



EMPLOYMENT TRIBUNALS

Claimant: Miss C Bentley

Respondent: The Governing Body of Oaks Park High School

Heard at: East London Hearing Centre

On: 6, 7, 8, 12, 13 14 15 March 2024
And in chambers on 22 March and 10 June 2024

Before: Employment Judge C Lewis

Members: Ms Jane Houser
Mr Michael Wood

Representation

Claimant: Stephen Bentley-Klein

Respondent: Laura Robinson - Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows.

1. The Claimant succeeds in the following claims:
 - 1.1 The claim for direct disability discrimination, less favourable treatment because of her disability succeeds in respect of, the Senior Leadership Team telling lies (i) describing her as unhelpful and difficult; and (ii) about her role as Adaptions Officer.
 - 1.2 The claims of victimisation in respect of the false description of (i) the Claimant as being unhelpful and difficult; and (ii) her role as Adaptions Officer.
 - 1.3 The claim of unfavourable treatment because of something arising in consequence of the Claimant's disability, in relation to issue 2.4.1 reprimanding the Claimant's BSL interpreter on 24 September 2021;
 - 1.4 The complaint of failure to make reasonable adjustments by allowing the Claimant to work from home from 1 September 2020

to 3 February 2021.

2. The remaining complaints including the complaints of indirect discrimination are not well founded and are dismissed.
3. The successful claims were brought within the time limit set out in s 123 of the Equality Act 2010.
4. The Claimant's remedy is to be determined at a separate hearing.

REASONS

1. The Claimant brought claims of direct disability discrimination; discrimination arising from disability, indirect discrimination, failure to make reasonable adjustments and victimisation, all under the Equality Act 2010.
2. The issues were identified at a preliminary hearing before by Employment Judge Crofill at a preliminary hearing on 18 July 2022 and agreed by the parties. The parties confirmed at the start of this final hearing that the agreed list of issues accurately reflected the issues for this Tribunal to decide.

Issues

1. **Direct discrimination (Equality Act 2010 section 13)**

1.1. Did the Respondent do the following:

1.1.1. the Senior Leadership Team providing spoken notated statements to the Governors in February 2021 in relation to the Claimant's grievance which told lies by saying the Claimant was unhelpful and difficult, about Redbridge Council Education Policy; about the Department of Education Government Guidelines; about her role as Adaptations Officer.

1.2. Did the treatment amount to a detriment?

1.3. Was the claimant treated less favourably than an actual or hypothetical comparator?

1.4. Can the Claimant prove facts from which, absent any explanation from the Respondent, the Tribunal could infer that the reason for this treatment was the Claimant's disability? If so,

1.5. Can the Respondent show that the treatment was in no sense

whatsoever because of disability?

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

2.1 Did the respondent treat the claimant unfavourably by:

2.1.1 not being sent a letter sent to all staff on 11th May 2021;

2.1.2 being the only member of staff not invited to a BBQ on 21st July 2021;

2.1.3 being the only member of staff not invited to submit their lunch preferences for the INSET days on 1st and 2nd September 2021;

2.1.4 reprimanding the Claimant's BSL interpreter on 24th September 2021

2.2. Did the following thing arise in consequence of the claimant's disability:

2.2.1. The Claimant's absence from the workplace because of her anxiety?

2.2.2. The need to have an interpreter assist her in workplace meetings

2.3. Was the unfavourable treatment because she was/had been absent from the workplace?

2.4. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent will rely on upon the following legitimate aims:

2.4.1 in relation to the allegations about communicating with the Claimant (the alleged letter on 11 May 2021, the BBQ on 21 July 2021 and the lunch preferences on 1 and 2 September 2021) the Respondent had a practice of removing staff on long-term sickness absence from all staff emails with the legitimate aims of avoiding causing them further stress and to respect any request of staff not to be contacted by email whilst off sick (as per the Claimant's request on 27th November 2020)

2.4.2 in relation to the allegation about "reprimanding" the BSL interpreter following a meeting one of the Claimant's colleagues complained about the way in which she had been spoken to by the BSL interpreter so the Respondent addressed this informally and directly with the BSL interpreter. The legitimate aim was to ensure that appropriate and effective communication could continue between staff.

2.5. The Tribunal will decide in particular:

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

2.5.2. could something less discriminatory have been done instead;

2.5.3. how should the needs of the claimant and the respondent be balanced?

3. Indirect discrimination (Equality Act 2010 section 19)

'The protracted grievance PCP'

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

3.1.1. Conducting protracted grievance processes

3.2. Did the respondent apply the PCP to the claimant?

3.3. Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic, e.g. people without her disability or would it have done so?

The Respondent denies that it applied the PCP alleged.

3.4. Did the PCP put people who are profoundly deaf at a particular disadvantage when compared to people without that disability in that the Claimant avers that people who are deaf are more prone to stress and anxiety?

3.5. Did the PCP put the claimant at that disadvantage?

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

3.6.1. The Respondent will rely on the following legitimate aims: (1) to ensure that the Claimant was well enough to participate in the grievance process, (2) to ensure that the Governors involved were available (3) to make sure that all parties understood the parameters of the grievance so that the matter could be dealt with as efficiently as possible (4) to obtain relevant information from Occupational Health and (5) to prioritise the safe and effective provision of education for children during the Covid-19 pandemic.

3.7. The Tribunal will decide in particular:

3.7.1. was the PCP an appropriate and reasonably necessary way to achieve those aims;

3.7.2. could something less discriminatory have been done instead;

- 3.7.3. how should the needs of the claimant and the respondent be balanced?

'The suspending e-mail PCP'

- 3.8. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:
- 3.8.1. Suspending work e-mail accounts for employees off work with ill health.
- 3.9. Did the respondent apply the PCP to the claimant?
- 3.10. Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic, e.g. people without her disability or would it have done so?
- 3.11. Did the PCP put people who are profoundly deaf at a particular disadvantage when compared to people without that disability?
- 3.12. Did the PCP put the claimant at that disadvantage? The Claimant says that the disadvantage comprised of:
- 3.12.1. not being sent a letter sent to all staff on 11th May 2021;
- 3.12.2. being the only member of staff not invited to a BBQ on 21st July 2021;
- 3.12.3. being the only member of staff not invited to submit their lunch preferences for the INSET days on 1st and 2nd September 2021
- 3.13. Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aims were:
- 3.13.1. in relation to the allegations about communicating with the Claimant (the alleged letter on 11 May 2021, the BBQ on 21 July 2021 and the lunch preferences on 1 and 2 September 2021) the Respondent had a practice of removing staff on long-term sickness absence from all staff emails with the legitimate aims of avoiding causing them further stress and to respect any request of staff not to be contacted by email whilst off sick (as per the Claimant's request on 27th November 2020)
- 3.14. The Tribunal will decide in particular:
- 3.14.1. was the PCP an appropriate and reasonably necessary way to achieve those aims;

- 3.14.2. could something less discriminatory have been done instead;
- 3.14.3. how should the needs of the claimant and the respondent be balanced?

4. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

- 4.1. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
 - 4.1.1. Requiring the Claimant to work from the school premises from 1 September 2020 (the workplace PCP)
 - 4.1.2. A practice of permitting staff to talk across each other at meetings (the meetings PCP)
- 4.2. Did the workplace PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that people would touch the Claimant in order to get her attention risking infection from Covid 19?
- 4.3. Did the meetings PCP place the Claimant at a substantial disadvantage as her BSL interpreter was unable to translate when people spoke across each other.
The Respondent denies that it applied this PCP.
- 4.4. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at these disadvantages?
- 4.5. What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - 4.5.1. That she was permitted to carry out her work from home (in respect of the workplace PCP)
 - 4.5.2. Instructing or training staff members not to talk across one another when the Claimant was using a BSL interpreter (in respect of the meetings PCP)
- 4.6. Was it reasonable for the respondent to have to take those steps and if so when?
- 4.7. Did the respondent fail to take those steps?

5. Victimisation (Equality Act 2010 section 27)

- 5.1. Did the claimant do a protected act as follows:
 - 5.1.1. Bringing a grievance on or around 30 November 2020?
- 5.2. Did the respondent do the following things:

5.2.1. the Senior Leadership Team providing verbal notated statements to the Governors in February 2021 in relation to the Claimant's grievance which told lies by saying the Claimant was unhelpful and difficult, about Redbridge Council Education Policy; about the Department of Education Government Guidelines; about her role as Adaptations Officer.

5.2.2. Send the Claimant a letter on 19 May 2021 purporting to be from the Claimant's line Manager Lesley Carty when Lesley Carty had no knowledge of and had not signed the letter.

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

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

6. Remedy for discrimination or victimisation

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

6.2. What financial losses has the discrimination caused the claimant?

6.3. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

6.4. If not, for what period of loss should the claimant be compensated?

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

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

6.7. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

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

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

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

6.11. By what proportion, up to 25%?

6.12. Should interest be awarded? How much?

7. Time Limits

- 7.1. Insofar as the claims set out above have been presented outside the ordinary time limit imposed by Section 123(1(a) [which includes any claim relating to an event prior to 30 March 2021] can the Claimant show:
- 7.2. That the acts complained of form part of conduct extending over a period including an act of discrimination that was presented in time;
OR
- 7.3. That it would be just and equitable to extend the ordinary time limit

Evidence

3. The Tribunal was provided with an agreed bundle of documents, a bundle containing 11 witness statements: six witnesses for the Claimant and five for the Respondent; and an agreed reading list suggested by the Respondent's Counsel. After confirming the issues and discussing the timetable for the hearing and arrangements for breaks, the Tribunal spent the rest of the first morning reading.
4. After lunch the parties returned and clarified their respective positions on disability. The Respondent had conceded that the Claimant was disabled person by reason of deafness but did not concede that her mental health difficulties arose in consequence of or were connected with her deafness. The Respondent relies on the mental ill-health not lasting long enough to meet the definition of disability in the Equality Act 2010. The Claimant says that her mental health difficulties arose from and are not possible to disconnect from her deafness, which is the disability relied on.
5. The BSL interpreters were sworn in and the Claimant proceeded to give evidence for the rest of the day, her evidence concluded at the end of day three. The Tribunal also heard evidence from Jenny Byrne, Amy Bentley, Lesley Carty, Angela Starr and Suzanne Owers on behalf of the Claimant, followed by Anjna Karania (nee Flack), Emily De Grove, Joanne Hamill, Mohammed Omer and Keith Gardner for the Respondent. At the time of the events in question Ms Karania was known as Ms Flack and is referred to in the relevant documents by that name. Ms Karania told us that she was happy to be referred to by either name and for the sake of consistency we have referred to her as Ms Flack throughout this judgment. The parties exchanged their written submissions in the morning of the last day of the hearing and the Tribunal read those before hearing oral submissions. The Tribunal reserved its decision on 14 March and met in Chambers on 15 March to deliberate and on 10 June 2024 to finalise its deliberations.

Findings of fact

6. The Tribunal made the following findings of fact the evidence before it, as far as they are relevant to its determination of the issues it had to decide.
7. The Claimant is and always has been profoundly deaf.

8. From 1 September 2015, the Claimant was employed by the Respondent at the Oak Park High School as a member of support staff in the Acorn Centre, initially for one day per week. The Claimant started the same day as her colleague, Jenny Byrne. The Claimant's job was to make adaptations to the class work for visually impaired students to use with the TA's (teaching assistant) in their lessons. We find that the Claimant's job was on a TA pay scale, but that she was not expected to or ever required to go into the class with the students, or be a key worker for any student. She carried out her adaptations on the computer and then printed those in large font on a printer. The Claimant learnt to be a Brailist and achieved a Braille qualification in 2018, she then operated a Braille printer from July 2018 onwards. The adaptations team had been joined in 2016 by Suzanne Owers. Around this time the then team leader, Douglas, offered and the Claimant accepted an increase in her days to 3 days per week. The Claimant was happy in her work and felt that she was a valued member of the visual impairment team. Following the Claimant's success in passing her Braille exams in 2018, her job title was amended to Adaptions Officer and she was given a new contract with that job title starting 1 July 2018 [132-133]. The Claimant's hours were subsequently increased to 4 days a week [confirmation letter dated 15 November 2018, p 139]. In April 2019, following a review exercise for support staff salaries, the Claimant's salary was assimilated to new point 13 and she was awarded a pay increase; for the purposes of this exercise her grade was reviewed as teaching assistant /adaptions officer [140].
9. The matters giving rise to these claims, and the focus of the evidence before us, arose during the Covid 19 pandemic following the first period of lockdown and the subsequent re-opening of schools in 2020. In March 2020, when schools were closed to most students, the Claimant worked from home. The Claimant installed software on her computer at home which meant that she was able to carry out her adaption work remotely and sent in her adaptations by email to Ms Owers with whom she had daily morning meetings to discuss the work needed. The Claimant was not placed on the rota of staff to attend school and was not required to go in to school before September 2020. Her line manager acknowledged that her work could be done from home. In August 2020, all staff members were sent information about the possible return to school in September and pointed to a risk assessment. This was a general risk assessment and did not make any provision for the specific requirements of disabled, including deaf, staff.
10. In August 2020, the Claimant and her family had discussions about the Claimant being due to go back into school and the implications for her mother who is diabetic and therefore was at higher risk from covid 19. At this time there was no vaccination, and cases were rising again. The Claimant was concerned that she could easily bring the virus home from school. The family decided that the Claimant's mother and her younger sister would move to stay with the Claimant's grandparents in Norfolk, to avoid the possibility of the Claimant bringing home covid from school and infecting her mother. The Claimant felt very sad to see her family split apart but felt that it was the safest thing for her mum. We find that the Claimant's mother had always been a mainstay in the Claimant's support network and coping mechanism as a deaf person, helping her to cope as a deaf person in a hearing world.

