



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Lacey

Respondent: Manchester University NHS Foundation Trust

Heard at: Manchester

On: 2-12 September 2024

Before: Employment Judge Cookson
Mrs Linney
Ms Hillon

REPRESENTATION:

Claimant: In person

Respondent: Mr Sugarman, Counsel

JUDGMENT having been sent to the parties on 18 September 2024 and written reasons having been requested by the respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The background to this case involves a family facing very difficult circumstances. It is not necessary for the details of those to be set out in these reasons except in the barest outline, but in light of the evidence we heard as a Tribunal Panel we stress that we do not doubt the personal stress and trauma the claimant and her family have faced over recent years.

2. The claimant brought complaints of harassment relating to disability, victimisation and a failure to make reasonable adjustments for disability. Her employment with the respondent was continuing at the time of this hearing.

3. Early conciliation in this case was undertaken between 3 October 2021 and 14 November 2021 and the claim was issued on 16 November 2021.

4. The hearing as noted took place in September 2024. The respondent, despite being the successful party requested written reasons but that request was not referred to the judge for some time. Unfortunately, by the time that request was referred, the judge faced the significant pressure from judicial workload, and it seem to be in accordance with the overriding objective to prioritise other cases requiring reserved judgments and where written reasons had been requested by unsuccessful parties, perhaps wishing to appeal. This has led to a delay in these reasons being provided and the judge apologises to the parties for any inconvenience this delay has caused.

5. The respondent conceded that the claimant was disabled by a mixed anxiety and depression disorder and by symptoms of PTSD from September 2018. The respondent conceded knowledge of disability from the same date. The tribunal was assisted by the provision of an independent expert report from a consultant psychiatrist, Dr Cullen. The claimant asserted that she was disabled from an earlier date (May 2015) and that the respondent either knew or ought to have known that.

6. Following case management hearings before Employment Judge Brace, we had the benefit of an agreed list of issues which is attached to this document.

7. In reaching our judgment we considered:

- a. An agreed bundle of documents running to some 1852 pages together with a supplementary bundle relating to disability provided by the claimant
- b. Witness evidence from the claimant and from the respondent from:
 - i. Judith Moss, formerly Consultant Clinical Psychologist and Professional Lead for Psychology and Behavioural Support at the Community Adult Learning Disability Service (“CALDS”);
 - ii. Daniel Ratcliffe, Principal Clinical Psychologist within the Psychology Service of CALDS;
 - iii. Lisa Jones Head of Service of CALDS;
 - iv. Lisa Astbury HR Business Partner of the respondent;
 - v. Theresa Hunt retired but previously Health Manager of the South Community Learning Disability team (“SCLDT”) based at Etrop Court at Wythenshawe;
 - vi. Julie Lomax previously Health Manager at CALDS (who was not called to give evidence in person, the claimant having previously agreed the evidence);
 - vii. Helen Geach Integrated Neighbourhood Lead in Adults and Specialist Services within Manchester Local Care Organisation (MLCO) and previously Lead Manager in Adults and Specialist Services;

- viii. Jenna Whisker Assistant Director for Central Adults and Citywide Specialist Services.
 - c. A chronology, cast list and key documents prepared by the respondent.
 - d. Written and oral submissions from both parties.
8. We record that we did not find the bundle helpful. The respondent had been instructed to include documents in chronological order. That was only partially complied with. The failure to fully follow tribunal instructions made the bundle significantly more difficult to work with, especially during deliberations. The tribunal timetable for case management in this case allowed more than enough time for the bundle to have been prepared properly and it is unfortunate that the respondent's solicitors took a decision to depart from Tribunal orders without seeking the leave of the Tribunal.

The law

Disability Claims under the Equality Act 2010 (EqA)

Meaning of Disability

9. Section 4 EqA identifies "disability" as a protected characteristic. Section 6(1) defines disability as follows:
- "A person (P) has a disability if—
- (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."
10. In determining the issue of disability, the tribunal must have regard to Secretary of State's Guidance on the meaning of disability.

The burden of proof in discrimination cases

11. s136 Equality Act states that
- "(1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision."
12. Schedule 1 of the EqA contains further provisions to explain how this definition is to be understood.

13. This section reflects what is often called “the shifting burden of proof.” The law recognises that direct evidence of discrimination is rare and employment tribunals frequently have to infer discrimination from their findings of material facts. The law requires the claimant to show facts which could suggest that there was discriminatory reason for the treatment, but the claimant does not have to prove discrimination.

14. It is only if the claimant shows facts which would, if unexplained, justify a conclusion that discrimination had occurred, that the burden shifts to the employer to explain why it acted as it did. The explanation must satisfy the Tribunal that the reason had nothing to do with the protected characteristic.

