically stated "If you require any further medical evidence from my Doctor, I will be happy to provide any necessary consent".

237.4 The relevant hypothetical comparator for this allegation is somebody who had attended a back to work meeting on 19 December 2017 (with their line manager's manager and a senior HR worker) and requested adjustments and had those requests refused and who then had a period of annual leave until 17 January 2018 during which they wrote two letters to the respondent seeking to persuade the respondent to review the matter further, including by stating, amongst other things, that their condition had lasted 12 months and that they were willing to supply medical evidence from the doctor.

237.5 The relevant circumstances for this comparator would also include that they had lodged a grievance about which they were waiting to hear the outcome.

237.6 We have to decide if the facts proved by the claimant are sufficient to show that the lack of replies to the letters might have been because of her particular disability.

237.7 We have seen evidence that individuals, including RL, did have adjustments made for them. RL is not specifically relied on by the claimant as an actual comparator in relation to this allegation but we are entitled to consider his circumstances when we are considering how a hypothetical comparator might have been treated.

237.8 The claimant has persuaded us that there are facts from which we could conclude that a hypothetical comparator (who did not have the same disability, anxiety states) (a) might have been treated differently and (b) with that difference being because the Claimant's impairment was mental rather than physical. In particular, we are satisfied that there are facts (the treatment of other employees) which tend to show that if the Claimant had

been asking for a change of duties, or hours, or work location because she was alleging that she had a physical impairment, then the Respondent would have been willing to engage in two way discussions, and obtain medical evidence and that a hypothetical comparator would have received an acknowledgement/reply to the letters dated 22 December 2017 and/or 17 January 2018.

237.9 We take into account that immediately after the letter of the 17 January, which was sent by email, the claimant commenced a period of sickness absence. However, the respondent has not persuaded us that its failure to reply was in no sense whatsoever connected to the claimant's disability. In fact, as we have mentioned, the respondent has not given evidence from Ms Zlonkiewicz as to the actual reason that there was no reply from her. While the non-attendance of a particular witness does not mean that it would be impossible for a Respondent to discharge its burden, in this case we do not accept that the reason (or only reason) was that the Respondent did not think that the Claimant's letters raised any new points. For one thing, the Respondent's position is not clear.

237.9.1 We can look at the contemporaneous internal correspondence, including what Ms Lahrichi sent to Ms Clough, Ms Zlonkiewicz and Ms Daughter in November 2017, and we can see from that that is true that the Claimant had indeed already said that her impairment was a long term one. We also know that Ms Ali was advising a referral to OH, presumably on the basis that she expected that the Claimant was willing to consent. So, based on that, it would be true that the Claimant's 22 December 2017 and/or 17 January 2018 did not raise issues that the Respondent had been unaware of prior to 19 December.

237.9.2 However, Ms Clough did not accept that position in her evidence. She denied knowing what was in the supervision records, and denied being told (up to and including 19 December) that the Claimant had alleged her condition was long term.

The Respondent cannot have it both ways. On the one hand argue that no reply was to the 22 December and 17 January letters because the Claimant was simply repeating herself, and, on the other hand argue that its stance as of 19 and 21 December was justified because Ms Clough was unaware that the impairment had commenced more than a few months earlier.

Furthermore, the Respondent has not given a good explanation for why Ms Ali's advice to consider making an OH referral around December 2017 was not followed.

Ms Clough's own evidence has to be judged against the background of stating that she does not remember the events of that period clearly, and that she maintains that she did not think there was a reason to investigate whether the mental health impairment had lasted for at least 12 months, despite communications being addressed to her in November (from Ms

Lahrichi) and in December (from the Claimant herself) stating that the Claimant was stating expressly that it had done so.

237.10 Therefore, the Respondent has not persuaded us that its failure to reply to these letters was, in no sense whatsoever, because of the Claimant's particular disability and this allegation of direct discrimination succeeds.

238. In relation to 8.6, as discussed already there are three different allegations there.

238.1 The claimant's allegation fails on the facts in relation to the specific word "dissolved". She was told that there was a job available for her, even though it was not the court working job and somebody who did not have her disability would have been given the same information.

238.2 In relation to the claimant's being told that reasonable adjustments requests would not be accommodated, pending the OH advice, we are satisfied that the respondent would have given the same information to different employee who sought changes to their working arrangements because of, for example, a physical impairment.

238.3 In relation to the length of time taken to refer the claimant to occupational health, which in turn meant there was no occupational health assessment made and would not be made until the 29 June as the earliest, there is no evidence that referrals were made more quickly following receipt of the consent form for other employees. Our finding is that there was general inefficiency on the part of the respondent and a lack of urgency on the part of its HR function in particular. The delay was not because of the claimant's particular disability, but because – however unreasonably – the Respondent was working towards a return date of the 25 June or 26 June and they were not (as they should have been doing) considering the importance of having the assessment done before the claimant's return date so that any recommendations/adjustments could have been implemented from Day 1 of the return. An occupational health assessment could have been conducted before the 29 June and it would have been conducted on the 29 June but for the claimant's resignation.

238.4 This allegation fails because the Claimant has not proven facts from which we might infer that – between 15 May 2018 and 25 June 2018 – the Respondent might have acted more promptly had her disability (or alleged disability as the Respondent saw it) been physical rather than mental.