11. On 24 August 2020 the Claimant emailed her immediate manager Suzanne Owers asking to continue working from home if possible, expressing concern about returning to work in an enclosed environment where it was not mandatory to wear facemasks, informing her she was fearful for her mother's safety and that although she was looking forward to getting back to work she was anxious and concerned. [311] Ms Owers replied informing the claimant she needed to send her request to Ms Flack immediately and ideally this should have been raised in July when all staff were expected back on site, albeit acknowledging that the Claimant had been continuing to work from home in July.
12. The Claimant emailed Ms Flack straight away requesting an individual risk assessment form [page 312]. Ms Flack told us that she understood this to have been as a result of a conversation with Ms Owers about a request to work from home. Miss Owers told us that the Claimant had been working from home during the lockdown from March 2020 to the end of that school year and that both Ms De Grove and Lesley Carty were aware of this and had accepted it. The adaptations team was due to move office in the new school year and the Claimant was concerned about the move of the small team into a large communal office; she asked Ms Owers if her job could be carried out from home. Ms Owers supported her in this request. Ms Owers understood the Claimant's reasons for making the request to be, the impact of covid on her commute, including train travel; working in the communal open space; the use of shared equipment; and her concerns over her family's (i.e. her mother's) health.
13. The Claimant did not complete the risk assessment sent to her in August 2020, because it was a generic form which did not cover either her specific requirements as a disabled person or as somebody who had a family member with an increased risk from covid due to a health condition. She followed the advice of her immediate line manager and raised her request to work from home by emailing Ms Flack.
14. On the 1st and 2nd of September 2020 the Claimant attended the INSET days held at the school in advance of the return of the children. The Claimant's workspace had been moved to a bigger office in the Acorn Centre. On setting up her desk space in the bigger office, the Claimant became concerned that adequate covid-19 precaution measures were not in place: there were no plastic screens between the workstations, which were less than 1 metre apart; all the workstations were facing the wall; the Claimant's workstation was next to the telephone, which meant that colleagues would be reaching into her workspace to answer it; none of her colleagues wore masks; the windows were always closed and the bins were not emptied regularly. The Claimant felt very uncomfortable and was concerned that the government guidelines on working in school had not been put in place in the office. Over the next few days this made the Claimant very anxious, particularly because, due to her profound deafness, with everyone facing the wall people had to touch her on her shoulder, or get into her space, to get her attention and communicate about work. The Claimant told us, and we accept, that she was the only person in the Acorn Centre who had to be touched in order to get their attention to communicate

with them. The Claimant began washing her hands many times during the day to prevent herself catching the virus and became upset and cried a lot. She described becoming very anxious, stressed and depressed.

15. On 2 September, the Claimant wrote to Ms Flack, who was the Personal Development and Welfare Officer, and was the nominated head for covid safety regulations, requesting a meeting that day about working from home [page 320 -321]. In the email to Ms Flack, the Claimant explained her situation and risk to her mother's health and asked for a meeting that day, informing Ms Flack that her sign language interpreter was at school that day, which meant that the Claimant would be able to communicate with Ms Flack if the meeting took place.
16. The Claimant complained that at no time before or after returning to the school site on 1 September 2020 did the Senior Leadership Team have a friendly or informal meeting with her about what would help to keep her as a deaf person safe in the workplace.
17. We have found that the Claimant was not able to communicate fluently with the members of the Senior Leadership team without a BSL interpreter, she was not able to have informal or impromptu discussions with them in which she could explain her circumstances and she relied on others to explain the school's processes and procedures which were not obvious to her.
18. The Claimant also sent an email to Geraldine Brampah (HR Manager) [321] to let her know that she had completed a risk assessment form for herself, but there did not seem to be anywhere on the covid 19 vulnerability questionnaire to add information about family members that are in high risk category and need to continue to shield. She explained that as she would not have a communicator available on 3 September there would be no point in having a meeting then; she also stated that in the meantime, she would speak to her sister about trying to find medical evidence to support her request on 3 September 2020.
19. Ms Flack responded to the Claimant's email with a letter dated 3 September 2020 as follows [336]

"I am writing to confirm the outcome of your request to work from home from September 1st 2020.

The reasons you have stated to work from home is due to your mother being vulnerable. However, the government guidelines have changed and as of 1st August all staff are able to return to work as there is no more shielding for households.

As the whole school has returned, we would expect that all staff are in to support this. Last term, the school had only partially returned and there were different guidelines in place. Schools have been identified as a low risk setting. If you feel you need further assistance at work, then please contact HR to arrange an individual risk assessment and any needs can be identified.

Please refer to the link for further details".

The link provided was to guidance to schools during the coronavirus outbreak. The Claimant disputes the Respondent's interpretation of the guidance.

Ms Flack's email attaching the letter set out the following:

" ... At present, the guidelines from August 1st have stated that all staff are able to come to work and there is no more shielding for households. Therefore, at this time, working from home is not an option as we will have the students in. This is based on the current guidelines. However when you have your risk assessment meeting, please do discuss this with HR."

The Claimant referred us to the guidance [page 162], issued by the Department of Education, which says, "some roles, such as some administrative roles, may be conducive to homeworking, and school leaders should consider what is feasible and appropriate."

20. The Claimant agreed to go to school during the first week of term, but we accept that during this time she was very anxious, stressed, could not concentrate on her work, was frequently washing her hands and tried to stay away from everybody in school. By 9 September she found that the extreme anxiety had made her depressed, withdrawn, and she was feeling alone. The Claimant was advised by her colleagues to go and see Ms Flack because she was so upset. Jenny Byrne went with her. The Claimant was very upset and wanted to go home but could not communicate properly to explain her concerns to Ms Flack or Jenny Byrne as neither of them could sign BSL well. They understood the Claimant's basic sign of "home" and Ms Flack said that the Claimant could go home. The Claimant's father came and picked her up.
21. On 9 September the Claimant had a meeting with Geraldine Brampah [367-369] at which she completed an individual risk assessment. Suzanne Owers and the Claimant's BSL interpreter, Sharon Keys, attended the meeting with her. They discussed the Claimant's mental health and her request to work from home, the Claimant provided Ms Brampah with a written document prepared in advance of the meeting [339] which set out her concerns and her line managers' support for her working from home. The Claimant also mentioned having difficulties on her journey to work. She told us and we are satisfied that she would also have told the Respondent had they asked, that her train journey to work was frequently disrupted due to the impact of covid and shortage of drivers which meant that there were last minute platform changes but that unlike hearing people she was not able to hear the platform change announcements which caused her increased anxiety in relation to her journey. The Claimant was given a flexible working form to complete [372-373] and was told the decision would be Ms Hamill's to make.
22. On 10 September 2020 the Claimant emailed Ms Flack about her concerns and referred to the Department of Education guidelines quoted above. She also stated that the school might be discriminating against her. The

Claimant stated in her email that there was no available space for social distancing from other members of staff in the office, that she felt totally unsafe from a covid-19 perspective, staff sit within a metre of each other under the closest airflow and face coverings are not being worn; she also referred to guidance from Unison quoting the government's advice, which was to work from home if you can, as follows:

"If you can do your job from home, you should continue to do so, you and your employer should discuss and agree working arrangements to best suit the needs of the business."

23. On 11 September, the Claimant wrote to Miss Hamill about her health and her request to work from home [347], she again quoted the Department of Education guidelines from August 2020 and referred to the rate of increase in covid-19 cases. She stated that it would greatly benefit her mental health to work from home doing her adaptations and explained her ability to fulfil her tasks from home, explaining that she already had the correct Microsoft operating programs and that her team leader supported her request to work from home. The Claimant pointed out that she had already demonstrated that she was capable of doing her work from home and informed Miss Hamill that,

"If I can reduce the risks associated with contracting covid 19, my mother would be able to live with me again which would greatly benefit my mental health during this uncertain time. I am extremely distressed by the situation at present and feel sure that working from home, and my mother returning to our home would alleviate this."

The same day the Claimant's GP signed her off sick for two weeks due to stress at work, [378].

24. The Claimant emailed Ms Flack on 11 September to [350], informing her that she is not able to come into work because she was severely depressed. Ms Flack replied asking for the medical diagnosis of depression. The Claimant responded by email informing Ms Flack that her father had read the correspondence and would reply in detail by Monday, 14 September 2020. In her email on 14 September asking for the medical diagnosis Ms Flack, also stated,

"I understand that you have said your father will be responding to me. I can confirm that my letter was sent to you."

25. On 15 September 2020 the Claimant's father replied to Ms Flack's email and copied in Miss Hamill. He was clearly upset and angry about how the school had been treating his daughter and he wrote what the Claimant described as a 'strong letter' to support her [356 to 358]. In that letter he refers to Claimant feeling discriminated against by the school and the HR department.
26. We were taken to a record of a telephone consultation between the Claimant and Tower Hamlets mental health assessment team on 16 September 2020 [359 -360] during which the Claimant's sister Amy spoke

on the Claimant's behalf. The record notes the Claimant's concerns about the school environment and the impact on her mental health and mood. The Claimant's reported symptoms were diagnosed as indicating moderate anxiety: low Mood, borderline clinical depressions, obsessive compulsive disorder and impaired attention/ concentration.

27. On 21 September 2020 Ms Flack sent a letter responding to Claimant in response to the letter from her father [361 -363]. In that letter, Ms Flack stated that the Claimant had misunderstood the purpose of the meeting on 9 September, which was a risk assessment meeting to decide whether any additional strategies were needed to support her at work and not a meeting to discuss the possibility of working from home. She apologised if there was any communication confusion. Ms Flack also suggested that 10 September was the first time the Claimant had raised a concern with her about her working space and that Ms Carty had also not been aware of the concerns. Ms Flack went on to state that the risk assessment meeting could not be completed as the Claimant had misunderstood its purpose and the Claimant's team leader needed to be contacted in the first instance to address any concerns that she may have. Ms Flack confirmed that the school had received the Claimant's fit note which stated stress at work and that she was not expected to attend until 1 October 2020. She informed the Claimant that a Stage 1 absence meeting would be held by Ms Emily De Grove in line with the school's absence policy. She stated that she was not clear why the Claimant felt she had been discriminated against and invited the Claimant to report any concerns about discrimination straight to the Headteacher, in line with the school's grievance policy. She also invited the Claimant to submit a flexible working request formally to the Headteacher and told the Claimant she could start this discussion with her line manager, Ms Emily De Grove, at the meeting on 1 October.
28. On 23 September 2020 the Claimant wrote to Geraldine Brampah again [364], informing her that she was currently off work with anxiety and that she wished to apply for flexible working so she could work from home while the coronavirus was spreading. The Claimant also told Ms Brampah that she was unable to sign off the report of their assessment meeting because the information was incorrect and part had been omitted, specifically, the Claimant's ability to do her work from home and that this was supported by her team leaders. The Claimant pointed out that the government guidelines had changed to encourage all people who can work from home to do so until further notice, and that was expected to be the directive in place for a minimum of six months.
29. The individual risk assessment was updated [367 -369], it is not clear by whom, but it appears to have been by Ms Brampah. In addition to the original content an addendum dated 24th of September 2020 was added to reflect the contents of the Claimant's email cited above, the additional details contained in the assessment include the following.

“Unfortunately, as Charlotte had to return to work her mother has had to leave the family home due to her diabetes. This has been very upsetting for Charlotte and she has provided an additional statement explaining her feelings. HR advised on the SAS service and this has been further explored

by Charlotte's line manager, as Charlotte would need the support of an interpreter to use this service.

HR also asked whether Charlotte had been to see her GP to explain how she had been feeling, again, there are difficulties obtaining an appointment. Charlotte needs access to an interpreter, and the appointments are only being done on the phone.

Charlotte's line manager explained that since Charlotte has been back at work she has been very anxious and the visible signs of this are shaking, crying and withdrawn from the team. Both her manager and her interpreter explained that this is unlike her, and are concerned about her welfare.

Charlotte's work is mainly desk-based. She has no interaction with students, Charlotte explained that her father is supporting her with the commute to work as she is not comfortable using public transport. Charlotte is cleaning her workspace a lot and at the moment there are no screens in her work area and as she is focused on her desk she is not getting close to colleagues and colleagues are also not getting close to Charlotte".

30. On 24 September 2020 Emily De Grove wrote to the Claimant to invite her to a stage 1 sickness absence meeting on 1 October 2020. The Claimant was not well enough to attend school on 1 October and the meeting was rearranged to 8 October 2020 by Google Meet. [384]. We find that this is the only meeting that was changed or delayed at the Claimant's request.
31. On 26 September 2020 Suzanne Owers sent an email to the Claimant's father from her personal email account [371] informing him and the Claimant that she had been instructed not to have any discussion with the Claimant about her issues with school, had been informed that she had no authority and did not speak for the school; and that she had been advised that the way the team runs may be reviewed due to the fact that she may not necessarily have autonomy to make decisions on task allocation. The email made clear that she felt she was being put in a difficult position by the school.
32. The Claimant completed a flexible working application form on 28 September 2020, [372-373] containing the following information:

"I am asking for this request as my mental health has greatly deteriorated due to the ongoing covid-19 pandemic. My GP Mental Health practitioner has diagnosed my symptoms as entirely environmental based and cites the school office environment as the main cause of this.

My mental health has rapidly declined since the start of term and I do not feel safe or happy in this environment.

My job requires no classroom time, no contact with students, and no contact with other staff members in person.

My role can be wholly fulfilled from home with a computer and internet access. I can confirm that I have both resources. During lockdown, I

purchased the correct program to carry out my work commitments on the same platform.

I believe that my health will improve if I am allowed to work from home. This has been supported by my mental health practitioner.

I want to be able to fulfil my working role and support my team and colleagues however I am not able to do this while the pandemic is ever present.

I would hope to return to the office as soon as the pandemic has waned significantly and is under control in this country.

I occasionally use the printer in the office to print documents however this task takes less than 10 minutes per day (on the days that it is needed, this is not every day) and my line manager, Suzanne Owers, has kindly confirmed that she is happy to undertake this task to facilitate my flexible working. This was stated in the HR risk assessment meeting I had on the 09/09/2020.

Apart from this, my line manager has confirmed that my role is conducive to homeworking given that I keep up communication throughout my working hours, which I have proven capable of and able to do as I have been doing this for the past five months with no detriment to the business."

In the box, headed "How do you think this impact can be accommodated?". The Claimant had answered,

"My line manager, Suzanne Owers, has agreed to print any documents that need printing. If it is deemed that my line manager or any other staff member in my team cannot print the documents, the school could provide me with a Braille printer and I could send the printed hard copies to the school office."

In response to the question, "Is this a request for change on a temporary basis?", the Claimant answered "Yes"

33. On 28 September 2020 the Claimant's father replied to Ms Flack's email to the Claimant dated 25 September 2020 [374-375]. He queried why she had corresponded directly with the Claimant despite her being away with stress and mental health issues and told Ms Flack that the school wishing to "clarify the situation" had led to increased stress for the Claimant. He queried the notes of the assessment meeting and referred Ms Flack to the recent changed government guidance in terms of working from home and to the DFE workforce guidance, which stated that, "most school-based roles are not ideally suited to homeworking, however, some roles, such as some administrative roles may be conducive to homeworking and school leaders should consider what is feasible and appropriate."
34. The Claimant had requested that a family member be allowed to attend the Stage 1 sickness absence meeting with her on 8 October but was told that this was not possible; she was told that she could be supported by a union rep, but not by a family member [389].