Failure to make reasonable adjustments

15. The EqA imposes a duty on employers to make reasonable adjustments for disabled people. The duty can arise in three circumstances. In this case we were concerned with the first of those. This is set out in sub-section 20(3). References to “A” are to an employer.

“(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.

Paragraph 20(1)(b) of Part 3 of Schedule 8 of the Equality Act says that the duty to make reasonable adjustments does not arise if the employer: “does not know and could not reasonably be expected to know – “(b) ...that an interested person has a disability and is likely to be placed at the disadvantage referred to...”

16. S21 of the Equality Act provides

“Failure to comply with duty

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

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

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

17. It is for the claimant to show what “provision, criterion or practice” it is alleged they have been subject to. The term is not defined in the EqA. However, the EHRC’s Employment Code, explains how we should approach this as follows the term ‘should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications, or

provisions. A [PCP] may also include decisions to do something in the future — such as a policy or criterion that has not yet been applied — as well as a “one-off” or discretionary decision’ (para 4.5).

18. Where a disabled person claims that a practice (as opposed to a provision or criterion) puts him or her at a substantial disadvantage, the alleged practice must have an element of repetition about it and be applicable to both the disabled person and his or her non-disabled comparators.

19. However, para 20(1) of Schedule 8 to the EqA provides that a person is not subject to the duty to make reasonable adjustments if he or she does not know, and could not reasonably be expected to know:

“...[not relevant]

in any other case, that an interested disabled person has a disability and is likely to be placed at a disadvantage by the employer’s PCP, the physical features of the workplace, or a failure to provide an auxiliary aid” – para 20(1)(b).”

20. The requirements set out in para 20(1)(b) – which apply in relation to employees in employment – are cumulative. In other words, an employer has a defence to a claim for breach of the statutory duty if it does not know and could not reasonably be expected to know that the disabled person is disabled and is likely to be placed at a substantial disadvantage by the PCP, physical feature or lack of auxiliary aid. Importantly, the words ‘could not reasonably be expected to know’ in para 20 give scope for an employment tribunal to find on the evidence that the employer had what is often called constructive (as opposed to actual) knowledge by lawyers, both of the disability and of the likelihood that the disabled employee would be placed at a disadvantage. Accordingly, the question is objectively what the employer could reasonably have known following reasonable enquiry. Employers do not have to make every possible enquiry in circumstances where there is little or no reasonable basis for doing so.

21. In determining a reasonable adjustments claim, a tribunal will therefore have to consider the nature and extent of the substantial disadvantage relied on by the employee, make positive findings as to the state of the employer’s knowledge of the nature and extent of that disadvantage, and assess the reasonableness of the adjustment (i.e. ‘step’) that it is asserted could and should have been taken in that context. In practice, these three aspects of the duty necessarily run together. It is often the case that an employer cannot make an objective assessment of the reasonableness of proposed adjustments/steps unless it appreciates the nature and extent of the substantial disadvantage imposed on the employee by the PCP, physical feature or lack of access to an auxiliary aid, and an adjustment to a work practice can only be categorised as reasonable or unreasonable in the light of a clear understanding as to the nature and extent of the disadvantage.

22. In terms of how we should assess whether an adjustment is reasonable or not the Code of Practice says this,

“What is meant by ‘reasonable steps’?”

6.23 The duty to make adjustments requires employers to take such steps as it is reasonable to have to take, in all the circumstances of the case, in order to make adjustments. The Act does not specify any particular factors that should be taken into account. What is a reasonable step for an employer to take will depend on all the circumstances of each individual case.

6.24 There is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask). However, where the disabled person does so, the employer should consider whether such adjustments would help overcome the substantial disadvantage, and whether they are reasonable.”

Harassment

23. Section 26, EQA 2010 sets out the legislative framework for harassment:

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

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

[.....]

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case

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

24. In ***Richmond Pharmacology v Dhaliwal*** [2009] ICR 724 the EAT stressed that the Tribunal should identify the three elements that must be satisfied to find an employer liable for harassment: (a) Did the employer engage in unwanted conduct, (b) Did the conduct in question have the purpose or effect of violating the employee's dignity or creating an adverse environment for him/her, (c) Was that conduct on the grounds of the employee's protected characteristic?

25. In a case of harassment, a decision of fact must be sensitive to all the circumstances. Context is all-important. For example, the fact the conduct is not directed to a claimant herself would be a relevant consideration, although this does not necessarily prevent conduct amounting to harassment and will not do so in many cases.

26. *Richmond Pharmacology v Dhaliwal* confirmed that not every comment that is slanted towards a person's protected characteristic constitutes violation of a person's dignity etc. Tribunals must not encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase.