239. In relation to 8.7, the relevant comparator would be somebody who circumstances were exactly the same as the claimant's, including resigning on the 25 June, but for the disability. The respondent did not reply to her, but the reason for that was not in any way because of her mental health impairment. The reason why the Respondent did not reply was that the respondent saw no reason to reply to the earlier letters once the claimant had resigned. The Claimant had been told that no further progress would be made on Grievances Two to Four until after the appeal outcome for Grievance

One; the appeal outcome for Grievance One was not until July. The Claimant did not chase up the other grievances, and the Respondent did not proactively seek to conclude them, but it would not have acted differently if she had had no disability or, say, a physical rather than mental impairment.

240. In relation to allegation 8.8, the comments made to the claimant at the meeting on 21 June 2018 were not because of her disability. They were references back to the decisions which the respondent had made and when Mr Campbell had written to the claimant on the 13 June. The claimant was told on 21 June that the respondent was standing by those earlier decisions. That was not because of her disability. Somebody whose circumstances were identical to hers, but who had a different impairment, or no impairment, would have been given the same information by the respondent on the 21 June.

241. So, for the eight allegations allegations of direct disability discrimination in relation to disability one (8.5) succeeds and all the others fail.

Direct discrimination (sex)

LOI 22. If the factual allegations 8.1 to 8.11 are found to have occurred as a matter of fact, has R treated C as alleged less favourably that it treated or would have treated the comparators: RL and JV (all allegations) and JJ (allegations 8.1 to 8.10 only) or else a hypothetical comparator.

Direct discrimination (race)

LOI 27. If the factual allegations are found to have occurred as a matter of fact, has R treated C as alleged less favourably that it treated or would have treated the comparators: RL and NC (all allegations) and JV and JJ (allegations 8.1 to 8.10 only) or else a hypothetical comparator?

242. In relation to direct discrimination because of sex and because of race, the claimant refers to eleven particular allegations and she relies on specific comparators as set out above. There is an extra comparator in relation to race, the claimant relies on NC, a white female, who obviously is not a comparator for her sex discrimination complaints.

243. In relation to allegations 8.1 through to 8.9 we have already discussed the events in some detail and we are not going to repeat everything we have said already in relation to those allegations. In relation to 8.1 through to 8.8 in relation to both sex and race, the claimant has not shifted the burden of proof. She has not proved any facts on which we might conclude (in the absence of an explanation from the respondent) that the reason for her treatment could have been her sex or her race.

244. In relation to allegation 8.5, we discussed above why we found this to be direct disability discrimination. There was a failure to reply to these letters but the claimant has not satisfied us that, if all the other circumstances were the same (including the mental health impairment of anxiety states), but her

race or sex had been different, there is reason to suspect that there might have been a reply.

245. In relation to all of these allegations, 8.1 through to 8.8, none of the proposed comparators had sufficiently similar circumstances to be deemed by us to be an actual comparator (for either sex or race discrimination allegations). We are satisfied that a hypothetical comparator of a different race to the claimant or a male hypothetical comparator would have received the same responses (and lack of responses from the respondent) in relation to requests to changes working arrangements. For the avoidance of doubt, that includes the delay in relation to making the referral to occupational health.

246. In relation to 8.9, the specific allegation that the claimant makes is about the disciplinary hearing on the 29 June and being invited to it.

246.1 Ms Choi looked at this in her grievance outcome and she separated the disciplinary into two separate strands. The first strand was in relation to the emails of October 2015 that the claimant had sent to various people and potentially being described as rude or aggressive. Ms Choi did not necessarily agree that the words used by the claimant in those emails had been rude and aggressive and in any event her grievance outcome finding was that potentially this could have been dealt with by speaking to the claimant rather than taking it as far as it went. She took a different view in relation the 18 May 2016 conversation. It was Ms Choi's opinion that it was not unreasonable for that to go as far as the disciplinary hearing.

246.2 The claimant has proven to us facts from which show that she was treated badly and unusually. Our finding is to the reason that the matters became disciplinary matters is as discussed above. It seems that the claimant made a complaint in July 2016 to the area manager about the way her line manager was treating her. The claimant asked for it to be dealt with informally, and the area manager spoke to the line manager about the allegations the claimant had made. In response to this conversation, the line manager, Ms Lahrichi, on 27 July 2016, sent a series of emails to the area manager. At some time after that (and the Respondent has not proven the exact date, although the discussions with the Claimant are mentioned above) the area manager made a decision to take these forward as a disciplinary matter. We are satisfied that if the claimant had been of a different race, or had been a man, and had made complaints to the area manager about the line manager, then (a) the line manager would have responded in exactly the same way as she did on 27 July 2016 and (b) the area manager would have responded in the same way that she did from July to November 2016, and in December and so on.

246.3 The eventual outcome would have been the same, regardless of sex or race. Even though, the complaint is based in part on a lack of proper investigation there is not really anything else that could have been done to "investigate" the matters. The respondent had all the information that it needed by, at the latest by July 2016 when Ms Zlonkiewicz received the information from the line manager, and of course the line manager had the information in May 2016 and also was dealing respectively. There were no

further steps that really needed to be taken to investigate, other than, as happened in November, speaking to the Claimant.