35. The Claimant sent a letter to email to Emily De Grove on 24 September [379-380], setting out her concerns about Covid 19. She informed Ms De Grove that she was off sick with anxiety and set out a number of concerns about the office and the Acorn Centre not having adequate safety measures, stating:

“As you know I am profoundly deaf. If someone in the office sneezes or coughs behind my back, or comes within the 2 metre social distancing guideline I would not know about this. This makes me even more anxious, as I can only do everything I can to protect myself and protect others. This working environment does not make me feel safe, and the lack of protection provided by the school is of great concern to me.”

She asked Ms De Grove to detail clearly how the school had and would ensure that the work environment was Covid 19 safe. Ms De Grove replied informing the Claimant she would discuss the concerns with her in their meeting on 1 October. (Rearranged for 8 October).

36. In the meantime, the Claimant received a letter from the Headteacher, Miss Hamill, dated 30 September 2020, [382 -383] in response to the Claimant's flexible working request. Miss Hamill informed the Claimant that the next stage in the process was a meeting with Ms De Grove, who had delegated responsibility for the Inclusion team and was best placed to explore the request with her.
37. The Inclusion Department Covid-19 risk assessment was in the bundle [387-388], it was updated on 6 October 2020. Minutes from the Stage 1 absence Meeting 8 October 2020 were also in the bundle [389 to 393]. The Claimant attended with her BSL interpreter Sharon Keys. The other attendees were Emily De Grove and Geraldine Brampah. The Claimant referred to her wish to work from home and asked Ms De Grove to explain what aspects of the role cannot be done from home [390]. The notes reflect [at page 391] that the Claimant explained that her work is only done on a computer, that she feels worse since coming to work, her colleagues touch her on the shoulder to get her attention and this makes her nervous and that she worked better when she was working from home. The Claimant repeated that it makes her very uncomfortable knowing that [her colleagues] will touch on the shoulder.
38. The Claimant was asked if she had received the consent form about Occupational Health support and if she wished to be seen by the OH service. The Claimant advised that she only wanted to be seen by her GP as that is where she feels comfortable and the GP is familiar with her. [391]. We find that Ms De Grove did not explain what the role of OH was or that the referral was intended to be supportive and might lead to advice to the school, only that it was not compulsory. We find that in failing to explain this to the Claimant she failed to take into account the Claimant as a deaf person would not have access to the same level of general knowledge or awareness about workplace processes as hearing employees who are able to pick this up through direct or overheard conversations or discussions in the workplace.

39. The Claimant was given a target to return to work after half term [29 October 2020]. She was informed that if her absence continued her case could progress to stage II and there may be a referral to occupational health at that stage. The Claimant was sent an outcome letter on 12 October 2020 [394 -396] by Ms De Grove in which Ms De Grove repeated her assertion that the guidance for office work does not apply to educational settings. She did not refer to the Claimant being touched by her colleagues to get her attention or colleagues being unmasked around her.
40. On 19 October 2020 the Claimant's father contacted Unison on her behalf and she received some advice from Carlene Rose who explained that an occupational health report would be done by an independent doctor, not from the school, and was there to help her. Having had this reassurance the Claimant decided she would agree to have an OH assessment. The Claimant continue to be signed off with work-related stress.
41. On 19th November 2020, the Claimant began a series of counselling sessions with Deaf 4 Deaf Ltd to talk about the stress and anxiety that the senior leadership team and covid 19, had caused her. The Claimant received 12 sessions, which concluded on 2 August 2021.
42. On 24 November 2020 Claimant's father wrote to Miss Hamill asking for the Governors' contact details explaining that the Claimant wished to raise a grievance which included the Headteacher and Deputy Headteachers and therefore understood that this needed to be addressed by the governing body.
43. On 16 November 2020 the Claimant attended a stage 1 review meeting together with Miss Angela Starr, Carlene Rose and Shaheen Fareed, HR Manager, and Deputy Head Teacher Emily De Grove which took place by Google Meet. After the meeting Ms De Grove wrote to the Claimant on 25 November 2020 [428-429] summarising their discussion. Ms De Grove confirmed that the Claimant's flexible work application to work from home had been rejected and an occupational health referral was going to be arranged by HR.
44. The Claimant asked for a correction to the notes to reflect that she had asked that she be allowed to record all meetings in future to aid accurate notetaking. She also requested that the minutes of the notes be corrected in a separate email on 27 November to Miss Farhad [431]. On 30 November, Miss Shaheen Farhad emailed the Claimant to inform her that she would not be allowed to record any meetings as this was against school policy.
45. On 27 November 2020 Ms Hamill, wrote a letter to the Claimant's father in response to his email dated 24 November requesting the email address for the School Governors in order to raise a formal grievance regarding a breach of the Disability [Equality] Act 2010 in the following terms [433]:

" ... Please note that as you are not an employee of the school, you are not able to invoke the grievance policy or any other policies that apply to employees of Oaks Park.

We will therefore not respond to any correspondence from you relating to or on behalf of an employee of the school.

If Ms Charlotte Bentley wishes to raise any concerns about procedures or policies apply to her then she as an employee of the school can do this on her own or with the support of a recognised trade union representative or work colleague. Charlotte has utilised her right to representation at recent meetings with the attendance of Carlene Rose, UNISON.

I therefore respectfully request that you refrain from emailing, mailing or contacting staff at the school for the above reasons, as we will not be able to respond to your queries.”

Grievance – relied on as protected act

46. On 30 November 2020 the Claimant sent an email to the Chair of Governors, Mr Omer, asking to file a grievance against the Headteacher, Ms Joanne Hamill and two Deputy Headteachers Ms Flack and Ms De Grove [434-435]. She explained that she was profoundly deaf since birth and that her grievance was in relation to discrimination under the Equality Act 2010, and failure to implement government guidance with school returns in September.
47. On 7 December 2020 the Claimant received a letter from Ms Hamill formally refusing her flexible working request [447-448] informing her that she must work in school and that she would remain under her existing contractual terms and conditions.
48. On 15 December 2020 Mr Omer wrote to the Claimant [464] asking whether the Claimant had exhausted the internal processes before deciding to pursue the grievance, inviting her to respond within 10 days.
49. On 16 December 2020 the Claimant attended the occupational health referral by zoom. The Claimant's sister was also present on the call and interpreted for her. By the date of the occupational health appointment the Claimant had been off work for three months with anxiety. The prognosis reached by Dr John Sterland, Consultant Occupational Physician, was set out in his report dated 21 December 2020 [465-467] as follows:
 - “1. The general situation is one of a generalised Anxiety state and collapse in self-confidence, not simply focused on COVID related issues, but complicated by personal factors:
 - a. Predisposing factors have been that Charlotte was just managing with her home support network in a very close and supportive family with profound deafness as a disability.
 - b. Precipitating factors included a combination of the COVID pandemic emphasising her mother's physical vulnerability, changes in her support network at home as her mother left temporarily for a safe area, and feelings of lack of support from School from September 2020.

c. Perpetuating factors include a minor element of COVID Anxiety for herself, and much greater associated COVID Anxiety for her family, along with feelings of guilt and responsibility, emerging embitterment about the work situation and feelings of lack of support from school.”

50. The consultant occupational health physician advised that the Equality Act was likely to apply and in management advice, expressed the opinion that the Claimant was fit to work, “however, at present, this must be well managed from home”. He strongly recommended that the Claimant resume her duties,

“as far as possible working from home, ... this would enable her to rebuild her confidence in herself, in her work and in the school.”

He also advised that multiple factors were present, which prevent the Claimant from travelling to the workplace; that the situation would improve over the next three months as the Claimant engages with counselling, develops strategies, the covid pandemic recedes, and vaccination proceeds. He noted that there was currently a second wave of the covid pandemic in progress, particularly affecting London boroughs, that have recently been placed in Tier 3. The incidence in Redbridge Borough, where the school is situated, was now 477 per 100,000 in the week 5th to 11 December 2020 (England average 159); that,

“as before, government advice is to work from home where possible”.

He described the situation as complex and not simply including the Claimant herself, noting:

“The Claimant understood that she herself is not at exceptional risk of complications from covid, **but her situation as a whole is fragile and composes a delicate support system which is at high risk.**” [emphasis added]

He suggested planning for three months working from home (in January, February and March 2021), with the possibility of an earlier return if the vaccine programme rollout in England proceeded rapidly in early 2021, which would increase confidence and decrease risk.

51. On the 22nd of December 2020 the Claimant responded to Mr Omer’s letter about her grievance [629-630], explaining why she had included the Headteacher in her grievance and setting out again how she had worked successfully from home from March until July and the situation on returning to school, that she became increasingly stressed as a result, that she asked to work from home again and was told this was not possible due to school policy, which was following government guidelines. She quoted the guidelines in respect of some roles being conducive to homeworking. She complained that she had been bounced around between Ms Flack, Ms De Grove and Ms Hamill with each one saying that a conversation cannot be had, and each passing responsibility for the rejection onto the other. She also referred to the Equality Act and reasonable adjustments. The Claimant asked for a hearing to discuss the grievance. Her letter was passed on to Mr Omer on 4 January by the school secretary Karen Mount [473].

52. On 5 January 2021 a Stage 2 Absence Review meeting was held by Google Meet. The meeting was attended by Claimant, assisted by Angela Star - BSL interpreter, Carlene Rose -Unison representative, Shaheen Farhad, HR manager and Angela Flack, Deputy Headteacher. Prior to the meeting Ms Flack confirmed to the Claimant that the school had agreed the meeting could be recorded as long as those present had provided their consent. Ms Flack sent the Claimant an outcome letter on 30 January 2021, summarising the discussions [489-491]. Ms Flack set out the measures that had been put in place to improve covid-19 security, including instructions about social distancing, wearing of masks in corridors and in communal areas, school updates via staff bulletin, changing the Claimant's desk so that it was forward facing so she could see was coming into the office, looking into installing Perspex screens. Ms Flack again referred to government guidelines about school reopening in September 2020 stating that staff are required to attend work to support running the school. The Claimant had said that she did intend to return to work and a return to work meeting was planned at which the occupational health referral report with be reviewed. The target for the Claimant's return to work with 2 February 2021. The Claimant was reminded that should she not be able to return to work it was possible that she might move to stage 3 of the sickness absence procedure and this may lead to her dismissal.
53. The Claimant sent an email in response on 18 January 2021 [492-494]. She thanked Ms Flack for allowing the meeting to be recorded, and again raised, amongst other things, the school workforce guidelines issued in September 2020, repeating that the guidance allowed that some roles such as administrative roles may be conducive to homeworking and school leaders should consider what is available and appropriate; she provided the link to the relevant part of the guidelines. She repeated reference to the Equality Act and reasonable adjustments not having been made. The Claimant expressed the desire to be able to start doing some work, following her return to work meeting, to provide Braille adaptations to her team.
54. Ms Flack replied to the Claimant's email on 19 January 2021 [496], repeating her position in respect of the government guidelines that on reopening the staff are required to attend work and that the school's position was that the Claimant's role is one that should be carried out within the school environment. However, she acknowledged that the Claimant had quoted the guidance correctly when it stated that school leaders should consider what is feasible and appropriate when considering whether working from home is workable or not.
55. On the 19 January 2021 the Claimant sent an email to Karen Mount [495], pointing out that she had not had a reply to her letter of 22 December 2020 concerning her grievance and that it was over the 10 days set out in the policy. On 20 January 2021, Karen Mount responded to the Claimant email about her grievance, apologising that she had not had a reply from the Chair of Governors, explaining that due to the current pandemic he had been extremely busy carrying out funerals at the cemetery where he works and that he had also suffered a personal bereavement. She told the Claimant that she hoped to have an answer for her very soon [500].

56. Following the return to work meeting on 3 February 2021 the Claimant started doing adaptations from home again whilst on a phased return to work.

Grievance meetings in February 2021

57. On 21 January 2021 Mr Mohammed Omer informed the Claimant that he had decided to keep himself in reserve in case there was a need to chair a grievance appeal hearing. He invited the Claimant to confirm her agreement to addressing her grievance under the formal stage of the grievance procedure [514-515]. The Claimant duly confirmed this, completing and returning the form on 27 January 2021 confirming that the grievances being raised were: breaking the Equality Act 2012, bullying, and failing to follow government guidelines of August 2020 [522-523]
58. The Claimant's grievance was heard by Google Meet on 4 February 2021. The grievance meeting was conducted by Keith Gardner, who was then Vice Chair of the Governors. In advance of the grievance meeting Mr Gardner sent an email to the Claimant on 2 February 2021 to outline the proposed format of the meeting so that she would be aware of the order of events and to share with her some questions that he intended to ask at the meeting so that she could think about her response and if she wanted to discuss with her trade union representative. The Claimant answered the questions in writing on 3 February 2021 [561, attachments at 541-554].
59. At the meeting Mr Gardner was supported by a HR representative, the Claimant was supported by her union representative, and her father and had her BSL interpreter with her. Karen Mount was present as Clerk to the Governors.
60. Mr Gardner interviewed Miss Flack, Ms De Grove and Ms Hamill in the afternoon of 4 February 2021. The minutes of the grievance investigation meeting with the Claimant are at page 463- 586. The minutes of the investigation meetings held with Ms Flack, Ms De Grove and Ms Hamill are at 587- 602, 603 - 613 and 614-629 respectively. On 12 February 2021 Mr Gardner interviewed Lesley Carty, [630- 644]; and Geraldine Brampah [645 – 662].
61. Mr Gardner wrote to the Claimant on 12 February 2021 to update her on the progress of her grievance, informing her he had carried out a number of interviews and that he intended to undertake further interviews on 22 February, after half term, with a view to sending her an outcome by 26 February 2021. Mr Gardner re-interviewed Ms De Grove on 22 February [notes at page 664 to 671]. His grievance outcome letter was sent to the Claimant on 22 February 2021 [672 -679].
62. The Claimant alleges that the Senior Leadership Team (that is, Ms Hamill, Ms Flack and Ms De Grove) told lies to the Governors in February 2021 in relation to the Claimant's grievance: by saying that she was unhelpful and difficult; about Redbridge Council education policy; about the Department of Education guidelines; and about her role as adaptations officer. The Claimant relies on the minutes of those interviews to support her claims of direct disability discrimination and victimisation.

Saying that the Claimant was unhelpful and difficult

63. Miss Hamill was taken to references in the notes of the grievance investigation on 4 February 2021 where it was suggested that she had been unfairly, and the Claimant alleges untruthfully, critical of the Claimant. The Claimant relied on the tenor of the interview overall and specifically at pages 621, 625 and at 627:

[page 621]:

"I know that AF and EDG's frustration was that they felt CB just would not work with the school, she wouldn't take on the recommendations, such as have an OH assessment, let's work for that. It was a natural thing we would put in place early on to get an expert to assess the need but, she wouldn't engage in that.