27. Mrs Justice Slade's comments on how a Tribunal should approach the words "related to the protected characteristic" are helpful in the EAT decision of *Bakkali v Greater Manchester (South) t/a Stagecoach Manchester* [2018] IRLR 906, [2018] ICR 1481 (EAT). She says, whilst it is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a claimant – "related to" such a characteristic includes a wider category of conduct and as such requires a broader enquiry when making a decision (see paragraph 31)

28. Tribunals must not devalue the significance of the meaning of the words used in the statute (i.e., intimidating, hostile, degrading etc.). They are an important control to prevent trivial acts causing minor upset being caught in the concept of harassment. Being upset is far from attracting the epithets required to constitute harassment. It is not enough for an individual to feel uncomfortable to be said to have had their dignity violated or the necessary environment created. (*Grant v Land Registry* [2011] IRLR 748).

29. Considering whether there has been harassment includes both a subjective and objective element. Underhill J in *Pemberton v Inwood* [2018] EWCA Civ 564 summarised the position as follows: "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))"

30. Section 212(1) EqA says "detriment does not, subject to subsection (5) include conduct which amounts to harassment."

31. Section 212(5) EqA says "Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic."

32. Section 212 EqA means that an action that is complained of must be either direct discrimination or harassment, but it cannot be both. Equally such an action cannot be both harassment and victimisation. It must be one or the other. This is because the definition of detriment excludes conduct which amounts to harassment.

Victimisation

33. Section 27 EqA says: "(1) A person (A) victimises another person (B) if A subjects B to a detriment because-

34. (a) *B does a protected act, or*

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

‘Protected act’ is defined in section 27(2). It includes:

“(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.”

Findings of fact

36. We have made our findings of fact in this case on the basis of the material before us taking into account contemporaneous documents where they exist. We have resolved conflicts of evidence on the balance of probabilities and taking into account our assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts.

37. We have not made findings of fact about every matter referred to in evidence before us but only those matters which we concluded were relevant to the legal issues to be determined.

38. The claimant was employed with Manchester Primary Care Trust (“MPCT”) as an Assistant Psychologist in the Community Learning Disability Team (“CLDT”) from 17 May 2004. On 1 May 2021 she transferred to the respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”).

Events in 2015

39. In May 2015 raised concerns were raised about errors in a dementia assessment report prepared by the claimant and she was invited to an informal meeting to discuss those concerns under the respondent’s Capability Policy. The tribunal accepted that the concerns were genuine and warranted consideration in this way given the potential significance of errors in an assessment in terms of the care provided to a service user.

40. Sadly, around the same time one of the claimant’s children was diagnosed with a serious medical condition.

41. The claimant’s clinical supervisor, Nicola Jervis and Judith Moss (Professional Lead of Psychology and Behavioural Support (“PaBS”)) held an informal capability meeting with the claimant on 17 June 2015. The following day the claimant was signed off sick by her GP due to stress. The sick note was due to expire on 13 September 2015.

42. On 4 September 2015 the claimant's husband died suddenly at home in circumstances which had a significant impact on the claimant and her children. Undoubtedly the circumstances were very traumatic. The tribunal heard evidence about what happened. However, out of respect for the family's privacy and in light of the public nature of these reasons we have not set out any findings about what happened because we do not consider that necessary for our decision to be understood.

The claimant's sickness absence

43. The claimant was signed off by her GP with a bereavement reaction from 14 September 2015 to 16 June 2016. No action was taken under the respondent's sickness absence procedure.

44. On 25 May 2016 the claimant was assessed as fit to return to work by Occupational Health and on 6 June 2016 Lisa Jones (Head of Service) and Lisa Astbury (HR) held a sickness review meeting with the claimant at her house, in the absence of the claimant's line manager who was on long term sickness absence. On 22 June 2016 the claimant returned to work on a phased return and a return-to-work meeting was held.

45. On 28 June 2016 Judith Moss (a consultant clinical psychologist and the clinical lead) held an informal capability meeting with the claimant – this was to follow up the meeting on 17 June 2015. There had been a long delay since the last meeting, but Ms Moss told us that the underlying capability concerns were considered sufficiently serious to warrant a follow up meeting once the claimant was well enough to have a meeting.

46. The claimant's phased return to work ended on 25 July 2016.

47. On 29 September 2016 Ms Moss and Ms Jones held a meeting with the claimant to review her return to work, following up the meeting on 28 July 2016.

48. On 6 October 2016 the claimant sent Ms Astbury and Dr O'Neill from the Employee Health & Wellbeing a fit note from her GP for one month. It said that the claimant "may be fit for work taking account of the following advice: If available, and with your employer's agreement, you may benefit from amended duties" and in the comments section it said: "Bereavement reaction, stress made worse by demands of capability process, could this be looked at?" No specific recommendations were made nor did the GP suggest any adjustments. On 13 October 2016 Ms Jones held a meeting with the claimant to discuss that fit note, the notes from the meeting on 29 September and the adjustments which were in place.