246.4 We reject the respondent's suggested explanation that the May 2016 matter had to be taken seriously because it was a complaint from an external partner. That proposition is not consistent with the evidence: the Respondent did not take it seriously in May 2016, and did not treat it as an external complaint. Ms Lahrichi did not take any action until July 2016 and Ms Zlonkiewicz did not speak to the Claimant about it until November. It took almost a year to invite Ms Lahrichi to make a written statement. However, the Claimant has not proven any facts from which we might conclude that the Respondent's reasons for taking the matter to a disciplinary hearing – a year after the incident – were based on any unconscious or conscious perception that the claimant was more likely to be aggressive or rude because of her race and nor was it based on any conscious or unconscious bias in connection with her sex.

247. In relation to 8.10, the reason why the deductions were made from the Claimant's September salary is that the respondent's finance department did not have accurate information from the claimant's line manager in relation to the Claimant's absence and phased return to work. We are satisfied that it was not an error made deliberately by the line manager or by anybody else. It was a genuine error. It was not made because of her race and it was not made because of her sex. Her sex and her race played no part in this error.

248. In relation to 8.11, deductions to pay were made from January through to June 2018. The respondent's sick pay policy is set out in its staff handbook. That policy that has been applied to the claimant. We are satisfied that it would have been applied to any other employee regardless of that employee's sex or that employee's race. The respondent did not exercise any discretion in her favour to pay her more than 21 days full pay and 21 days half pay. The Claimant has not proved that any facts from which we could conclude that she would have been treated differently if her sex or race was different.

Victimisation

LOI 34. Was there detrimental treatment because a protected act:

Alleged Protected Act	*Alleged Detriment*
Grievance One	*Factual Allegations 8.1 to 8.11*
Grievance Two	*Factual Allegations 8.3 to 8.11*
Grievance Three	*Factual Allegations 8.6 to 8.11*
Grievance Four	*Factual Allegations 8.7 to 8.11*

249. It is important to note that Grievance One is actually made up of two documents: not just the 11 August letter but the 3 October 2017 letter as well. The 11 August letter, while it refers to the Equality Act, getting the name slightly wrong, and also refers to discrimination, contains no clear and express reference to a protected characteristic. There was a discussion of sickness and so potentially by implication that might have been some potential reference to disability, but we are not satisfied based on the 11 August letter that it contains an express or implied allegation that would amount to a breach of the Equality Act. It is not within the definition in s26(2)(d) Equality Act 2010 (or any of the other sub-paragraphs of section 26(2)).

250. The 3 October makes similar points to those in the 11 August letter (not surprisingly given this was in response to the Respondent's request for more information), but in addition (in item 3g), the claimant alleges that she has been stereotyped as an aggressive black person. Therefore, when we do take the two letters together the totality of Grievance One is a protected act. However, it is a protected act that is made on the 3 October not the 11 August.

251. In relation to Grievance Two, the 23 November the letter refers to her anxiety condition and in paragraph 3 that she has been treated inconsiderately and in paragraph 7, she specifically refers to disability discrimination and says that she has been treated differently to others and that no adjustments had been made for her. Grievance Two is a protected act (within the definition in s26(2)(d)) and it is made on the 23 November 2017.

252. In Grievance Three, the claimant refers to the duty to make reasonable adjustments and she alleges that the respondent failed to comply. She refers to the Equality Act specifically. She alleges unlawful discrimination in relation to her disability. She refers to discrimination arising from disability and she refers to requirements to make reasonable adjustments. Grievance Three is a protected act (within the definition in s26(2)(d)) and it occurred on the 27 April 2018.

253. Grievance Four on the 13 June, in the letter the claimant implies that she had been subjected to victimisation in relation to her previous grievances. In any event, in paragraph 7 she again refers to requirements to make reasonable adjustments and make the allegation that the respondent breaches that obligation. Grievance Four is also a protected act (within the definition in s26(2)(d)) and that protected act occurred on the 13 June.

254. In relation to alleged detriment 8.1, the reason why the claimant was told – on 11 August - that she was returning to normal work duties was that that was what the respondent wanted her to do. She was not told this because of the contents of the 11 August letter, or because the Respondent perceived that, once the allegations in that letter were clarified, they would amount to allegations of breach of Equality Act 2010. The respondent would have given that same information to any other employee in similar circumstances and was not all influenced by any protected act (and none had occurred by this date, we decided) and nor was it motivated by any belief that the claimant might do a protected act in the future.

255. In relation to 8.2, the reason the claimant was told Ms Lahrichi was going to speak to head office is that that was what she was going to do. It was not something that was said to the claimant because of any protected act.

256. In relation to 8.3, the reason for what the claimant was told on the 27 November was that the respondent was not persuaded that it should change the Claimant's working arrangements (from those announced to her in October). That is why the claimant was told to carry on working as per those arrangements. She was not told to carry on working because the respondent was motivated by any protected act in Grievance One or in Grievance Two or because of any anticipated further protected act.

257. In relation 8.4, the reason that the respondent told the claimant on 19 December in the meeting (and subsequently in the letter that day and email of 21 December) that the claimant's anxiety was a condition not a disability (and that no reasonable adjustments) would be made is because the respondent's opinion was that her mental health impairment was not a disability. The respondent was not influenced to make those comments by the any protected act in Grievance One or in Grievance Two or because of any anticipated further protected act.