We tried to do meetings very early on in her sickness absence to try and review her working conditions, let's work out some compromises – these meetings were cancelled, delayed, there was barriers (put in place by CB). The impression was that the school policies, that CB as an employee, that they didn't actually apply to her. When we tried to explain to her, these are the next steps, this is how we can support, we need you to do this, allow us to do that, she wouldn't engage in that and that was a big barrier. It was challenging."

[625]

"I am aware from the feedback that she did not adhere to the expectations of an employee who is off work. It was challenging for the school to reach out to get the contact. I think it is really important that when someone is off work that you do keep those lines of communication open. Unfortunately, CB was not responding."

[627]

"... I think steps were taken by the school in terms of trying to reach out, encourage her to work with us, encourage her to avail herself of the opportunity to get further support through OH, to talk to them us about the working environment and to transition back to work. *Unfortunately, she just wouldn't work with us and it was very frustrating and it was disappointing to be quite honest*, because we've had lots of staff who had anxieties about returning to work across all schools in different work places.

... We had a lot of success stories where we had put people at ease who had considerable anxieties and challenges to bear and it was CB's response to us, which was not proportioned what she was dealing with. We had a wide range of people with more demanding needs, greater difficulties that we were able to support successfully back to work. They worked with us found compromises and solutions and we made adaptations ...

However, in CB's case, and I don't know if there were too many people

meddling in the pot, there were a lot of others giving advice that this 'noise' perhaps prevented CB working with us.”

64. We have found that the Claimant only requested that one meeting, the meeting scheduled for 1 October 2020, be postponed. This meeting was arranged while she was signed off sick with stress at work by her GP and had been arranged to take place at the school. It was rearranged at her request to take place by Google Meet and it took place on 8 October 2020. The Claimant pointed to the school itself having cancelled two meetings with her, one seven minutes before it was due to start.
65. We accepted the claimant's evidence that she did not know or understand what a referral to OH meant or entailed until it was explained to her by her Unison rep who encouraged her to see it as a supportive measure, and that once this had been explained to her she informed the school that she was willing to accept the offer of an OH referral.
66. In her interview by Mr Gardner on 4 February 2021 Ms Flack confirmed that there were no other deaf employees at the school and told us seven staff had completed individual risk assessments. She told us that no other employees had made requests to work from home, which is what she also told Mr Gardner [595]. The Claimant's request to work from home

“was denied after speaking to the Head teacher. At the time, September 2020, the School was fully reopening and we expected all staff to be in the building. We did not get any other request for home working everyone was aware we were returning to school”

67. Ms Flack was asked by Mr Gardner why the Claimant's request to work from home was not managed as part of the individual risk assessment discussion on 9 September 2020, she gave the following answer;

“Because CB had not completed the questionnaire first. She only asked via email to work from home which as part of the school procedures was not appropriate...”

[590] “ On 2nd September CB contacted me with a request to work from home. It stated that her mother had a vulnerability. She contacted me on the 2nd September and wanted to meet with me on that day. I was overseeing training and all manner of things and I did not see that email until the end of the school day. I responded to CB to say she hadn't completed the IRA [individual risk assessment] as per the school procedures – did you not meet the deadline; did you miss it. I informed her that we didn't see her form however, I will ask HR to arrange one for you. HR did attempt to arrange one but **because of her hearing impairment it couldn't be done immediately** and we hadn't had sufficient notice. However, as a school, we have been advised by the Borough that we are school setting, we were fully open and all staff were expected to return. At [600] she says the following about what the Claimant should have done” [emphasis added]:

“CB should have been discussing her concerns with LC, who would then have discussed them with EDG, EDG could have then deferred to me should she need to take advice ...”

And in response to a question about whether she had failed in her duty of care to the Claimant ,

[601] “... All communications from CB have been responded to. When CB has highlighted a concern it was dealt with, it was followed up as quickly as we could with the running of the School. CB was then written to with those responses and that information. **Despite her not following procedures, we took that as her lack of understanding** – so despite that we did still follow up when we were alerted to a concern. “ [emphasis added]

68. Ms Flack blamed the Claimant for not having filled in the request for risk assessment in advance. We find that the Claimant had not clearly understood, the policies or what she needed to do and when; we are satisfied that, her deafness was a significant factor in this. We find that part of the reason the Claimant set off down the formal route of being told to apply for a flexible working request and then into the grievance route was because she was unable to have a one-to-one discussion with her line manager or Ms Flack, either on the 2nd, 3rd or 9th of September 2020 and the reason for that was the Claimant's deafness, Ms Flack was not available to speak to the Claimant on 2nd or 3 September when she had BSL interpreter with her and there was no BSL interpreter available on 9 September when the Claimant went to her in distress.
69. Ms Hamill confirmed she had considered that the Claimant was being difficult; when asked to specify how, or in what way, the Claimant was being difficult, she referred to the delay in the first sickness absence review meeting. When taken to the relevant documents she accepted that it was due to the Claimant being off sick and having requested a Google Meet meeting instead of in-person meeting; she also accepted that the Claimant attended the rearranged remote meeting. Ms Hamill said she believed there were other occasions but she could not point to any. She could not provide any other examples or recall the basis for her comments [625] that the Claimant was not adhering to the expectation of an employee who is off work.

About the Claimant's role as Adaptions Officer

70. Mr Gardner asked Ms Flack about the Claimant's role as Adaptions Officer and whether it could be done from home. At 592 Ms Flack told Mr Gardner that she had spoken to Suzanne Owers on 17 September when she returned from a period of isolating.

“SO stated she believed CB's role could be done from home. I asked her who would submit the work to CB as it would have to be done by email communication, we can't just pick up the phone – she said it would be herself. I said but you have just returned from an absence, if you are not here, who would be providing CB with work. SO said no nobody would be. There wouldn't be anyone to provide that work. So, based on that is CB able

to do her work from home fully and SO confirm no she wasn't."

Ms Flack also told Mr Gardner that she had then asked Ms Carty on the same day whether the Claimant had raised any of her concerns with her and if she had raised her request to work from home with her and Ms Carter confirmed that she had not.

[595]:

"[Q] Would CB be required to be on site to directly support the students? "

"[A] My understanding of her role is that she doesn't directly support students. She indirectly supports students. However, I wouldn't be the best person to clarify this."

"[Q] Could her job be carried out from home without significant impact upon the School?"

[A] Based on my conversation with SO who was the lead TA when I looked into this on the 17th September, I wasn't convinced it could be. The set up within that department was that SO was allocating the work and she had just returned to work from absence and it was only her allocating her the work. With CB at home and unable to pick up the phone it wasn't clear that if she was at home and SO was absent who would be directing her and allocating her the tasks."

71. We are satisfied that Ms Owers did not say to Ms Flack that it would not be possible for the Claimant to work from home and nor did she say that it would not be possible if Miss Owers was off work for anyone else to co-ordinate the Claimant's work in her absence. We find that was the conclusion which Ms Flack drew, we find that she reached that conclusion without looking at or considering any alternatives and at least in part based on her assumption that it would not be possible to communicate with the Claimant at home because she would not be able to pick up the phone (as she was deaf).

72. Mr Gardner asked Ms De Grove's about the Claimant's role on 4 February 201 and in a second interview on 22 February 2021. When asked about the role on 4 February Ms De Grove gave the following answers:

[604] "She is an Adaptions Officer for visually impaired team. We have quite a few VI students, we have a specific team within inclusion that primarily dela with the VI students. CB's main role is adapting resources teachers provide and exam papers for students who are not completely blind. We are not talking about adapting into braille. Its about blowing up into larger fonts."

73. We are satisfied that the Claimant had been responsible for adapting materials into braille since she became a qualified brailist but apart from that this short description given on 4 February was accurate.

74. In the same interview Ms De Grove described herself as deaf aware and fully aware of the Claimant's needs and requirements as an employee of the School [605]. However, when asked later by Mr Gardner whether she

had taken the Claimant's disability into consideration she replied that it "was not relevant" [610]. When asked her view of the Claimant as a colleague and employee of the School she answered:

[606] "She does a good job. I know the VI team are really happy with her, she is very efficient. With her not being here they have struggled to get the adaptations done as quickly as CB can do. Yes, she works well."

Ms De Grove was asked whether the Claimant would be required to be on site to directly support students;

[609] "she does not have face to face work with the students because she is adapting but in terms of communicating with her team and in particular with the lead TA for VI then she needs to be on site. If someone is absent it is going to be very difficult to communicate with her at home. I know her lead TA Suzanne Owers (SO) has said that if she was absent it would be difficult to get the work to CB. So, although she doesn't need to be here to be working with students, she does need to be here for the smooth running of the department essentially."

We find that Ms De Grove misrepresented Suzanne Owers position, however we are satisfied that she did so because that was what was relayed to her by Ms Flack. We find that the information that Suzanne Owers had said it would be difficult in her absence [repeated in the second interview on 22 February 2021 at 665] has come from Ms Flack not Ms Owers.

75. Ms De Grove was interviewed again on 22 February 2021 and we set out relevant parts of that interview below.

[664]

"One of the key bits of information was how it would work within the team. AF [Ms Flack] had already had a meeting with SO and then had another meeting with LC on the same day about CB working from home. One of the key things was that SO had said actually it would be very difficult to coordinate giving work, collecting work etc, and just the general smooth running of the team. That was an important bit of information."

We have not found this to be an accurate reflection of what Ms Owers said. This suggestion originally came from Ms Flack and has been developed by Ms De Grove. Ms De Grove went on to volunteer the following information:

[665] " The other thing is the fact that CB is a TA and although she is currently, or at that time was doing a job that technically she could do from home, which was the adaptations, blowing up work etc, it was likely that if her particular day to day jobs changed, she wouldn't be able to do that from home. CB in particular supports 3 Year 11 VI students and all the adaptation work she does for those three students. But with students working from home during lockdown less adaptations were needed as they were working from a laptop and they can blow things up themselves. They don't need someone to increase the size of the worksheets and things like that. So, if we needed CB to do other things, she wouldn't have been able to do it from

home. She is a TA and we might have needed her to support students which she might not be able to do from home particularly if it was a key worker student or VI students in school.”

[667] “She is a TA and although at the time she was doing adaptations and like I said earlier, with students working from home, they don’t need as many adaptations. There would still be some but it wouldn’t necessarily fill up her job role.

CB works 27.5 hours [per] week and the students she does adaptations for – that is 24 hours’ worth of work. But with them working from home they don’t necessarily need that. That would leave us with her being used elsewhere. She is a TA and her job description and contract is as a TA. It would have left us with either she does braille she is a qualified brailist, which would require her to come in and do the embossing like the other VI TAs were doing or she would have had to be supporting the students. Again all the other TAs were on a rota to come into the building to support the students in the key worker bubbles. We did actually have a couple of VI students in and she would have been expected to come in. There was going to have to be flexibility within her role, so couldn’t outright say, you can work from home because it would have depended on which children were in, how many tests were happening that week, what needed adapting. We needed the flexibility of her potentially being in the building.”

Ms De Grove confirmed that she was aware that Ms Owers was now doing the printing for the Claimant. She was asked what proportion of the Claimant’s time would have been spent in face-to-face contact, she acknowledged that before lockdown it was zero. She was asked about what the Claimant had been doing since 2015 and answered,

[667] “ I don’t know the percentage as obviously I haven’t been here that long but I know she was definitely working with students because her original contract was for one day a week and she was just supporting students. The Adaptations Officer part of her job was only in place in 2018 and it has increased, because we have had more students who have required it. However, it will change again very soon as the students she is supporting will be leaving in June. Her role will have to go back to supporting students again.”

76. The Claimant took issue with the description of her role and her contract she describes it as being a lie and a misrepresentation of her role. She told us that she was not a TA and had never been a key worker, or worked face to face with students, nor would she be able to do so.

77. Mr Gardner also asked Ms Hamill about the Claimant's job and her duties and specifically asked whether the Claimant was required to be on site to directly support the students on a daily basis Miss Hamill replied, [621]

“That was what she was appointed for, to be on site.”

She was then asked whether the Claimant's job could be carried out from home without any significant impact upon the school and answered,

[621-622]

"No, it would always have an impact on the school. The question was asked when CB put in the flexible working form and the question was asked of the Inclusion team. Could this be operated and it was felt that it wasn't because it would have an impact on effective and efficient running of the department. It was going to have an impact on the other team members, because we would have to reorganise the management of the workload. It did not support what we do as face-to-face organisation working with people. We don't have a system in place for working from home. Schools are not worked out like that, it was going to have a detrimental impact on the team. The team was already under considerable pressure because, like all of the teams, people were being impacted on due to self-isolation, increased illness and children, self-isolating, and it was going to add an extra layer of work to the team, a team that was already under considerable pressure. It was turned down as an appropriate adjustment at that stage in terms of it didn't work with the contract that was originally designed."

78. On 12 February 2021 Mr Gardner interviewed Ms Carty, who line managed the Inclusion team. [630-644]. Ms Carty told Mr Gardner that she communicated with the Claimant in writing or via others; that due to the nature of her job the Claimant did not work directly with pupils. Ms Carty also confirmed that the Claimant's job could be carried out from home without any significant impact upon the School. The only part of the job that would be affected would be the printing the end of the day which was not a large amount of work to do and Ms Owers was happy to do it. If Miss Owers was out of the workplace then work could be passed to the Claimant:

"through myself and through the team. The Claimant knows to look in the work folder on the computer where staff put the work that needs to be adapted, and the Claimant would work her way through that."

She told Mr Gardner that Ms Owers absence would not have a significant impact on the Claimant's ability to do her work from home because the Claimant could have sent the work to someone else. Ms Carty also told Mr Gardner that she had never been asked whether an Claimant could work from home and not been asked, her views by the Deputy heads or the Head teacher or HR, but that she had told Emily De Grove informally in one of the line management meetings of the Claimant's job could be done from home and that she does not need to be in the meetings.

Ms Carty told Mr Gardner that she would have been supportive of the Claimant's flexible working request had she been asked. [643] She believed that if the management team sat down with her and Suzanne Owers to find out exactly what the Claimant did and how her role was carried out, whether it could or could not be carried out from home, they could have addressed the problems with the Claimant more informally and could have resolved the issues of concern, but the only response they got about the Claimant's request for working from home was "all support staff need to be on site."