49. The rescheduled informal capability meeting eventually went ahead on 8 February 2017 and there was a further capability meeting on 1 August 2017. At this meeting Dr Ratcliffe (by then the claimant's clinical supervisor) reported that he had identified further errors in two reports which to inaccurate scores being recorded. Since the claimant had returned to work in June, she had completed only 11 reports which the tribunal accepted was a limited output. The claimant has told that because

she had failed to meet the standard agreed in the informal capability process, it would be necessary to move to a formal process.

The formal capability process

50. On 5 September 2017 the claimant was invited to Stage 1 capability meeting under the Manchester Primary Care Trust Capability Policy. The hearing was rearranged at the claimant's request, and it went ahead on 2 October 2017. Ms Moss was again supported by Lisa Astbury, and the claimant attended with her trade union representative, Mr Goodier. The claimant referred to her mental health and that as result of the impact of the stress caused by her bereavement and that caused problems with her ability to concentrate at work.

51. At around the same time a clinical psychologist emailed Ms Moss, Dr Ratcliffe and Ms Jones to say the team were concerned about the claimant's well-being.

52. On 17 October 2017 Ms Moss and Dr Ratcliffe met to discuss the action plan from that stage 1 capability meeting.

53. At around the same time CMFT merged with University Hospital of South Manchester NHS Foundation to form the Manchester University NHS Foundation Trust, the respondent.

54. On 30 October 2017 the claimant met with Ms Jones to complete a workplace stress assessment and the following day had a meeting with Dr Elizabeth O'Neill from Occupational Health who advised that the claimant was fit for work with adjustments.

55. The next day the claimant had a supervision meeting with Dr Ratcliffe. During that meeting she became upset and left the room. She was later found in a highly distressed state and the claimant had gone home. The day after that the claimant was signed off work as unfit for work due to a depressive episode and from 3 April 2018 with anxiety and depression.

56. While the claimant was off work Ms Therea Hunt was appointed as SCLDT Health Manager. As a result, she became the claimant's non-clinical manager. This followed a period of time when there had been no line manager in place for the claimant or her colleagues. Although as the claimant's line manager, Mrs Hunt should usually have primary responsibility for the management of the claimant's absence because her absence had been managed by Ms Jones up to that point, and Mrs Hunt was managing a particular issue and issues with the rest of the team, it was decided that Ms Jones would continue to lead on the claimant's case.

57. On 24 April 2018 the claimant attended a further occupational health appointment with Dr O'Neill. The respondent was advised that the claimant was still unfit for work. However, by June the claimant's health had improved to come extent and she was able to return to work on a phased based on 4 June 2018. There was a return-to-work interview on 11 June 2018. The phased return ended on 27 September 2018 with the claimant returning to her previous hours of work, but she continued to have a reduced workload.

58. Over the next few months there was a certain amount of tension between the claimant and Mrs Hunt about the claimant's working hours. The claimant worked non-standard hours to help her manage childcare, but this meant she worked 2 long days. She worked Monday and Tuesday 8.15 am to 5.45 pm, and Wednesday and Thursday 8.15 am to 2.45 pm, with Friday as a non-working day.

59. Mrs Hunt became concerned about the claimant being late or reporting tiredness and requesting Healthbank leave or annual leave due to poor sleep or having overslept. She was concerned about the claimant taking special leave by notifying the administrative team rather than her as line manager and seeking that leave in circumstances which Mrs Hunt considered fell outside the policy, such as to cover planned appointments.

60. "Healthbank leave" was paid leave which certain staff who had transferred to the respondent from Manchester or Trafford Community Services who could request special leave to pursue 'health promoting activities'. Staff could also take "Special Leave" which is discretionary paid or unpaid leave in addition to annual leave, which can be requested to cover an urgent, immediate or unforeseen situation (or to support staff in carrying out public, and civic or professional duties). Such leave requires approval from a line manager and the policy requires the employee to inform their manager as soon as possible.

61. In November after discussions about her hours the claimant changed her core hours so that her hours were more evenly spread over 4 days.

62. On 9 November 2018 the claimant was invited to attend a capability review meeting with Ms Moss on 19 November. The meeting went ahead as arranged and the claimant was accompanied at the meeting by her trade union representative Mr Goodier.

63. On 24 January 2019, in a follow up to the November meeting, the claimant was invited to a performance capability meeting. This was originally arranged for 27 February 2019 but was rearranged to accommodate Mr Goodier's availability, with the hearing going ahead on 16 April 2019. In the meantime, OH advised that the claimant was fit to return to work with adjustments.