258. In relation to 8.5, it was unreasonable for the respondent to have ignored the claimant's letters of 22 December and 17 January 2018. As we mentioned above the only significant action taken in response was by Ms Ali reminding Ms Choi that the Grievance One outcome had not yet been issued. There was no specific reply to the claimant's letters from the respondent. The Respondent has not provided an adequate explanation for its failure. However, the claimant has not persuaded us that there are facts from which we might infer that the failure to reply to those letters was the fact that she had issued Grievance One or Grievance Two (or any belief by the Respondent that she might do further protected acts). Our decision is that claimant the Respondent was not influenced to fail to respond because of Grievance One or Grievance Two. The Respondent did ensure that the much-delayed response to Grievance One was issued on the 16 February 2018. We are satisfied that the failures to specifically reply to the 22 December and 17 January letters would have been the same even if the protected acts had not occurred.

259. In relation to 8.6, this refers to the events of the 15 May 2018 and immediately afterwards.

    259.1 We have carefully considered what Ms Clough said in response to questions about why RL seemed to have adjustments made for him and the claimant did not. We noted that Ms Clough said, and we are paraphrasing, and that RL was more flexible in his requests for adjustments than the claimant. We have considered carefully whether we could infer from that that (a) the Claimant was seen as being inflexible because of her protected acts and (b) she was subjected to alleged detriments 8.6 because of that perceived inflexibility. On balance, we do not find that this comment by Ms Clough implies that the claimant's subsequent grievances were (part of) the reason that adjustments were not made for her. The respondent's

position is that the reasons it it did not make adjustments between 15 May 2018 and the planned return to work date are those given by Mr Campbell in his 13 June letter. As mentioned above, that explanation was based on the fact that he delegated some of the investigation to the area manager. We are not persuaded that we could conclude that the respondent's treatment of the claimant was influenced by her protected acts. The respondent's refusal of the claimant's requests for adjustments had been consistent from August 2017 onwards including at the 19 December meeting. In other words, the respondent did not change its position about adjustments (although it did agree to make the PH referral) and our finding is that the refusal to make was not influenced by the protected acts. It simply stood by its position and it would have done so whether the Claimant had alleged breaches of Equality Act 2010 or not.

259.2 Furthermore, the fact that no occupational assessment was made during the Claimant's employment was because of the timing claimant's resignation. There would have been an occupational assessment on the 29 June but for her resignation. Therefore, the protected acts were not a cause of the lack of an occupational health assessment. The delay in making the referral was due to inefficiencies and lack of urgency on the part of the respondent, but that delay was not influenced by the protected acts. If anything, it is the fact Grievance Four was received that caused the respondent to finally make the referral.

259.3 We found that the word "dissolved" was not used at the meeting on the 15 May. In any event, the information that the claimant was given was that there was a job for her to do 5-days a week.

260. In relation to 8.7, while the respondent did not reply to the June letters (other than discussing them at the appeal meeting on the 21 June), we do not think that the failure to provide a written reply was because of the protected acts. The failure to give a reply was because the respondent did not think a reply was required once the claimant had resigned.

261. In relation to 8.8, the Respondent on 21 June said that it was standing by Mr Campell's letter of 13 June 2018. It was not influenced in that stance by the protected acts.

262. In relation to 8.9, it is not pursued as victimisation it occurred and was completed by no later than the 10 August 2017 (when Mr Noonan said that he was not going to change his decision given earlier). None of the Respondent's conduct in relation to this allegation was influenced by any belief that the Claimant might do any protected acts in the future.

263. In relation to 8.10, the deduction on 20 September 2017 was not because of the part of Grievance One submitted on 11 August, or because it was believed that the Claimant might do a future protected act. The deductions were made on 20 September because of an error on the respondent's part.

264. In relation to 8.11, the reason for the deductions from January through to June was that the respondent was applying its sickness policy and was not using

its discretion to pay the claimant in full for that period and it was not influenced by the protected acts which the claimant did.

265. Therefore all the complaints of victimisation fail.

Discrimination arising from disability

LOI 36. The allegation of unfavourable treatment as something arising in consequence of the Claimant's anxiety states are 8.1 to 8.8 and 8.10 to 8.11.

LOI 39. Did R treat C as aforesaid because of 'something arising' in consequence of the disability? C relies upon her sickness absence from work arising from her disability.

266. Our findings of fact and our analysis in relation to the various allegations has already been dealt with. LOI paragraph 38 correctly highlights that we must consider whether the allegations constitutes unfavourable treatment.

267. As far as allegation 8.2 is concerned, Ms Lahrichi's comment that she would speak to head office is not unfavourable treatment. It was her truthful response to requests which the claimant was making for action to be taken.

268. In relation to the other allegations, each of them constitutes unfavourable treatment in that claimant was subjected to a disadvantage. The "something" that is relied on is the claimant's sickness absence from work. However, the cause of the unfavourable treatment in relation to 8.1, 8.3, 8.4, 8.5, 8.6, 8.7 and 8.8 is not the fact that the claimant had high levels of sickness absence so those allegations fail.

269. In relation to deductions from pay as unfavorable treatment:

269.1 In relation to 8.10, part of the deduction made on the 20 September was caused by an absence which the claimant had had in the period immediately before the relevant pay date, and part of it was due to the hours in the phased return to work and part of it was an error. The error that was made in September 2017 was caused by a mistake which the respondent made about the claimant's sickness absence rather than the actual sickness absence itself.

269.2 In relation to 8.11, all of the deductions made from January through to June were because of the sickness absence.

269.3 We have to consider whether the respondent has proved that it made those deductions because of actual sickness absence pursuant to a legitimate aim and if so, whether that was a proportionate means of achieving that aim.