Ms Owers had already provided a statement in support of the Claimant's grievance, [550], in which she stated that she believed the Claimant's role

was solely office-based and that as long as she has email to receive and return work tasks, suitable software and a messaging service to check in with her team, she would be able to work just as productively from home as she did during the first lockdown.

79. A further statement was provided, [551-552]. anonymously at the time, but it has since been confirmed that it was provided by Ms Byrne, who stated that she had worked with the Claimant for six years and confirmed that the Claimant does not work with students.
80. We are satisfied that the information provided to Ms Hamill by Miss Flack was not an accurate reflection of either Miss Owers or Ms Carty's views in respect of the Claimant's role and whether it could be carried out from home. We find those views are accurately reflected in Ms Owers' statement [550] and her answers to Mr Gardner's questions,[630-644].
81. The Claimant was very upset on reading the notes of the grievance interviews with Ms de Grove, Ms Flack and Ms Hamill. She took issue with the references to her being required to work with students or in the classroom and told us in evidence, that she had never worked in the classroom; that the suggestion was ridiculous, the students were visually impaired and the Claimant can only communicate via British sign language, so there was no way for her to communicate with the students; and that she had never been required to have one-to-one contact or any contact with students in the classroom and would not be expected to in the future.
82. We accept the Claimant's evidence which is supported by the witness statements and oral evidence from her colleagues Ms Owers and Ms Carty who worked with her most directly and closely. The Claimant's original appointment in July 2015 was to the post of Teaching Assistant for Visually Impaired students [129], On 1 July 2018 her contract was formally amended to reflect her role as Adaptions Officer[132, 133-138]. The Adaptions Officer was included in the TA job family for the purposes of a pay review carried out in in 2019, this reflected its position on the Local Authority previous pay scale [140]. However, we are satisfied that the Claimant was never expected or required to work in the classroom with visually impaired students but rather in the office as part of the inclusion team providing support by adapting materials. The Claimant was upset that Ms De Grove's comments showed a complete lack of thought in respect of the Claimant's situation, but in particular a disregard of her disability of deafness which made it nonsensical to suggest that she would be in the classroom, supporting visually impaired students on a one-to-one basis, or any other basis.
83. Ms De Grove gave evidence that she looked at the Claimant's personnel file because she had raised a grievance; Ms De Grove had seen the reference to TA in there and told us she had assumed the Claimant worked in the classroom with students because she had the title TA in her job description. Ms De Grove also told us that Lesley Carty was the direct manager responsible for the day to day running of the Inclusion team and she, as SENDCO lead, had weekly line management meetings with Ms Carty. Ms De Grove accepted that Ms Carty had said that the Claimant

never worked face to face with students but Ms Carty was unaware that the Claimant had TA in her job description. In her oral evidence to us Ms De Grove accepted that she was mistaken [at 608] and that the Claimant had never worked with students.

84. We have found that Ms De Grove's description in the second interview was not an accurate portrayal of the Claimant's role. It also contrasts with and goes well beyond what Ms De Grove said in the first interview. Ms De Grove was asked about this in evidence. We are satisfied that Ms De Grove was aware of what the Claimant's role involved having answered Mr Gardner's question accurately in her first interview but went on to embellish this, adding what she *might* be asked to do based on there being reference to TA in her job family, even though this did not bear any relation to the practical reality of the Claimant's role.

In respect of the Redbridge Council education policy and the Department of Education, government guidelines

85. The Claimant relies on the following answers by Miss Hamill in her interview on 4 February 2021, [page 622]:

"So in March we were told by the local authority to essentially get everyone out of the building. The advice was to have as few people in the building that you can manage while still fulfilling your responsibility with regards to key work and vulnerable children. So, we had only a very, very small amount of people in the building and the children who would have been directly working with CB's team in terms of visually impaired, they weren't in the building. We therefore only needed a very small amount of the Inclusion team in the building so, I was able to comply with the Local Authority and DfE clear expectations, which is have as few people in the building as possible. When it came to September it was very different. The information that came out over the summer was that schools were fully open from September and I have to admit there was less than clear guidance came out about working from home from the DfE however, they further clarified that the advice about working from home didn't apply to schools. Schools were built on a face-to-face environment that is the way we ran/organised the school. We clarified this a number of times with the Local Authority because all Head teachers were coming up against these requests for working from home. If they had been allowed, we would not have been able to open. It would have had a significant impact on the efficient running of the school because we don't have the correct number of students to staff ratio, etc. ***It was made very clear by the Local Authority; it [working from home] doesn't apply to schools. [emphasis added]***

And at the top of page 623,

" It was the same consistent message from the Director of Education that schools are face-to-face environments and it [WFH] didn't apply to school environment."

When asked if there was anything sent out by the Local Authority reflecting that advice Ms Hamill told Mr Gardner that, "They [the Local

Authority] quoted the DfE guidelines ...”

86. We find that the Claimant had sent the link to the relevant DfE guidelines to the Respondent on a number of occasions before 4 February 2021
87. In Ms De Grove’s second interview on 22 February 2021 the risk assessment and the response to the flexible working request were raised and at the top of page 667 Ms De Grove said the following:

“We said it would not be supported as she was working in an educational setting and therefore the working from home ... CB was using the guidance which had been given out nationwide in terms of ‘if you can still work from home, work from home’.

So, myself and HR went through the facts that we are an educational setting didn’t actually apply to us and staff were expected to be on site. Therefore, the working from home request was not going to be considered.” [underlined by the Claimant]

Mr Gardner then referred Ms De Grove to the guidelines to schools at section 2 paragraph 4 provided to him by the Claimant which stated that;

“some roles such as administrative roles may be conducive to homeworking and school leaders should consider what is feasible and appropriate.”

It was in response to this that Ms De Grove is recorded as saying:

“She is a TA and although at the time she was doing adaptations and like I said earlier, with students working from home, they don’t need as many adaptations. There would still be some, but it will necessarily fill up her job role.

88. We were taken to the relevant guidance issued by the Department for Education [161-162] and published on the gov.uk website under the heading school workforce. The guidance states:

“From 1 August, wider government policy on going to work is expected to change, with employers to be given more discretion about where staff work. Most school-based roles are not ideally suited to homeworking and schools may expect most staff to return to work in settings. Some roles, such as some administrative roles, may be conducive to homeworking, and school leaders should consider what is feasible and appropriate.”

We are satisfied this was the relevant guidance in force at the time and it was also drawn to the Respondent’s attention on numerous occasions by the Claimant before the grievance investigation meetings took place in February 2021. The local authority’s position was put to Miss Hamill in evidence: she did not dispute that later in February the local authority’s position was that some working from home might need to be supported.

Grievance outcome

89. Mr Gardner sent the outcome of his grievance decision to the Claimant on the 22 February 2021 [672-679]. He accepted that this was 102 days rather than the 60 days referred to in the grievance policy [67] however he told us that he thought the timelines were recommendations, or guidance, and that the grievance was complicated with a number of elements, he divided it into eight parts. He explained in evidence the steps he took to investigate the grievance and his explanation for the time taken. We find that Mr Gardner did his best to conduct a fair and thorough investigation.
90. Mr Gardner upheld, in part, some elements of the grievance complaints and offered a formal apology on behalf of the school. He recommended that the Senior Leadership Team and relevant staff undertake deaf awareness training and that they must communicate more fully with the Claimant in regard to proposed changes in the workplace. He also recommended if the Senior Leadership team wished to speak directly to the Claimant they should make time to meet with her and to have a BSL translator present to ensure that the Claimant was fully supported in any discussion. In respect of the Claimant's request to work from home he understood that the Claimant was at that time currently working from home until April 2021 as a reasonable adjustment. He observed that it seemed sensible that the school consider allowing her to continue working from home, until she felt able to return to the workplace, as part of a support package rather than any flexible working procedure. He informed the Claimant that he had instructed the School to address the concern raised by the Claimant in the course of their interview that a flashing fire alarm had not been installed despite that being bought the School's attention some years previously,
91. Mr Gardner also wrote to the head teacher Miss Hamill. That letter is at page 682. It was critical of the actions of the Senior Leadership and team stating that he believed that:

“ there was an unnecessary emphasis placed on CB to have to comply with a specific policy or procedure for appropriate action to be taken by the School. ...”

He set out 10 immediate action points for the school to take; three actions to be taken when the Claimant returned to the school site; and seven future actions.

92. On receiving the outcome of the Claimant's grievance appeal, Miss Hamill sent a strongly worded letter wrote to Mr Gardner on 3 March 2021, [683 - 685], in which she described the Claimant as being '*manipulative*' in using the system and stated that the Claimant was making outrageous claims about discrimination and bullying, [page 686] and that all reasonable adjustments requested were implemented [685] in respect of the Claimant's role. Ms Hamill complained that in effect the Claimant had being provided an unfair opportunity as a result of having written questions sent to her before her interview while the staff members had no. We find that this was a reasonable adjustment for Mr Gardner to make for the Claimant. Ms Hamill stated that all reasonable adjustments requested by team members were implemented. The Claimant did not see Ms Hamill's letter at the time.

93. In paragraph 4 of the letter under the heading “School left feeling confused and unsupported”. [686] Ms Hamill states, at e..

“It was perceived that the recommendations could undermine school's ability to manage personnel matters, as the perception was that it was OK to undermine and refuse to follow policies **by making outrageous claims about discrimination and bullying.**” [emphasis added]

Ms Hamill objected to Ms Gardner’s finding in respect of “Grievance 2, that [the Claimant] became unwell due to the poor safety within [her] office and management refusal to give consideration to her working request”

Ms Hamill pointed to a copy of an email on 9 September from an HR friend of the Claimant’s interpreter which the Claimant had included in the grievance bundle and the email for the Claimant on 11 September saying she was unwell and would not be coming into the office as being evidence that the Claimant “would not adhere to School Policies” and

“an example of how the School had been manipulated and left without capacity due to [the Claimant’s] actions.”

Mr Gardner responded to Miss Hamill's letter on 9 April 2021.

94. We have seen the email referred to by Ms Hamill which was in the bundle at 340-341 [Sharon Keys to Steve Bentley-Klein, 9 September 2020]. Ms Keys told Mr Bentley-Klein that she had spoken;

“to someone I know in HR and that she said the Charlotte has two options;

She can either wait for the decision and if it goes in her favour, then she can work from home and no further action will be needed.

The other option would be to book a GP appointment with an interpreter and basically ask to be signed off with stress for a couple of weeks, once this happens the school must put in place a return to work strategy which might include working from home followed by a phased return, but it essentially forces the school to look at ways of supporting Charlotte through this time.”

We find that the Claimant was experiencing distress, anxiety depression and OCD symptoms at this time and that her concerns about going into the workplace were genuinely held [see medical notes from telephone consultation dated 16 September 2020, 359-360]. We also find that the HR advice given indirectly to the Claimant was an accurate assessment of the options open to her in the circumstances. We do not find that receiving or following advice from someone with HR experience can fairly be described as being manipulative. Ms Hamill did not explain why this was either manipulative or failing to adhere to policies. We are satisfied that this was an unduly negative framing of the Claimant’s actions.

95. Ms Hamill told us that she described the Claimant’s claims [in her grievance] as “outrageous” because the claims were unsubstantiated in relation to

discrimination. She maintained that the claims were unsubstantiated in spite of Mr Gardner's findings that there had been discrimination; telling us that she disagreed with his findings, it was still her view they were unsubstantiated; she also contested Mr Omer's findings on the same basis, she felt they did not have the full chronology of what had happened to support the Claimant.

Grievance appeal

96. The Claimant wrote to Miss Mount on 5 March 2021, noting that Mr Gardner had upheld a number of her complaints, notably that she was required to work in an unsafe environment in September 2020, and that the school's handling of the situation was inadequate. He did not uphold the complaint that the School had been in breach of the Equality Act 2010. On 6 March 2021 the Claimant appealed against the finding that the Equality Act had not been breached. [691]. The appeal letter and grievance form were forwarded on to Mr Omer the same day.
97. A key plank of the Claimant's complaints in the grievance appeal was that Mr Gardner had failed to see the Claimant's hearing impairment as a major cause of her anxiety and poor mental health; that he had accepted the school's insistence that she had always been a TA and had believed what Ms Hamill had said about what the Claimant did in her role and would have to do in the future, including work with visually impaired students, even though she is a BSL signer and blind students would not be able to see her hands.
98. The grievance appeal hearing was held on 20 April 2021 at the school and via Google Meet the appeal panel was chaired by Mohammed Omer, Chair of Governors. Mr Gardner was also in attendance, together with HR representative Karen Mount. The Claimant was represented by her Unison representative, Carlene Rose, Angela Starr attended as BSL interpreter and the Claimant's father also attended via Google Meet. The minutes of that meeting are set out on pages 710 to 733. The Claimant had provided a written statement dated 20 April 2021, which is at 707 -709. A separate meeting with Mr Gardner took place in the afternoon [734 -747]. Miss Mount sent the panel's written questions to Miss Hamill on 23 April 2021 and her the responses are at pages 748 -755.
99. As already noted, the Claimant took issue with the content of Ms Hamill's answers to the questions from the Governors which were sent on 23 April, at page 748 -757, which Ms Hamill states:

“CB had previously work one-to-one with students attending a PHS with hearing impairments. The needs to do so is increase over time due to the reduction of students with hearing parents attending APH at present.”
[page 748, paragraph 2]

Ms Hamill was unable to explain with any certainty where this information come from. She told us it may have come from the previous Headteacher but that she had no direct experience or knowledge of the Claimant having worked directly with students. We accept the Claimant's evidence that she had never done this. We found her to be an honest witness and are satisfied

that she was in a better position than Ms Hamill to know what work she had done in the past.