64. During March 2019 there were a number of occasions when the claimant again requested carer's or special leave at short notice. On 11 March 2019, the claimant had requested half a day carer's leave from the administrative team to look after one of her children. Mrs Hunt was off at the time, but she told us the claimant should have asked another manager. On 20 March 2019, the claimant requested a day's special leave when one of her children was sick. Late the following afternoon the claimant told Mrs Hunt that she was requesting special leave for the following Monday for a routine orthodontist appointment for her son which Mrs Hunt refused because it was a planned appointment.

65. Mrs Hunt emailed Dr Ratcliffe and Ms Jones about the concerns she had. She referred to the issue of the claimant taking leave in relation to her children and said this *"These meet the criteria [for carer's leave] though I do feel a wider discussion is required as to whether they can be left alone given that they are now at secondary*

school & unless they are continually throwing up they are probably just sleeping it off & she is local.” Concerns were also raised about the claimant’s use of her mobile phone during work, the time to undertake assessments/reviews as Mrs Hunt seemed concerned by the amount of time the claimant was away from the office, and she questioned whether an observed practice should be undertaken because *“I do wonder how she presents herself & the service”*. The claimant would later see a copy of this email and be offended by it.

66. On 1 April 2019 the claimant requested annual leave for the following day which was granted and then 3 April 2019 the claimant phoned Mrs Hunt to request carer’s leave because she thought her 11-year-old son might have flu. Mrs Hunt questioned whether the claimant’s adult children or daughter in law could help or whether her son needed someone with if he was resting or sleeping. The claimant told Mrs Hunt that her son was too unwell for this, and the carers’ leave was agreed. The following day the claimant raised concerns about that conversation with Mrs Jones, alleging that Mrs Hunt had “huffed and puffed” on the phone and had told her how to run her family and acting in unprofessional and overbearing way. An allegation of bullying was made.

67. There was a further capability hearing on 16 April 2019 which was to follow the hearing from the previous November, attended by the claimant supported by her trade union representative Mr Goodier, and Ms Moss and Mr Cruikshank from HR. The claimant became upset during the meeting and said she was going to raise a grievance.

The Grievance and Bullying Complaint

68. On 18 April 2019 the claimant submitted a formal grievance. She raised concerns about the capability process continuing despite her poor mental health and alleged that she had been bullied harassed and victimised. The managers named in the grievance were Ms Moss, Ms Jones, Mrs Hunt and Mr Cruikshank.

69. On 3 July 2019 the claimant was signed off by her GP with work related stress and from 26 November 2019 with depression. She returned to work in January 2020 on phased return and there was a return-to-work interview with Gaynor Spencer.

70. On 30 January 2020 Helen Geach (Lead Manager, Adult & Specialist Community Services) informed the claimant she would be investigating the claimant’s grievance, and the claimant was invited to a meeting under Stage 1 of the “Disagreement Policy”. That meeting had to be rescheduled and eventually went ahead on 26 March 2020. That meeting of course was scheduled shortly after the announcement of the first Covid “lockdown”. At the meeting the claimant told Ms Geach that she also wished to raise a bullying complaint under the Dignity at Work Policy and on 28 March emailed Ms Geach to say that she would like the capability process to be quashed.

71. On 21 April 2020 Mrs Hunt, accompanied by Ms Lomax, visited the claimant at home (the claimant was working from home in light of the covid restrictions) because she had not responded to messages from colleagues after she did not attend a “Teams” meeting. The claimant says that the reason was that she was on the phone

all day to service providers and that Mrs Hunt threatened to report her for a breach of the lone working policy.

72. On 30 April 2020 Ms Geach wrote to the claimant regarding the grievance hearing and on 29 July wrote to update her on the progress of the investigation. It was concluded on 9 October. The claimant was informed of the outcome of the grievance and the dignity at work bullying complaint by a letter on 16 October 2020.

73. The claimant appealed the outcome and also made a subject access request.

74. The claimant was informed that Jenna Whisker would consider her Dignity at Work appeal and Stage 2 Grievance with a hearing arranged for 16 December 2020.

75. Ms Geach provided a response to the claimant's appeal on 11 December 2020 and the claimant emailed Ms Whisker with her response to the management case on 30 March 2021. The following day Ms Whisker conducted the Dignity at Work appeal and stage 2 grievance appeals and she was sent an outcome letter on 19 April 2021.

76. On 3 October 2021 the claimant began early conciliation, and the certificate was issued on 14 November. The tribunal claim was submitted on 16 November.

77. In February 2023 the stage 1 informal performance review was registered with a Stage 1 Informal Performance Review Meeting held on 23 November 2023 and a Stage 2 Hearing on 20 February 2024.