269.4 The aim that the respondent relies on is the efficient use of available resources and ensuring that services are targeted at those who most need them. The respondent relies on the same legitimate aim both in relation to the deductions that were made from pay when the claimant was entirely absent for sickness absence reasons and also when, for example, in

September 2017 she worked reduced hours as part of a phased return to work. In both cases we accept that the reason for the deductions was the respondent was seeking to use its resources in an efficient way and to ensure that services were targeted as those who most needed them, and we accept that is a legitimate aim.

269.5 The policy was clearly set out in the handbook and had been devised with that aim in mind. The policy causes a disadvantage to the claimant into comparison to the benefit that she would have received from her employment if the respondent had decided to exercise its discretion to pay her in full during her sickness absences or during her phased return to work. However, notwithstanding the disadvantage to the Claimant, the respondent has persuaded us that its policy is one that is proportionate. The respondent does have limited financial resources and is independent on funding from commissioning for its income. It has to live within its means and can only provide services to vulnerable service users if it has money available to pay its workers and for its other overheads. The disadvantage caused to any employee by the application of the sick pay policy has to be weighed against the disadvantage that would be caused to the respondent and the respondent's service users if part of the respondent's resources were used in paying sickness absence indefinitely at full pay. Therefore, this allegation fails because the respondent has shown that it had a legitimate aim and the deductions from the Claimant's wages were a proportionate means of achieving that legitimate aim.

Duty to make reasonable adjustments

LOI 42. Did R apply the following PCPs

1. Directing C to work at the Grove

2. Directing C to work her contracted hours

3. Requirement to work in the Health Promotion Group

4. Requirement to be managed by Lesley Bell and Will Davis

270. The first alleged PCP is directing the claimant to work at The Grove. In particular, the alleged requirement is that she had to work there as her main base and that she would be there all the time except when attending court on an as and when required basis. On the respondent's own case, there as requirement for the claimant to work at The Grove was because that is where they needed her to be to provide services to the service users, and from where other employees were also doing the same thing and it was where the respondent had offices used by (some) managers, and where BEH also based some NHS workers. We were told by the Respondent that handover meetings took place at The Grove at 9:30 each day, and that the Claimant needed to attend those handover meetings in person, and that service users attended appointments at The Grove during the course of each day, and that the Claimant needed to be present to conduct some of those appointments in person. In short, this was a PCP which the Respondent applied to the

Claimant. From May 2017 onwards, she was required to be at The Grove on some fixed days each (as opposed to just attending The Grove occasionally, and usually being at court) and from 30 October 2017, she was required to attend The Grove every day, Monday to Friday, and did not have any fixed and regular court days.

271. The claimant has not satisfied us that this PCP put her at a substantial disadvantage in comparison to a person who is not disabled. The reasons for this are that on the claimant's own evidence, the fact that she was required to work at the geographical location of The Grove was not the problem. It took her slightly longer to travel there from home, but that was not the alleged disadvantage. The alleged disadvantage was that she did not want to work on the Health Promotions team and she did not want to work with Lesley Bell or Will Davies. Making her do those things, but at an address different to The Grove would still have been (on the Claimant's case) a disadvantage. Correspondingly, while her first preference was to work elsewhere (eg at the police station or at court), she was willing in principle to work at The Grove (to "help out" as she put it) and the actual location itself was not a problem so long as she could work on a different team and/or not with Bell and Davies.

272. In relation to the second PCP, the claimant's contracted hours were 9:30am start, 5:30pm finish, 35 hours per week. That is three requirements that need to be discussed slightly separately.

    272.1 There was a requirement to start work at 9:30am Monday to Friday. This was not something specific to the claimant. It was the respondent's general start time for all employees at The Grove. The cross-team handover meetings started at that time, and sub-team meetings and started immediately after the handover meeting ended.

    272.2 In deciding whether the claimant has been placed at a substantial disadvantage by this start time, we have to consider the evidence that was presented to us. We had no direct expert evidence on this as specific point. The respondent had not obtained an occupational health assessment. We have evidence from the claimant's GP notes. The claimant frequently raised sleep problems with the GP. She was prescribed medication for that. In addition, we had the claimant's evidence that getting to work for 9:30am each morning was a disadvantage for her because she suffered disruptive sleep patterns over the course of the night and that made it more difficult for her to get up in time to get to work for 9:30am. On 12 December 2017, for example, the GP suggested that the claimant needed to have reasonable adjustments and these included changes to her hours or duties. Against that evidence the respondent has not produced any evidence to contradict the evidence on the claimant's side. We are satisfied that the claimant was placed at a substantial disadvantage by the requirement to start work at 9:30am each day.

    272.3 The other two points are the requirement that the work should cease at 5:30pm each day and the requirement to do 35 hours each week. Neither of these latter two requirements by themselves placed the claimant

at a substantial disadvantage. She could work as late as 5.30pm and she could do an aggregate of 35 weekly hours.

272.4 However, the claimant was willing to, and in fact wanted, to do 35 hours a week. In order to do that she was willing to, and offered to, finish later than 5:30pm each day. If she did not start at 9.30am, then something else had to change. Either her hours had to be less than 35, or she had to take shorter lunch breaks, or she had to finish later than 5.30pm, or she had to work weekends.