100. On 29 April 2021 Mr Omer contacted Miss Mount (Governor Services) to inform her that the panel needed more time to consider the facts. He asked for the period to be longer than a week to take into account the last few days of Ramadan, followed by Eid and that he was unavailable on Fridays. On 3 May 2021 Miss Mount informed the Claimant that the panel had requested an extension to 7 May. On 3 May Miss Mount also forwarded the panel the minutes of the confidential meetings on 11 May 2021, [766 to 773].
101. On 11 May 2021 the Claimant attended a phased return to work meeting with Lesley Carty and Ms Flack, she was accompanied by her union representative and BSL interpreter. [766-773] The Claimant was sent a letter dated 12 May 2021, setting out the outcome of that meeting [775-777] which was written as though it was from Lesley Carty and 'pp'd' on her behalf. Ms Carty has informed the Claimant and told the tribunal that she did not sign that letter. However, she did accept in the course of her evidence, that she had seen a draft of the letter. We were taken to email chasers from the HR representative who had drafted the letter asking Ms Carty to make any amendments and informing her that it would be sent out. We accept that the implication inferred from the fact she did not respond to that email was that it was taken that she accepted its contents.
102. On 13 May 2021 the Claimant's father, Mr Bentley-Klein received an email response from Redbridge local authority in respect of the education policy in September 2020, which stated:

"The council did not and does not have a policy about staff working on school site or working remotely during periods of lockdowns. This is a matter for individual governing bodies. Throughout the pandemic we've kept schools updated on national policy, guidance and changes within those." [781]

Grievance appeal outcome

103. Mr Omer's letter setting out the grievance appeal outcome was sent to the Claimant on 11 June 2021 [803]. In summary the appeal panel considered that the School did fail to make reasonable adjustments with regards to not allowing the Claimant to work from home or exploring how her role or job description could be adjusted to allow her to work from home. The panel felt that the school also failed to make reasonable adjustments by failing to assess the working environment within the school in relation to where the Claimant was sitting and not implementing an alarm. The panel did not uphold the complaint that she was directly discriminated against but did feel that she was subjected to unfavourable treatment as a result of indirect discrimination, in that there were decisions taken, criterion applied and processes followed by the school that apply to everyone that had a detrimental impact on the Claimant because of her disability.
104. The panel expressed that it understood how the Claimant might have felt the behaviour towards the Claimant was oppressive but found no evidence

to support the claim that it was bullying and victimisation and did not uphold that part of the grievance appeal. In the final two paragraphs the letter concludes with the following:

“Overall, having extensively considered the evidence and representations you made at our meeting and having taken the time to fully explore the processes used and how these impacted you, the panel upholds the majority of your grievance appeal in relation to failing to make reasonable adjustments and you were indirectly discriminated against by the school when they applied policies, criterion and practices in relation to returning from lockdown to all employees, which ultimately disadvantaged you because of your disability.

Finally, we would like to fully endorse the recommendations made by Mr Gardner in his outcome letter to you. For completeness, this is with regards to a formal apology on behalf of the school, that all SLT and relevant staff undertake deaf awareness training, that the school must communicate more fully with you with regard to proposed changes within the workplace, for them to be more receptive to your needs and requirements and that your period of absence from work due to ill-health from mid-September 2020 until early February 2021, is not counted towards any absence management trigger, nor should the payments made to you during that time, to sick pay entitlement.”

105. In spite of both Mr Gardner and Mr Omer, the Vice Chair and Chair of Governors respectively, accepting that the school had discriminated against the Claimant, Ms Hamill maintained a steadfast denial that this was the case. She maintained that the Governors and the Chair had been given the wrong advice by HR in finding for the Claimant that there had been discrimination on any point. Ms Hamill maintained that had the Claimant come to the school and cited her deafness as the reason that she was asking for working from home then that would have been treated as a request for reasonable adjustments but she did not cite her deafness, she cited the vulnerability of a family member [and stress and anxiety].
106. On being asked if she had provided the apology recommended by Mr Gardner, a recommendation endorsed by Mr Omer, Ms Hamill told the tribunal that she was not asked to write a formal apology and she considered that the content of Mr Omer’s letter conferred the apology, and it was not necessary for her as Headteacher to write to the Claimant. Nor were we taken to any evidence that Ms Hamill or the SLT had taken steps to put in place the deaf awareness training also recommended by the Governors. We are satisfied having seen and heard Ms Hamill give evidence that this was also a reflection of a hostile response to the claimant’s discrimination claims.

Issue 2.1.2 being the only member of staff not invited to a BBQ on 21 July 2021

107. On 16 November 2020 at her stage 1 sickness absence review meeting the Claimant told Ms Fareed (HR Manager) that she did not want contact with the staff as this may cause additional stress school, (not with the school as recorded in the letter from Ms Hamill [428]). This was clarified by the

Claimant [432] in her email of 27 November 2020 correcting the minutes.

108. The Claimant was removed from the “all staff” email distribution list. Ms Hamill and Ms De Grove told us that this was the Respondent’s usual practice when it became clear that a member of staff will be off work for a significant number of weeks, usually 4 weeks or more.
109. Following the stage 2 absence review meeting with Ms Flack on 13 January 2021 at which the Claimant was informed that her target return to work date was 2 February, Ms Hamill sent an email to the IT department on 20 January 2021, asking that the Claimant’s access to school IT be reinstated on 21 January 2021 [501]. The Claimant was sent a copy of the January staff bulletin by Shaheen Farhad on 20 January 2021.
110. The barbecue was mentioned in the staff briefing for July 2021, page 318 and again in the bulletin for the week commencing 19 July. See page 333. These were distributed on the all staff email . The information about the barbecue was in the slides from the staff briefing on 5 July 2021 [808-Headteacher notices]. The briefings were also saved on the intranet with the recording with subtitles (although the Claimant disputed that the subtitles were any use) and the school barbecue was in the school calendar with the first hour shown as protected time, which indicated that all staff were expected to attend.
111. On 21 July 2021 the Claimant received a WhatsApp message from her colleague, Cindy Rocco, asking her if she was going to the school barbecue later [Page 839], the Claimant replied that she had not received the email about the barbecue party, and so I was not invited. The Claimant told us that she did not know anything about the barbecue; she felt upset that she had not been included in the social event and described this as being typical of how the Senior Leadership Team treated her, and many other members of staff.

Issue 2.1.3 being the only member of staff not invited to submit their lunch preferences for the INSET days on 1st and 2nd September 2021

112. The school organised its ISNET days for 1st and 2nd September 2021. The Claimant arrived on 1 September and found that people were discussing their lunch preferences, having been emailed in advance, asking them to specify their lunch choice. The Claimant had attended with her BSL interpreter, Angela Starr, and was upset and anxious because she felt responsible for the fact that not only she, but also Angela Starr would not have a lunch provided. The Respondent’s evidence was that there was plenty of lunch and the options were simply meat or veggie, and that there would be plenty of both options to go around.
113. The Claimant told us that since this occurred, she has been restored to the email list for these events. She thinks it was Lesley Carty who arranged this. She also feels less anxious at school now because she always has her BSL interpreter with her in her small office; this is paid for from her Access to Work budget.

114. On the 3 February 2022 the school was sent a third OH report about the Claimant [844-846] which suggested, amongst other things, that clarification and agreement regarding her job description would help ease her anxiety.

2.1.4 Reprimanding the Claimant's BSL interpreter on 24 September 2021

115. On 26 September 2020 a team meeting was arranged in one of the classrooms and the Claimant attended with her BSL interpreter Angela Starr. The team manager started the meeting by reminding all staff that the Claimant was in attendance with her signer and reminded them that only one person should talk at a time and that staff should raise their hand if they wanted say anything, thus allowing the Claimant to see who was talking. Unfortunately, the rule was not observed and a few of the team started to talk at the same time; Ms Starr put her hand up and reminded the team not to all talk at the same time, saying that she could only interpret one voice, which meant that she missed out what other voices were saying and that meant that Charlotte would then lose track of the topic, who's talking and also potentially miss vital information. One member of the team laughed. Following this laughter, the team leader explained again repeating what Ms Starr had said, asking for the team to please talk one at a time. The overlapping talking continued, at which point Ms Starr raised a hand again and, she says, asked in a polite manner, for staff to please talk one at a time. She says the team leader nodded at her and she took that as a nod of approval. The meeting continued with colleagues continuing to talk over one another.
116. A few hours after the meeting the Claimant and Ms Starr with were called into the office by Emily De Grove. Ms De Grove told the Claimant that a member of staff (the one who had laughed in the meeting), had complained about Ms Starr's attitude in the meeting. Ms Starr explained the reason that she had spoken during the meeting and that she needed colleagues to talk one at a time was to be able to do her job, which was to interpret for the Claimant. At the meeting Ms De Grove spoke to Ms Starr about her tone and accused her of scolding a member of staff; the Claimant was very upset about this. It was not disputed that Ms De Grove told Ms Starr that the tone of her voice was not appropriate, however Ms Starr accepted during her evidence that she was not told that she would need to apologise to the member of staff. She was instructed by Ms De Grove that in future meetings she should not interrupt if she needed to ask staff to talk one at a time, she should go through the chair or leader of the meeting. Ms Starr was asked to acknowledge the complaint, which she declined to do.
117. Ms Starr told the tribunal she explained to Ms De Grove that the Claimant is her client and she is not employed by the school; the Claimant was using her own Access to Work budget to fund the interpretation, if the Claimant was not happy she could change interpreter at any time but Miss Starr's job was to ensure equal access for her client the Claimant. Ms Starr pointed out that she and the chair of the meeting both asked the staff present to agree to making reasonable adjustments to enable a deaf member of staff to get access to meeting but were ignored. Ms Starr, the Claimant and Ms De Grove agreed to close the matter, agreeing to disagree. We accept that the Claimant was very upset about this. We also accept Ms De Grove's

evidence that after the meeting she spoke to the team and reminded them not to speak over each other.

118. We accept Ms Starr's evidence that this was the only occasion in her time as a British Sign Language interpreter that she had ever been criticised in this way. She acknowledged that the staff member was unhappy enough to have complained but did not accept that what she had done was unprofessional, she maintained that she was simply doing her job. She had been accused of being unprofessional, she felt without good reason. After their meeting with Ms De Grove Ms Starr discussed what had happened with the Claimant and told her that she thought it would be better if she (Ms Starr) did not come to the meetings with her any more to avoid bad feelings and protect the Claimant.
119. The department staff meetings were rearranged with the outcome that the Claimant and her interpreter were not required to attend the whole meeting; the Claimant's adaptations work was covered first and the Claimant could leave after this had been discussed. This had the effect that the Claimant was not included in full discussions in the department and was not included in any other matters that might come up. We find that this led to the Claimant feeling more excluded.

Relevant law

Direct discrimination – section 13 of the Equality Act 2010

120. Section 39 of the Equality Act 2010 provides that an employer must not discriminate against an employee of his by, amongst other things, subjecting him to a detriment.
121. Section 13 of the Equality Act 2010 sets out the legal test for direct discrimination. A person (A) discriminates against another (B) if, because of a protected characteristic (race in this case), A treats B less favourably than A treats or would treat others.

Causation

122. The House of Lords has considered the test to be applied when determining whether a person discriminated "because of" a protected characteristic. If the act is not inherently discriminatory, the Tribunal must look for the operative or effective cause. This requires consideration of why the alleged discriminator acted as he did. Although his motive will be irrelevant, the Tribunal must consider what consciously or unconsciously was his reason? This is a subjective test and is a question of fact. See Nagarajan v London Regional Transport 1999 1 AC 502. See also the judgment of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884.

Comparators

123. For the purposes of direct discrimination, section 23 of the Equality Act 2010 provides that on a comparison of cases there must be no material difference

between the circumstances relating to each case. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual. The circumstances relating to a case include a person's abilities if on a comparison for the purposes of section 13, the protected characteristic is disability.

124. Whether there is a factual difference between the position of a claimant and a comparator is in truth a material difference is an issue which cannot be resolved without determining why the claimant was treated as he or she was; see: Shamoon v Chief Constable of the Royal Ulster Constabulary *UKHL 11*, [2003] IRLR 285, [2003] ICR 337.
125. Lord Nicholls in Shamoon v Chief Constable of the RUC [2003] [2003] ICR 337 (at [7]–[12]) explained that sometimes it will not be possible to decide whether there is less favourable treatment without deciding 'the reason why'. This is particularly likely to be so where a hypothetical comparator is being used. It will only be possible to say with any confidence that a hypothetical comparator would have been treated differently once it is known what the reason for the treatment of the complainant was. If the complainant was treated as they were on the ground of the relevant protected characteristic, then it is likely that a hypothetical comparator without that protected characteristic would have been treated differently. The correct approach in cases where it is difficult to apply a two-stage test, is for a tribunal, faced with the task of deciding whether discrimination has taken place, to look at all the circumstances of the case to decide why the claimant was treated as she was (*Shamoon v Chief Constable of the RUC* [2003] *UKHL 11*, [2003] IRLR 285, [2003] ICR 337, per Lord Nicholls at [11]–[12]). In so doing, a tribunal must take into account all potentially non-discriminatory factors which might explain the conduct of the alleged discriminator, as well as those which are indicative of discrimination.
126. The EAT gave some helpful guidance in *London Borough of Islington v Ladele* [2009] IRLR 154, [2009] ICR 387, EAT; upheld by CA: [2009] EWCA Civ 1357, [2010] IRLR 211, [2010] ICR 532., stating (at [40]):

"The following propositions with respect to the concept of direct discrimination, potentially relevant to this case, seem to us to be justified by the authorities:

(1) In every case the tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572, 575—"this is the crucial question". He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.

(2) If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial: see the observations of Lord Nicholls in *Nagarajan* (p 576) as explained by Peter Gibson LJ in *Igen v Wong* [2005] EWCA Civ 142, [2005] ICR 931, [2005] IRLR 258 paragraph 37.

(3) As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts.

The courts have adopted the two-stage test, which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in *Igen v Wong*.

(4) The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. ...

(5) It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test: see the decision of the Court of Appeal in *Brown v Croydon LBC* [2007] EWCA Civ 32, [2007] IRLR 259 paragraphs 28–39. ...

(6) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are: see the observations of Sedley LJ in *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] IRLR 377 esp paragraph 10.

(7) As we have said, it is implicit in the concept of discrimination that the claimant is treated differently than the statutory comparator is or would be treated. The proper approach to the evidence of how comparators may be used was succinctly summarised by Lord Hoffmann in *Watt (formerly Carter) v Ahsan* [2008] IRLR 243, [2008] 1 All ER 869 ... paragraphs 36–37) ..."

Section 15 Equality Act 2010

127. Under Section 15 of the Equality Act 2010: "(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."

128. The correct approach to that statutory test is set out in the decision of Mrs Justice Simler, President of the EAT, (as she then was) in the case of *Pnaiser v NHS England* [2016] IRLR 170, at paragraph 31:

"(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, ...

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability."

(e) ... However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator."

(g) "...the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability."

And at (i) observed:

"...it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of 'something arising in consequence of the claimant's disability'. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

Objective justification

129. In a Section 15 claim the approach to be adopted to objective justification is that as set out in Hardys & Hansons Plc v Lax [2005] ICR 1565 - a case of justification of indirect sex discrimination (see Hensman v Ministry of Defence UKEAT/0067/14/DM). The tribunal must reach its own judgment upon a fair and detailed analysis of the working practices and business considerations involved. It must have regard to the business needs of the employer (Hensman at para 44).

Sections 20 and 21 Equality Act 2010

130. *Section 20 - Duty to make reasonable adjustments*

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

(2) The duty comprises the following three requirements.