Submissions

78. We received oral and written submissions from both parties. Mr Sugarman provided us with a written skeleton argument which includes a detailed summary of the relevant law as well as his submissions about how we should apply the law to the facts. Those are commented on in the discussion below.

Discussion, further findings and our conclusions

Disability

79. Although the respondent conceded that the claimant was disabled by a mixed anxiety and depression disorder and by symptoms of PTSD from September 2018, the claimant alleged that she had become disabled at an earlier date.

80. The claimant had claimed that she was disabled by reason of PTSD, depression, stress and/or grief from May 2015. The Tribunal were assisted in our deliberations by the provision of the expert report from Dr Cullen. In that report Dr Cullen made a number of assessments about the impairment which the claimant has experienced. He found that she had features of post-traumatic stress disorder but was unlikely to meet the full diagnosis criteria, that she had had prolonged grief disorder since 2015 and chronic and fluctuating mixed anxiety and depression disorder since later 2017/early 2018. He said this, "In my opinion the mixed anxiety and depressive disorder most likely started towards the end of 2017 and early 2018", and he went on to say that in his opinion the diagnosis of that mixed anxiety depressive disorder and

the prolonged grief disorder combined with the features of PTSD rendered the claimant disabled under the Equality Act. Based on his findings the Tribunal understand that his conclusion is that the claimant was disabled from late 2017 to early 2018, although of course whether the claimant was disabled is a matter for the Tribunal not a question of medical opinion.

81. The respondent argued that the position set out by the consultant meant that the impairment started to have a potentially disabling effect in late 2017 but would not have become a disability until September 2018 when it would have been clear that the impairment was going to last more than 12 months.

82. In terms of the claimant's case that she was disabled at an earlier point in time as she says, we faced significant difficulties from the lack of specific evidence presented by the claimant. In her submissions she had referred to the fact that she does not have legal training and is not represented by a solicitor, and we acknowledge that, but the claimant had been given careful directions by a Judge during the case management process which explained what was required in relation to the assessment of disability, what evidence would be required and she was provided with links to guidance documents. For whatever reason it seems the claimant had chosen not to have regard to that guidance.

83. In particular the claimant's failure to give us detailed evidence about the impact of her mental impairments on day-to-day activities made our deliberations so challenging, but we do have some information available to us. There was some evidence in her witness statement and there was some evidence available to us elsewhere in the bundle, and we took that into account alongside the expert report. We did the best we could to fairly assess the evidence we had.

84. The expert report was significant in our view, and we did not accept the interpretation which had been placed on it by the respondent.

85. In his report Dr Cullen says this

6.4 In my opinion the mixed anxiety and depressive disorder most likely started towards the end of 2017 or early 2018 based on GP records and the report of subsequent weight loss. The course of the disorder has been chronic and fluctuated with some improvement noted at various times. I did find Mrs Lacey to be mildly to moderately depressed at interview with a flattened effect....

6.5 In my opinion, the ICD-11 diagnoses of mixed anxiety and depressive disorder and a prolonged grief disorder combined with features of PTSD have rendered Mrs Lacey disabled under the Equality Act 2010.

86. We did not accept that when he said this Dr Cullen meant that because he identified the anxiety/depressive disorder to have started in 2017/2018 which he describes as rendering the claimant as disabled, he meant in his assessment it was only then she had an impairment with an impact on day-to-day activities which had the potential to be a disability, but that it would not become a disability until the following year on the basis the respondent suggested. This is not referred to all by Dr Cullen nor did we find the respondent's submissions to be consistent with the evidence.

87. Paragraph 2(1) of Schedule 1 of the Equality Act says this

“The effect of an impairment is long-term if—

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected.

88. We concluded that the more natural reading of the report is that by late 2017 the claimant had a mental impairment mixed anxiety and depressive disorder and a prolonged grief disorder combined with features of PTSD which was had lasted or was likely to last for 12 months. The report records intermittent but significant impacts on day-to-day activities with loss of concentration, weight loss through not eating properly, problems sleeping and struggling to work. We conclude that by late 2017 it was clear that the claimant had a mental impairment which had the required long-term affect and was unlikely to improve for some considerable time.

89. Having considered the evidence available to us, we reached the conclusion that the claimant was disabled from when she was unable to work from 2 November 2017, which we found to be consistent with the expert opinion. It was at that point in time that it seems the mental impairment had a significant impact on her ability to work (as well as other day to day activities) which was likely to be long term given the claimant’s previous history and struggles with the impact of stress and grief.