272.5 In relation to starting later than 9:30 we are satisfied that it would have been reasonable for the respondent to have had to make an adjustment for the claimant which enabled her to start later than 9:30am, perhaps at 10:00am which is what the claimant said she would be satisfied with. In saying this we are not that handover meetings took place at 9:30am, and so a later start time would have meant some other changes, either to the handover time, or else to the arrangements for the Claimant give/receive the information needed at handover.

272.6 However, the respondent's simple insistence that the fact that handovers were at 9.30am meant that it was impossible to make an adjustment ignores the requirements of the Equality Act. An employer potentially has to make adjustments and potentially that requires looking flexibly at what its current arrangements are and considering what adjustments could be made to alleviate disadvantage to a disabled employee, and then deciding if it was reasonable to make such adjustments.

272.7 The adjustments that could reasonably have been made include:

272.7.1 Arranging for meetings to take place at a different time of the day to enable the claimant to attend.

272.7.2 Arranging for the information from the handover meetings to be conveyed to the claimant by other means.

272.7.3 Doing the same for C as was done for one of her comparators RL and simply remove the requirement to attend the handover meetings (and if, necessary, moving her to a team which did not require her to attend such meetings, or else removing her from the obligation to work on a particular team at all).

273. There is an inconsistency in the Respondent's position that it would have considered later start time for the Claimant provided she reduced her weekly hours and its position that (part of) its argument for being unable to agree to the Claimant's request for later start times was that there was no reasonable solution to the issue that handover meetings were at 9.30am.

274. In terms of whether it would have been reasonable for the Respondent to have make an adjustment to the Claimant's start time such that the claimant still fitted in 35 hours per week, or else whether it would have been reasonable

for the Respondent to have make an adjustment to the Claimant's start time such she would work less than 35 hours a week that raises the issue that if of whether her pay would stay the same or she would have her pay reduced.

275. However, the issues were explored properly with the claimant. At least until Mr Campbell's letter (which he explained to us meant that the claimant could potentially submit a flexible working request), the respondent simply said that it was not willing to allow her to start later than 9:30am.

275.1 The contract stated that lunch breaks would be between half an hour and one hour per day and so that it does not seem to us that it would have particularly difficult for the respondent to allow the claimant to start at 10:00 and finish at 5:30 each day and have a half hour lunch break. So that would have enabled the claimant to still do 35 hours per week, still stay on the same rate of pay and still meet the respondent's stated objective of leaving the building at 5:30pm.

275.2 That is not the only way that a later start could have been accommodated while keeping the weekly hours as 35. There could have been some combination of working late on Wednesdays and/or on Saturdays, for example.

275.3 More generally, we are not actually satisfied by the evidence that the respondent did have a hard and fast rule that everybody needed to leave the building at exactly 5:30pm. On the contrary the evidence of people who worked in the building was people did sometime work there later than 5:30pm, albeit everybody had to leave by the time the last keyholder was ready to leave. We accept the respondent's case that it would have not have been appropriate for the claimant to be left as the last person in the service to leave the building and we also accept that the last two people on the site needed to leave together. However, it would have been reasonable for the Respondent to have had to bring in a system by which the Claimant would record the extra hours which the claimant worked after 5:30pm, so that – on average – she worked 35 hours per week, including making up time on Wednesdays and taking less than an hour at lunch.

275.4 We do take into account the fact that the claimant's responsibilities included seeing service users and that the times to see service users had to be during the working day between 9:30am and 5:30pm. However, we are satisfied nonetheless that the claimant's work with adjustments could have enabled her to still see service users and start at 10am.

276. In relation the third PCP, a more accurate description (based on the arguments put forward by the Claimant throughout the litigation and during the hearing) of the PCP would be "requirement to be on the Health Promotion team with Lesley Bell and Will Davies" rather than simply being on the Health Promotion team. In the litigation, the Claimant has not identified (and nor has the Respondent) different duties that the Claimant would perform on the Health Promotion team, as opposed to (say), the Assessment and Engagement team. It is correct that the Respondent imposed a requirement to work in the Health Promotion group. There was a requirement from around

2017 onwards for the workers to be allocated to particular teams. It was not universally applied in the sense that at least one person, RL, did not have that requirement applied to him, but it was still a PCP. In the claimant's case the team that was selected for her, as of October 2017, was the Health Promotion group. This was different to the team that had been selected for her in May 2017. Again, there is no expert evidence before us to say that the claimant was placed at a substantial disadvantage because of her disability by the requirement to work on this group and so we need to make our decision based on the evidence and contemporaneous documents.

276.1 The claimant gave evidence that she felt genuinely very nervous and anxious about the fact that she was being required to work on this group. The reason that she gave was that she was worried that false accusations might be made against her. The issue for us to decide is not whether the claimant's fear was justified, from an objective point of view. The issue we have to decide is whether she was placed at a substantial disadvantage because of her disability. We are satisfied that the claimant's anxiety state did cause her to be nervous about working with particular employees given the background to the disciplinary proceedings which had been brought against her. It may well be that Lesley Bell acted entirely reasonably and appropriately in drawing certain matters to the respondent's attention; however, that is not how the claimant perceived it. There is no evidence from the respondent to suggest that the claimant did not genuinely have concerns that working with Ms Bell would put the Claimant at risk of false reports being made about her conduct. We are satisfied that she did have such concerns (which does not mean that we are saying that they were justified) and that the fear which she genuinely had was exacerbated by her disability. We take into account the 12 December note in which the GP suggested that consideration be given to allowing the claimant to work with different co-workers.