...

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

Section 21 – Failure to comply with duty

(1) A failure to comply with the first ... requirement is a failure to comply with a duty to make reasonable adjustments.

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

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

131. The EAT held in Environment Agency v Rowan [2008] ICR 218, para 27 that the tribunal needs to look at: the PCP applied by or on behalf of the employer, or the relevant physical feature of the premises occupied by the employer; the identity of non-disabled comparators (where appropriate); and the nature and extent of the substantial disadvantage suffered by the claimant. The tribunal needs to look at the overall picture.
132. In Sheikholeslami v University of Edinburgh [2018] IRLR 1090, the EAT held that whether there is a substantial disadvantage as a result of an application of the PCP in a particular case is a question of fact to be assessed on an objective basis, measured by comparison with what the position would be if the disabled person in question did not have a disability.

Victimisation – section 27

133. Section 27 of the Equality act 2010 provides:

(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.

134. Under the victimisation provisions it is primarily from the perspective of the alleged victim that one determines the question whether or not any 'detriment' had been suffered St Helens Metropolitan Borough Council v Derbyshire [2007] UKHL 16, [2007] IRLR 540, [2007] ICR 841. The detriment must be 'because' of the protected act. Once the existence of the protected act, and the detriment have been established, in examining the reason for that treatment, the issue of the respondent's state of mind therefore is likely to be critical, and it is necessary to consider the judgments of the House of Lords in the cases of Nagarajan v London Regional Transport, and Chief Constable of West Yorkshire Police v Khan, and to the same effect, the Court of Appeal in Cornelius v University College of Swansea [1987] IRLR 141.

Submissions

135. The parties both provided helpful written submission which they amplified orally.
136. One of the Claimant's criticisms of the Resident was that it failed to see her as a deaf person, and kept trying to insist that her deafness could somehow be separated from other parts of her, including her mental health, which, she explained is impossible as her deafness is an intrinsic part of who she is and how she experiences the world. Mr Bentley-Klein reiterated in his submissions that his daughter's profound deafness creates multiple barriers in terms of communication and affects every aspect of her life including her mental world.

Findings and conclusions

137. The events relied on in the list of issues or the issues themselves are not set out in chronological order. We have set out our findings and conclusions below in the order set out in the list of issues trying to address each issue sequentially as far as possible, which may not be entirely chronologically.

Direct discrimination

1. The Senior Leadership Team providing spoken notated statements of the Governors in February 2021 relation to the Claimant's grievance which told lies:

by saying the Claimant was unhelpful and difficult,

about Redbridge Council education policy;

about the Department of Education, government guidelines; and

about her role as Adaptions Officer

[relied on as direct discrimination and victimisation]

Saying the Claimant was unhelpful and difficult

138. The Claimant relied on Ms Hamill's statements in the grievance interviews as saying that she was being unhelpful and difficult. We have found that in her interviews with Mr Gardner, Ms Hamill did seek to portray the Claimant as being unhelpful and difficult. We have not found this to be an accurate or fair description of the Claimant's actions or approach.

The reason for Ms Hamill's negative description of the Claimant

139. On the evidence before us the source of Ms Hamill's negative description appears to be Ms Flack and Ms De Grove's criticism of the Claimant for failing to complete an individual risk assessment in August and for going to Ms Flack with her concerns rather than raising them with Ms Carty or Ms De Grove first [Ms De Grove's witness statement paras 8, 12; Ms Flack's interview on 4 February 2021 [596] and witness statement paras 13, 14, 16, 18] .
140. In her interview with Mr Gardner Ms Flack also stated [590] " On 2nd September CB contacted me with a request to work from home. It stated that her mother had a vulnerability. She contacted me on the 2nd September and wanted to meet with me on that day. I was overseeing training and all manner of things and I did not see that email until the end of the school day. I responded to CB to say she hadn't completed the IRA [individual risk assessment] as per the school procedures – did you not meet the deadline; did you miss it. I informed her that we didn't see her form however, I will ask HR to arrange one for you. HR did attempt to arrange one but **because of her hearing impairment it couldn't be done immediately** and we hadn't had sufficient notice. However, as a school, we have been advised by the Borough that we are school setting, we were fully open and all staff were expected to return"
141. Ms Hamill also referred to the Claimant provision of a sick note to school on 11 September 2020, after having received some HR advice, as being the Claimant 'manipulating' the school [685].
142. Having heard Ms Hamill's evidence the Tribunal are satisfied that she had formed the view that the Claimant was being difficult and unhelpful, we have also found that this was an unfair and unfounded characterisation. We find that Ms Hamill did not take into account or consider that the Claimant might, as a deaf person, experience particular difficulties either in respect of communication, or understanding the school's processes. This is consistent with Ms Hamill 's oral evidence to the Tribunal in which she placed the blame onto the Claimant for not knowing or understanding the procedures and process, and not specifically referring to her deafness when requesting to work from home, rather than on her managers or the school for not taking into account the impact of the Claimant's deafness. We have set out in some detail in our findings of fact what we have found the surrounding

circumstances to have been.

143. We carefully considered Ms Hamill's explanation for expressing this negative view of the Claimant. We have found that the Claimant was not able to communicate fluently with the members of the Senior Leadership team without a BSL interpreter, she was not able to have informal or impromptu discussions with them in which she could explain her circumstances and she relied on others to explain things such as school processes and procedures which were not obvious to her. These are things which arose from her deafness and as such we have found that it is not possible to disentangle the Claimant's deafness from the basis for Ms Hamill's criticisms of her. We find that Ms Hamill made negative assumptions about the Claimant's actions based on how she expected a hearing person to act.
144. We find that the Claimant's deafness was a barrier to communication and that none of her managers were able to sign or understand BSL. Nor did they consider that she may have different communication needs as a deaf person. The perception of her being unhelpful and difficult in large part arose from her not understanding the process and procedures they expected her to follow. We are not able to disentangle entirely that lack of understanding of what was being required of her from Claimant's deafness. We are satisfied that the Claimant's deafness played a significant part in the treatment complained of.
145. We have found that this amounts to less favourable treatment of the Claimant because of her disability.

about Redbridge Council education policy; and

about the Department of Education, government guidelines;

146. The Claimant relied on Ms Flack's statement to Mr Gardner in the grievance investigation, and specifically the notes at page 590 where she is noted as saying the following:

"However, as a school, we have been advised by the Borough that we are school setting, we were fully open and all staff were expected to return.

We were aware that there were some guidelines covering office settings, but they don't apply to this school and all school staff was returned to work. That was the guidance that I received and our interpretation as a school and we followed them...."

Ms Flack, also told Mr Gardner, page 595, the Claimant's request to work from home,

"was denied after speaking to the Head teacher. At the time, September 2020, the School was fully reopening and we expected all staff to be in the building. We did not get any other request for home working everyone was aware we were returning to school"

Miss De Grove repeated the Respondent's position on 4 February that the

guidelines from the DfE state that all school staff had to be in. Miss Hamill stated that the guidance was that schools were open and all staff should be in school and working from home doesn't apply to school. She repeated at 622 and 623 that guidance on allowing working from home did not apply to schools which were face-to-face environments.

147. Whilst we have found that this is not what the guidelines actually said at the time, we are satisfied that the reason the members of the Senior Leadership Team expressed their position on those policies and guidance in the way they did was that they had misunderstood or misinterpreted those guidelines. We find that their interpretation of the policy would have been the same whether the Claimant had a disability or not.

148. We have not found this treatment to be because of the Claimant's disability.

About the Claimant's role as an Adaptions Officer

Ms De Grove

149. Ms De Grove spoke about this to Mr Gardner on 4 February, [pages 603-613 at 609], and again on 22 February [at 665]. In her second interview on 22 February Ms De Grove, told Mr Gardner that Miss Owers said it would be very difficult to allocate the work if the Claimant was at home: we have found that is not what Miss Owers said [665]. Having told Mr Gardner in the previous meeting the Claimant was not required to work face-to-face, she proceeded to tell him that the Claimant was a TA and that she could be required to work face to face

[667]. Ms De Grove went as far as to tell Mr Gardner that the Claimant was definitely working with students in the past and would go back to supporting students.

150. We find there was no proper basis for this assertion. We are satisfied that this did not come from speaking to Ms Owers and was not a fair or accurate reflection of the Claimant's role. It was not a statement which Ms De Grove could have reasonably and honestly made had she addressed her mind to the Claimant's deafness and the obvious difficulty she would have in communicating with visually impaired students in sign language.

How would a hypothetical comparator have been treated?

151. We considered whether Ms De Grove's description of the Claimant's role simply arose from her misunderstanding that the Claimant had been a classroom TA and what was required for that role. We concluded that it did not. We also considered whether if someone without the Claimant's disability had been in the Adaptions Officer role, Miss De Grove would have fallen into the same error. We are satisfied it is likely that Ms De Grove would have made similar statements about any role which she had wrongly understood to be a TA role but are also satisfied that she could only have made these statements honestly about the Claimant's role if she ignored the fact that the Claimant was profoundly deaf. Ms De Grove has failed to provide a satisfactory explanation for misrepresenting the position and the Respondent has not shown the Claimant's deafness had no influence on the making of the false statements.

152. We went on to consider whether the same treatment also amounted to victimisation. We are also satisfied that Ms De Grove, consciously or unconsciously, misrepresented the position to try to influence the outcome of the Claimant's grievance as set out below.

Detriment

153. We find that the Claimant reasonably considered that Ms Hamill's characterisations of her as unhelpful and difficult was to her detriment. We also find that the mischaracterisation of her Adaptions Officer role as a TA who could be required to go in to the classroom, was to her detriment and had ongoing consequences, causing the Claimant to be concerned about threatened future changes to her role and what she might be required to do by the School.

Discrimination arising from disability 15 of the Equality Act 2010.

The acts relied on set out at 2.1.1 to 2.1.4 of the list of issues.

[2.1.1 not been sent a letter sent to all staff on 11 May 2021. This allegation was withdrawn.]

2.1.2 being the only member of staff not invited to a barbecue on 21 July 2021

154. We were told, and it was not disputed, that the Claimant was removed from the all staff email circulation list during her period of sickness absence and that this was in accordance with the school's policy not to send email to staff who were off sick, particularly those who have had stress-related illness, for any length of time.
155. The Respondent disputed that the invitation to the barbecue had been only sent via the all staff email. which was available to the Claimant online with subtitles had she chosen to view it. We have accepted the Respondent's evidence that there was no separate invitation to the barbecue but information about the barbecue was included in the staff bulletin which was available on the intranet and was in the school calendar. We do not find the allegation made out on the facts. The information about the barbecue was made available to the Claimant and she was invited to it. We have not upheld this complaint of discrimination.

2.1.3 being the only member of staff not invited to submit their lunch preferences for the INSET days on 1st and 2nd September 2021;

156. The Respondent accepted that the Claimant's absence from work due to anxiety because of covid complicated by personal factors which related to her deafness and that it became aware of this once it received Dr Sterland's occupational health report in January 2021.
157. We have found that the reason she had been removed from the all staff email was to protect staff well-being. We find that this practice was applied to others as well as to the Claimant. We also accept that the Claimant had requested not to receive emails from staff during her absence. We are

satisfied that in following this practice the Respondent was pursuing a legitimate aim up until the Claimant's return to work. However beyond this date leaving the Claimant off the all staff email list was no longer in pursuit of a legitimate aim.

158. The Claimant was due to return at the beginning of February 2021 and on 20 January 2021 Ms Hamill instructed that she be restored to the email system on 21 January 2021 We find that Miss Hamill had notified the IT department that the Claimant's IT access should be restored to her but this was overlooked. The Claimant was not added back into the all staff email group until October 2021.
159. We have found that the reason for this was an administrative error or mistake; it was an oversight or mistake on the part of an administrator failing to act on the request to restore her to the email group and IT access. However this was a mistake that arose in the circumstance where the claim had been off work and the absence from work was the underlying reason for the Claimant not being on the all staff email at the relevant time.
160. The email group was used to notify staff about arrangements for lunch options in advance of the INSET days in September 2021. We accept it was distressing for the Claimant to arrive at the first INSET day to find others discussing the lunch options and to not know whether she had been included in the lunch order, or whether there would be enough food for herself and her interpreter. We accept that this amplified her feelings of not being included.
161. We have found this amounts to unfavourable treatment because of something arising in consequence of the Claimant's disability. It was submitted on behalf of the Claimant that in the context of the Claimant as a deaf person, it was even more important that she be included in the staff bulletin, as she was excluded in so many ways from other modes of communication. We accept that on the Claimant's return to work, steps should have been taken to ensure that she was returned to the all staff email group. We have however found that Ms Hamill in instructing the IT department to restore the Claimant's access to the emails took proportionate steps to ensure her email access was restored.
162. We therefore find that the Respondent's treatment was a proportionate means of achieving its legitimate aim. We have not found this complaint well founded.

2. 1.4 reprimanding the Claimant's BSL interpreter on 24 September 2021

163. We find that the Claimant's need to have an interpreter to assist her in workplace meetings arose from her deafness. The Claimant described her BSL interpreter as her ears and her voice. We accept that description. The Respondent denies that the conversation with Ms De Grove was a reprimand and relies on the legitimate aim of ensuring that appropriate and effective communication could continue between staff. We are satisfied that ensuring that appropriate and effective communication could continue between staff is a legitimate aim. We found that the conversation with Ms

de Grove was in effect a reprimand and went on to consider whether the means adopted by the Respondent was a proportionate means of achieving that aim.

164. We find that as a result of the meeting with Ms De Grove, the Claimant felt that she was being denied her voice and denied her choice of interpreter. The way forward that she had agreed with Ms Starr at the end of the meeting, to avoid future conflict with the member of staff who had made the complaint, was for the Claimant to employ a different BSL interpreter to attend meetings in future.
165. We accept that the way that the matter was dealt with by the Respondent left the Claimant feeling excluded and Ms Starr feeling that she had been criticised and her professionalism called into question. We find that this was unfavourable treatment of the Claimant who reasonably felt that her BSL interpreter was being told off for doing her job and for acting as her voice. We find that the Respondent approached the incident from the perspective that Ms Starr had done something wrong. This left the Claimant feeling that she would have to use a different sign language interpreter and not her usual chosen interpreter; the staff meetings agenda was arranged so that the Claimant was only present for part of the meeting, which led to Claimant feeling even more excluded.
166. We are satisfied that there were less discriminatory ways of achieving the aim pursued by the Respondent, including not treating Ms Starr as though she had done something wrong. ensuring that the person chairing such meetings were given clear guidance as to how to conduct the meeting in such a way that the Claimant was not excluded; making clear and reinforcing a rule about not speaking over each other, making it clear to the other staff that the Claimant's BSL interpreter was there as a communication aid for the Claimant and should be respected, in order to allow the Claimant to have equal access to the meeting..
167. We do not find, therefore, that the unfavourable treatment was justified. We have found this complaint well founded.