90. To be clear, the claimant had been suffering from stress (both work and non-work related) from May 2015 but from the limited information available it seems likely that was an adverse reaction to work and home which might be expected to be short lived. We accept that the claimant and her children were deeply affected by the very sudden and sad death of Mr Lacey in September 2015, and we do not underestimate the stress the claimant has experienced supporting a family as a lone parent. Stress, however, is not a disability – it is a reaction to the pressure of day-to-day life. Grief can have a long-term impact on an individual’s mental health such that it may amount to a mental impairment, but grief (however profound) is also a normal human reaction to loss, and although it may have an initial significant impact on day-to-day activities in the aftermath of bereavement, that too is an ordinary human reaction and its impact on day to day activities can usually be expected to abate, even if the grief itself is likely to last for much longer.

91. Although the claimant was unwell in the months that followed her bereavement, we concluded that between 2015 and 2017 such evidence as we had was consistent with somebody experiencing adverse reactions to very difficult life events, rather than disability.

Knowledge of disability

92. In terms of knowledge, we had to consider at what point the respondent was aware, or ought reasonably to have been aware, that the claimant was disabled. The

respondent conceded that it was aware of disability from the date of its concession in September 2018.

93. We considered the evidence about the failure by Lisa Jones to refer the claimant to Occupational Health as had been strongly recommended by HR in 2016. We had not found the claimant was disabled at that time, but it seems likely that if advice had been sought there may have been more knowledge on the part of the respondent about the claimant's mental health at that time. This was somebody who was being adversely impacted by stress and was finding things difficult, but even if a reference made to OH at that time, we are satisfied that advice given would not have suggested that the claimant was disabled at that time. However, by July 2017 staff working within the Specialist Psychology Team were beginning to raise their own concerns about the claimant and her mental health. Dr Ratcliffe noted that the claimant's mood was starting to dip in July and concerns were raised about the claimant's weight loss. The respondent was concerned enough about the claimant's mental health to refer her to Occupational Health in October 2017.

94. There was a paragraph in the report provided at that time following that referral which was not explained to us but which we thought was quite significant in which Occupational Health said this, "*The Equality Act application is ultimately a legal decision rather than a medical one and as such only the courts can ultimately decide on this. However, based on the information currently available we are able to give our assessment of the likely interpretation of the Act in this specific case*", and they went on to attach a link where further guidance could be provided. The report does not however say what the assessment about the possible application of the Act was.

95. It is unclear to us why the respondent did not take that opportunity to turn its mind as to whether the claimant was disabled and seek the advice that had been offered by Occupational Health. We think if they had, it is more likely than not that Occupational Health would have expressed an opinion at that time that the claimant was disabled. We concluded that the respondent known or ought to have known that the claimant was disabled from the start of her absence on 2 November 2017.

The Legal Complaints

96. The agreed list of issues in this case does not record the alleged discriminatory acts in chronological order. We thought that was unhelpful and we have dealt with the allegations in date order.

Harassment

97. The Equality and Human Rights Commission's Code of Practice highlights that in order for unwanted conduct to be unlawful harassment there must be a connection between the protected characteristic and the conduct which is said to amount to harassment. The unwanted conduct does not need to take place *because* of the protected characteristic, but there must be that connection.

98. In assessing the evidence, we recognise that witnesses will not readily volunteer that a remark or conduct is related to a protected characteristic, and the alleged harasser's knowledge or perception of a protected characteristic is relevant

but is not conclusive. The same is also true of whether an alleged harasser's perception of whether his or her conduct relates to the protected characteristic means that could be relevant but is not conclusive. However, conduct is not related to a characteristic simply because an individual has a protected characteristic and finds conduct which they have been subject to, to be offensive and to have the prohibited effect.

Issue 3.1.6 "Jude Moss set an action "To continue to check the claimant's work after capability over, and if any error found to resume stage 3 of the capability policy" from 2 October 2017 to date. (described in the issues as micromanagement)

99. We understood this to be allegation about the proposed continued checking of the claimant's work after the completion of the capability process. Although it is expressed as a continuing act, it is expressed as an allegation about a single decision taken by Ms Moss in October 2017. The decision she took is set out in a letter that was sent on 12 October 2017 (dated 2 October). That says:

"A review period of four months was agreed with the standard of 100% accuracy of scoring and reporting assessments to be maintained. If after this period the standard has been maintained the formal process will be removed, and an agreement about the appropriate level of checking and ongoing quality assurance of your work will be agreed. Evidence of further errors during the four-month review period will lead to stage 5.2 of the capability policy being instituted."

100. The allegation refers to stage 3, but the claimant was never subject to stage 3 of the respondent's procedure during the relevant time.