276.2 We are therefore satisfied that, because of her disability, the Claimant was at a disadvantage in comparison to non-disabled employees by the PCP to work on the Health Promotions team with Ms Bell. We therefore have to consider whether it would be reasonable for the respondents to have to make a reasonable adjustment such as allocating the claimant away from the Health Promotion group (either to a different team or to no team at all) or any other reasonable adjustment.

276.3 Look at the list of adjustments on page 97, number 10 is mediation and the possibility of mediation to resolve underlying conflict with Lesley Bell. We think that this is something that would have been reasonable for the respondent to have had to offer. It would have been a cheap and straightforward offer to make and there is no evidence that the respondent attempted to address the claimant's concerns in this regard. They just stated that she had a responsibility to work with BEH staff.

276.4 We also note that suggested adjustment number 4 is not forcing the Claimant to work with in the Health Promotion group with Ms Bell and Mr Davies. It is our finding that as a reasonable adjustment part of a phased return to work at least, the claimant could have been offered the opportunity

as RL was, to potentially work without being in a specific team member, at least for an interim period. This could have been pending review. It could have been, for example, pending mediation that we just mentioned. It could have been pending occupational health advice as to whether it should be something implemented in the longer term.

276.5 In relation to item 3 of the suggested adjustments, allowing the Claimant to remain on (or return to) the Assessment and Engagement team, we heard evidence from Ms Okpa-iroha that requests could be taken to the joint management team for people to potentially have team moves approved. So, if the claimant was offered as a reasonable adjustment, at least on a temporary basis, the option of not being on the Health Promotion team (with Davies and Bell) then that would have given the respondent the opportunity to have at the joint managers meeting, a discussion about a potential permanent move for the claimant to the Assessment and Engagement team or another team. The respondent could also, of course, have taken that to one of the meetings during the claimant's sickness absence.

276.6 The respondent failed to make any of these adjustments and our decision is that it would have been reasonable for it to have had to do so. Certainly the respondent was aware by May 2018 that the claimant had been off sick for 5 months and continuously and had not actually been really at work (other than a brief period in December) since 5 December 2017. The respondent was aware of the claimant's position was that she genuinely felt that she needed to have these adjustments made for her before she could return to work but the respondent refused to put anything in place even on an interim basis to enable her to do so.

277. In relation to the fourth PCP, 4 the requirement to be managed by Lesley Bell and there was no such PCP in relation to Lesley Bell because she was not a manager in any event. We also find that this PCP did not exist in relation to Will Davies either. Being on the Health Promotion would did not change the Claimant's line management even though Mr Davies was a manager on the Health Promotion team. The claimant's line management was going to remain the same. She was employed by the respondent not by the NHS and Mr Davies would not have become the Claimant's line manager.

LOI 47. In respect of all claims of discrimination against the Respondent, did the Respondent take all reasonable steps to prevent its employees from doing those acts or anything of that description?

278. We have not been shown any evidence that the respondent sought to stop its employees doing the things in question. The head of HR was involved at an early stage and other HR officers were also involved and gave advice. On 27 November, Ms Lahrichi sent an email to which the recipients included the respondent's Chief Executive. The Chief Executive at the meeting on the 21 June said that she stood by the decisions that had been made by Mr Campbell following the meeting on the 15 May 2018. The Assistant Director, Ms Choi, made decisions in relation to Grievance One as well. There is

simply no evidence that the employees were doing anything other than acting in the course of their duties.

Time Limits

279. Because of early conciliation, Equality Act complaints about acts or omissions on or after 17 December 2017 are in time and that in term means that all of the complaints that we have upheld as breaches of the Equality Act are in time.

280. In relation to the deduction from wages claims, there was a gap: deductions were made on 20 September 2017 and deductions made on 20 January 2018 (and then each month until the end of employment). There were no deductions in any of October, November or December 2017. Therefore, there was a period of in excess of 3 months during which there were no deductions. This breaks the series. In any event, additionally we do not find that the deduction on the 20 September 2017 would, even but for the time gap issue, was part of the same series. The deductions made from January 2018 onwards were all in relation to the claimant's continuous absence from that date. None of them were as a result of her working reduced hours as part of a phased return to work.

Constructive dismissal

281. Constructive dismissal is dealt with between paragraphs 48 and 52 of the list of issues. The list of issues refers to the conduct that the claimant set out in the relevant paragraphs which started at paragraphs 32 to 35 of her second claim and also here resignation letter.

281.1 We found that the claimant was not told that her role was dissolved on 15 May. That is not a word that was used. She was not told that she had no role. There had not been consultation with the claimant specifically about the reorganisation but that does not matter in the circumstances; the reorganisation had already happened and the claimant was not affected by it. She had been invited to be consulted, but had replied, not unreasonably, to say that she was not well enough.

281.2 The claimant had been told the previous October 2017 that her court role was no longer available and that she would be working at The Grove full-time. She did not resign shortly after 24 or 27 October 2017. In November, she started working every day at The Grove and then afterwards she was off sick.

281.3 The claimant has not proved that there was another person recruited to replace her in the court role. If the claimant had not been off sick, then she would have been required to attend the court as and when required. Because she was off sick the respondent needed bank staff to do the occasional court work which the Claimant would otherwise have done.