Section 19 - Indirect discrimination.

3.1.1 PCP relied on was conducting protracted grievance processes.

168. The Respondent disputed that it had a PCP of conducting protracted grievance processes. It put forward evidence to show that a grievance outcome is usually provided within two months of the grievance being raised. Mr Bentley- Klein took us to two examples of grievances which were dealt with much more quickly and within the time frame set out in the Respondent's grievance policy [866 and 867].
169. We find that the Claimant's grievance took much longer than other grievances conducted by the Respondent. We do not find on the evidence that the time taken to deal with the Claimant's grievance amounted to a PCP (provision, criterion or practice) which applied to her and to others who do not share her protected characteristic.

170. If we are wrong about that. We are satisfied the Claimant was likely to be at a disadvantage compared to people without her disability. She was prone to stress and anxiety. We have considered the aims put forward by the Respondent [paragraph 59 of Counsel's skeleton argument] and accept that those were legitimate aims being pursued. We are satisfied that in the particular circumstances of this case [set out at paragraph 55 of Counsel's skeleton], the Respondent has shown that it was a proportionate means of achieving those legitimate aims and the outcome of fully exploring and considering the Claimant's grievance. We do not uphold this complaint of indirect discrimination.

The suspending email PCP

3.8.1 is suspending work email accounts for employees off work with ill health.

171. The Respondent accepts that it had a practice of removing staff on long-term sickness absence from "all staff" emails with the aim of avoiding causing them further stress and to respect any requests from staff not be contacted by email while off sick. The Claimant had accepted that she made such a request herself towards the start of her sickness absence. The particular disadvantage relied on was the Claimant was not receiving the invitation to the summer barbecue, and being the only member of staff not invited to submit their lunch preferences for the INSET days. The Claimant was working from home on a phased return at the time of the relevant emails.
172. The Respondent submits the Claimant was in the same position as anyone else who is off sick and /or working from home at the relevant time and who would therefore not hear about the barbecue via office chatter and who would have been removed from the all staff emails in which information about the barbecue or lunch provision on INSET days would have been circulated. In any event, the Respondent points to the Claimant's responses to the WhatsApp message as indicating that she was aware of the barbecue. The lack of inclusion was the disadvantage the Claimant was relying on as placing her at a particular disadvantage.
173. We have found that the Respondent was acting in pursuit of a legitimate aim in suspending the Claimant's work email account, for the reasons given above we have also found that its actions were a proportionate means of achieving that aim. We therefore do not uphold this complaint of indirect discrimination.

Reasonable adjustments sections 20 and 21 Equality Act 2010.

The first of the PCPs relied on by the Claimant under this provision is:

4.1.1, requiring the Claimant to work from the school premises from 1 September 2020

174. The Respondent accepts that it had a PCP of requiring the Claimant to work from the School premises from 1 September 2020 to 10 September 2020. The Respondent submitted that the PCP was not applied during the period from 11 September 2020 to 1 February 2021 because there is no requirement for the Claimant to work at all because she was signed off sick.

We do not find that this meant the PCP was not applied. The Respondent's argument in respect of the Claimant being off work from 11 September 2020 to be circular. The Claimant was signed off sick with anxiety which arose from the lack of covid security in the workplace. Had the Claimant not been required to come in to the School premises she would have been able to do her work and would not have needed to be signed off sick. The occupational health report was clear that a return to work from home would aid the Claimant in recovering her confidence and recovering from her anxiety.

175. The disadvantage relied on by the Claimant in respect of the workplace. PCP set out at 4.2 in the list of issues was that people would touch the Claimant in order to get her attention, risking infection from covid 19.
176. The Respondent does not dispute it knew the Claimant was deaf but submits that it did not know and could not reasonably be expected to have known in September 2020 that the Claimant would be placed at this disadvantage. The Respondent points to the Claimant being told by Susan Owers in August 2020 that she would need a reason to apply to work from home, and the reason the Claimant gave at that time was her mother's vulnerability and the difficulties with the train journey. It was submitted that the Claimant was not making the application to work from home for any reason related to her deafness and that the Respondent did not know and could not be expected to know, at that stage that her deafness was a factor. It was also submitted that that would be dangerous to suggest that the Respondent should make an assumption that people with a physical disability are more prone to anxiety or mental health issues, which is a stereotypical assumption and should not be made; the reason given by the Claimant was who she was worried about her mother that the Respondent took that at face value. Why would they assume the Claimant was any different to anybody else?. The Respondent relied on the Claimant saying on 9 September that she was not getting close to people, so the Respondent could not reasonably be expected to know that people were touching her. Had the Claimant said at the time it was because people were touching her it would have been clearly related to her deafness, but she did not.

Substantial disadvantage

177. We are satisfied that the Claimant was put at the disadvantage of people touching her in order to get her attention. On the reopening of the school the layout of the office was arranged in such a way that the Claimant had her back to the room and therefore people would touch her to get her attention. We find that the Respondent could reasonably be expected to have known this, and that if they had applied their minds to it, it should have been obvious. The Claimant is a deaf person sitting at a desk in room of people with her back to them, it is obvious that people will touch her as a way of getting her attention, to get her to turn round and look at them so that they could speak to her and she could lipread, or if they were able to sign so that she could see them signing. We are satisfied that if the Respondent was not aware of this, it ought to have been.

reasonable adjustments, the workplace PCP.

178. The Claimant submitted that it would have been a reasonable adjustment to allow her to carry on working from home. We are satisfied taking the evidence as a whole that would have been a reasonable adjustment in the circumstances. We have heard evidence from the Claimant's immediate line managers, both of whom told us that her work could be done from home, and was done from home; they stated that in the absence of Ms Owers, other members of staff could step up, including Ms Carty. The Claimant's managers were clear that the workflow and printing could be managed from the office by them, or the members of the team in their absence, by adding work to the relevant folder on the computer.
179. The Respondent accepted that the Claimant's work could be done from home from February 2021 onwards when the Claimant worked from home on a phased return, and during the second period of lockdown in March 2021.
180. We find that there was a failure to make reasonable adjustments from September 2020 and that was ongoing until February 2021.

4.1.2. Practice permitting staff to talk across each other at meetings (the meetings PCP).

181. We are satisfied that this practice existed. It was brought to the Respondent's attention that this was happening and that it placed the Claimant at a disadvantage as a result of her disability, in that she was then not able to follow the meeting because her sign language interpreter could not interpret more than one person's conversation or words at a time. The Respondent accepted that if this practice existed it would put the Claimant at a substantial disadvantage.

Reasonable adjustment

182. The Reasonable adjustment contended for by the Claimant was instructing or training staff members not to talk across one another when the Claimant was using a BSL interpreter.
183. There was no evidence before us that any of the staff had been given or had attended deaf awareness training however it was not disputed that the chair of the particular meeting about which we heard evidence told all the staff at the outset no to talk across each other and reminded staff twice not to talk across each other. We have also found that Ms De Grove spoke to staff after the meeting and instructed them not to talk across each other when the Claimant's interpreter was present because this caused difficulty in interpreting. We find that this was a reasonable step for the Respondent to have taken.
184. We find that the adjustment contended for was made and therefore do not uphold this complaint.

Victimisation

185. It was accepted that the claimant's grievance of 30 November 2020 constituted a protected act.

Alleged detriments

- 5.2.1. the Senior Leadership Team providing verbal notated statements to the Governors in February 2021 in relation to the Claimant's grievance which told lies by saying the Claimant was unhelpful and difficult, about Redbridge Council Education Policy; about the Department of Education Government Guidelines; about her role as Adaptations Officer.
- 5.2.2. Send the Claimant a letter on 19 May 2021 purporting to be from the Claimant's line Manager Lesley Carty when Lesley Carty had no knowledge of and had not signed the letter.

Detriments

Telling lies by saying the Claimant was unhelpful and difficult.

186. We have found that Ms Hamill did seek to portray the Claimant as difficult and unhelpful, we have also found that this was an unfair and unfounded characterisation, both for the reasons given above. [for example at page 621 the Claimant putting up barriers, not engaging with OH, cancelling or delaying meetings] and that this was not an accurate or fair representation of the Claimant. We are satisfied that in saying this Ms Hamill was seeking to influence the outcome of Mr Gardner's investigation and persuade him not to uphold the Claimant's grievance.
187. We are satisfied that Ms Hamill's view of the Claimant was negatively affected by the fact that she had complained about discrimination and that the school was in breach of the Equality Act 2010. In her response to Mr Gardner's grievance outcome, she describes the Claimant as 'making outrageous claims of discrimination and bullying' [683-685]. In evidence Ms Hamill confirmed she saw the allegations of discrimination as "outrageous" because, she said, they were unsubstantiated.
188. We have found that Ms Hamill took umbrage at the allegation of discrimination. She described it as being used to get round the School's policies and processes and made critical comments to that effect and about the Claimant including describing the Claimant as manipulating the process. We are satisfied that we are able to infer from those remarks that the fact that the complaint was of discrimination had a significant influence in the response from Ms Hamill.
189. We find that her negative view of the Claimant, conveyed to Mr Gardner in her interview, was influenced by the fact the Claimant had accused the School of discrimination and breaching the Equality Act. This is consistent with what we found to be Ms Hamill's refusal to accept the outcome of the Claimant's grievance, contesting Mr Gardner's letter, She refused to accept that there been any failure to make reasonable adjustments and in her evidence before us sought to avoid the findings of Mr Omer's decision on the appeal. In spite of both Mr Gardner and Mr Omer, the Vice Chair and

Chair of Governors respectively, accepting that the school had discriminated against the Claimant Ms Hamill maintained a steadfast denial that this was the case. We have found this complaint of victimisation is well founded.

About her role as Adaptions Officer

190. We are satisfied it would not have been possible for Ms De Grove to make reference to the Claimant working in classes with visually impaired students and to honestly say that she knew the Claimant had worked with students in the classroom in the past. [page 667-668]. If she had addressed her mind to this situation honestly she would have been bound to accept that this was not realistic or practicable. We asked ourselves why Ms De Grove would say this, was it simply to justify the original position of refusing the request to work from home or was it in part at least, in response to the grievance being about discrimination.
191. We have found that Miss De Grove did misrepresent the Claimant's role in her second interview, specifically providing a picture of her role which was not a fair picture of her responsibilities and was misleading to the Governors as to the actual position in the respect of the requirement for the Claimant to work in class. We have found the SLT closed ranks in response to the grievance We are satisfied that the statements made by Ms Hamill and Ms De Grove to Mr Gardner in the grievance interviews were said in order to persuade the Governors not to uphold the Claimant's grievance and to defend the Senior Leadership Team against the allegation of discrimination. It has not been possible to separate out the fact that the complaint included an allegation of discrimination from the way in which it was responded. We are satisfied that the fact that the SLT found themselves facing an accusation of discrimination contributed to their response, even if subconsciously. The Claimant's allegation of discrimination was a significant influence in the treatment which was to the Claimant's detriment. We find this complaint of victimisation is well founded.

about Redbridge Council education policy; and

about the Department of Education, government guidelines

192. For the reasons set out above we have found that the reason the members of the Senior Leadership Team expressed their position on those policies and guidance in the way they did was that they had misunderstood or misinterpreted those guidelines. We do not find this was because the Claimant had made a complaint of discrimination and therefore have not found it to be victimisation.

5.2.2 Sending the Claimant a letter on 19 May 2021, purporting to be from the Claimant's line manager, Lesley Carty, when Lesley Carty had no knowledge and of and had not signed the letter.

193. We have found that Ms Carty was asked to approve or make any changes to the letter before it was sent. Ms Carty accepted in evidence that she was copied in to the draft, she told us that she did not see that as an invitation to amend the letter and she did not confirm that she had agreed it. We find

that the letter was sent out having been signed on her behalf (pp'd) by HR on the basis that she had been sent the letter and had not either made any amendments, or suggested that she had any objection to its content. We do not find that there was a deliberate attempt by the Respondent to misstate Ms Carty's position or that there was any link to the Claimant having made a complaint of discrimination. We find that this letter was sent in the way that it was as a result of a lack of clear communication. We do not find that it was an act of victimisation.

Time limits

194. The claim form was issued on 21 October 2021. The early conciliation period was from 29 June 2021 to 10 August 2021, a period of 42 days. The Claimant was informed of the outcome of her appeal against the grievance on 11 June 2021. Her appeal was upheld in large part, but no remedy was offered in terms of financial recompense. The Claimant brought her claim within three months plus 42 days, the length of the early conciliation period during which the clock stopped, of the date she received the outcome of her appeal.
195. The Claimant also relied on further acts in September 2021, namely the lunches on the inset days and reprimanding her BSL interpreter in the meeting on the 24th September 2021. We have not found the failure to email the Claimant about the lunch choices to be an act of discrimination, but we have found the reprimanding the Claimant's BSL interpreter on 24 September 2021 to be discrimination.
196. We have found, in any event, that there is a link between the act of discrimination on 24 September, reprimanding the Claimant's BSL interpreter and the earlier acts about which she complained going back to 1 September 2020. We are satisfied that it was part of an ongoing state of affairs of discrimination against the Claimant as a deaf person. We note that deaf awareness training had not taken place by September 2021, despite the Governors' recommendation. There is no evidence before us of deaf awareness training for the period from February 2021 to September 2021, nor was there any evidence that this had then taken place in 2023. If it had taken place by September 2021, we would not expect Ms De Grove to have handled the incident in relation to the meeting with the BSL interpreter in the way that she did.
197. Had we found the earlier acts to be out of time we would have exercised our discretion to extend time on the basis that it would be just and equitable to do so. We took into account the seriousness of the discrimination; that the Claimant was following the grievance and appeal process which explained the time period between the matters about which she originally complained and the outcome of the appeal and that once the Claimant received the outcome she considered its contents and decided to go to ACAS shortly thereafter on 29 June 2021.

Remedy

198. A separate remedy hearing will be listed in due course.

Apology

199. Employment Judge Lewis apologises for the delay in sending the Judgment in this case to the parties. The decision was reached by the Tribunal in Chambers on 15 and 23 March 2024 but has taken longer than anticipated to be typed and approved. This is largely due to increased pressure upon Administrative and Judicial resources.

**Employment Judge C Lewis
Dated: 22 January 2025**