281.4 It is not true that the claimant was given no assurances about her future role. On the contrary the respondent's position was that they wanted

her to return full-time. They wanted her to be on the Health Promotion team and there was a role for her to do. She was given a job description for that role on 15 May.

281.5 There was quite a lengthy delay between the claimant's raising Grievance One on 11 August 2017 and then the outcome letter of 15 February 2018. However, that is not something that caused the claimant to resign. The claimant did not resign until the 25 June. By the time that she resigned the appeal meeting for Grievance One had already taken place. So delays in dealing with the grievance up to February 2018 were not the cause of her resignation. In any case, following the grievance outcome the respondent could not arrange the grievance appeal meeting straight away as the Claimant was not well enough. The claimant was told on 15 May that she could submit her grievance appeal grounds up to 3 weeks after her return. In fact, she submitted them on the 17 May and the appeal meeting was arranged reasonably promptly after that.

281.6 Next, we discuss the matters in the claimant's letter of 25 June. It is true that the claimant was told in writing on the 19 December that the respondent did not consider anxiety to be a disability. She did not resign promptly in response to that.

281.7 She refers to pay issues. There was no resignation following the 20 September reduction. There were also pay deductions from January to June 2018 onwards and it is our finding that the claimant did not resign specifically in response to those pay deductions.

281.8 In relation to the grievance issues, the respondent did tell the claimant that they would deal with Grievances Two and Three. It told her they would do this after the outcome of the Grievance One appeal. It also said that it was willing to discuss this proposal with the claimant if she wanted a different approach. The respondent was not refusing to deal with the grievances.

281.9 What we find significant is the respondent's repeatedly telling the claimant that it was not going to make any adjustments to the requirement to work on the Health Promotion team or to her start time. It also told her it would not agree to a phased return to work with temporary late start time or (at least, it was not willing to put such an arrangement in place before 26 June, albeit they might have been willing to consider it if recommended by the occupational health assessment which would not have been available until after her return to work date). One of the requested adjustments was to work on a different team and the respondent said that it was not going to implement that and the claimant was required to come back to the Health Promotion team from the first day of her return.

281.10 It is our finding that the respondent's unreasonable conduct, as described in the preceding subparagraph, was conduct likely to destroy or seriously damage the relationship of trust and confidence between employer and employee, and it did, in fact, fundamentally breach the employment contract. The claimant resigned in response to that breach.

281.11 She did not leave it too long to resign. She was entitled to wait until the welfare meeting on the 15 May. The decision from the welfare meeting of the 15 May was conveyed to the claimant by way of Mr Campbell's 13 June letter and the claimant resigned twelve days after that. The claimant was also entitled to wait to have a meeting with the Chief Executive of the respondent which took place on the 21 June. Attending that meeting did not affirm the contract. The claimant took the opportunity to raise with the Chief Executive directly whether there could be any changes in the respondent's position in relation to the adjustments that she was seeking. She was told on the 21 June that the respondent's position was final and that it was as per Mr Campbell's 13 June letter.

282. We do not overlook the fact that the respondent said that return to work issues could be discussed with Ms Lahrichi on the 26 June. However, the claimant's position was, and we think it is a reasonable one in all the circumstances, that Ms Lahrichi had no authority to approve adjustments, especially in circumstances when Ms Lahrichi's line manager and Ms Lahrichi's line manager's line manager (Mr Campbell) had declined to make adjustments.

283. We have therefore concluded that there was a dismissal.

284. The reason for the dismissal was not redundancy. The reason was not that the respondent had reduced requirement for workers doing the work of this type. The change in duties from court worker to offender recovery worker were minor and, in any event, the change had occurred the previous October and the claimant did not resign in response when the decision was made.

285. In its grounds of resistance the respondent has not specifically pleaded a potentially fair reason.

286. Our finding is that the dismissal was unfair. It was not for a potentially fair reason. The claimant is entitled to remedy. We will consider remedy issues such as ***Polkey*** and contributory fault and any other remedy issues at the remedy stage. For the avoidance of doubt the redundancy pay claim fails.

287. In relation to the 20 September deduction from wages, that claim fails for two reasons. Firstly, the claimant has not proved to us that there was an unauthorised deduction from wages that still existed after the correction that was made in her October pay slip. The second reason that that claim fails is that it is out of time.

288. In relation to the deductions from January 2018 onwards, the claimant has failed to prove that she was contractually entitled to more wages than were actually paid to her. We are satisfied that the claimant was paid in accordance with the contractual sick pay entitlement.

289. In relation to the health insurance scheme, the claimant has not proved that she was entitled to some payment of wages as a result of that scheme. If the a claimant had proved that payments had been made from the insurance company to the respondent, then that would potentially mean that there had been an unauthorised deduction from wages claim. However, that is not the

case. In the circumstances as they actually existed was that there was no obligation for the respondent to make payments on wages to the claimant given that it had not received payments from the insurance company. The Claimant has not proved that the Respondent breached any term of its contract by its handling of the matter. The Claimant made an enquiry, but did not ultimately complete the application form.

290. Any other issues in relation to whether the claimant suffered a financial loss as a result of the fact that she was paid SSP only and so on as per the January onwards payslips can be considered as part of the remedy hearing.

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Employment Judge Quill

Date: 26 April 2021

Sent to the parties on: 26/04/2021

For the Tribunal Office