101. It is worth making the point that insofar as this is allegation about an allegedly discriminatory decision that was taken by Ms Moss in October 2017, we concluded that was before the claimant was a disabled person. Arguably that is sufficient for us to conclude that the complaint is not well founded. Even if the decision is said to have a continuing effect after the claimant became disabled, at the time the decision was taken if the claimant was not disabled, the decision itself could not have been related to a protected characteristic. However, in case we were wrong about when the claimant became disabled and the respondent's knowledge about that, we considered the allegation more fully. Recognising that the claimant is a litigant in person and taking a cautious approach to her case, the latest decision taken by Ms Moss in relation to capability was to proceed to stage 3. That was in April 2019 not October 2017, as pleaded, and in fact the procedure never did proceed to that stage.

102. The context of the capability procedure is important. As an assistant psychologist, in recent years the focus of the claimant's duties had been the completion of assessments which are used to measure, record and monitor potential cognitive decline in adults with learning disabilities, including Down's Syndrome. Those assessments would be used to assess whether service users should be referred to the Memory Clinic for further diagnosis, and that in turn could influence future management and treatment of their dementia. It is self-evident, in our view, that

the accuracy and consistency of recording data in those circumstances is going to be extremely important.

103. We found the claimant's position on the significance of the reports and the potential significance of errors to be contradictory at times. She told us that she owned her mistakes. She acknowledged that her work needed to be accurate and needed to be corrected, but at times she appeared to suggest that her work would not actually be used to diagnose dementia and therefore errors could not be regarded as being so serious. We preferred the respondent's evidence about the significance of the reports. They are clearly very important elements of the care provided to vulnerable people, and we accept that the respondent was entitled to insist that 100% accuracy was required for certain core aspects of those reports. That is the context for the decisions which Ms Moss took. The tribunal concluded that it was disingenuous of the claimant to describe action to ensure the accuracy of reports in these circumstances as micromanagement.

104. Even on the claimant's case the initiation of the capability process predated her stress related absence, and the initiation of the informal stage predates disability. The Tribunal was satisfied that the process during the informal stage had been carefully applied and when the claimant became unwell the process was paused and adjustments were put in place for her. The standard required of the claimant was explained to her.

105. As Mr Sugarman reminded us, the ACAS Code of Practice gives clear guidance to employers about the management of underperformance in a fair way and we were satisfied that what the respondent sought to follow those principles in the claimant's case. She was treated fairly.

106. Ultimately, if an employee is not performing a job to the required standard and is unable to show that they can meet the employer's standards, that is a fair reason to bring employment to an end. That is true in any role but given the significance of the work that the claimant was undertaking we accept it was entirely appropriate for the respondent to find consider whether the claimant was capable of meeting the requirements of the role she was undertaking. Adjustments to the process may be required for a disabled person but an employer can apply performance requirements to a disabled person if it is reasonable to do so.

107. The informal process had been initiated and then at various stages put on hold. Although that process had started in May 2015 the first formal stage was not applied until October 2017, and it was following that meeting that the outcome letter which is referred to in this allegation of harassment was sent.

108. We accept that the respondent identified further errors in reports submitted by the claimant. The respondent was entitled to move to stage 2 of the capability policy in those circumstances. It is not in dispute that when those errors were raised with the claimant, she became distressed and that appears to have been the trigger for the sickness absence that followed. The claimant began a further period of sickness absence which continued until June 2018 and the capability process was not progressed during that absence, even though the tribunal accepted the evidence of the respondent that some significant errors had been identified in the claimant's work.

When the claimant returned to work in June 2018 the capability process was not re-instigated until late September, giving the claimant time to return to work, or at least return to her full contracted hours, although she continued to have a significantly reduced caseload.

109. During the following two months further concerns were raised, and the Tribunal accept those concerns were significant and warranted further action notwithstanding the claimant's health because of the importance of the work to the care provided to vulnerable people. There was a capability review meeting on 19 June 2018 and the claimant was sent an outcome letter taking her to the next stage. She was referred to Occupational Health. There were some difficulties in getting the claimant to Occupational Health, but eventually a report was received and there was a further review in February 2019. That noted some improvements to the claimant's work, but there were concerns about workload levels and some minor quality issues had been identified. However, more serious concerns were then raised about the management of a dementia spreadsheet in March 2019.

110. A further capability hearing was held in April 2019 and the outcome to that informed the claimant that she would be referred to a capability panel at stage 3 of the procedure. A possible outcome of that meeting could be her dismissal, although the respondent had referred to the possibility of considering other possibilities, including redeployment. The tribunal were satisfied the respondent was justified in progressing matters to that stage.

111. Before that process progressed further the claimant raised a grievance. The procedure associated with her grievance and appeal took some time, in part it appears perhaps due to Covid, and certainly in part because the claimant was absent from work for some of that period of time. When the process was eventually completed, although the grievance was not upheld, a decision was taken to restart the capability process at the informal stage. The tribunal concluded that was fair approach to adopt. The respondent would have been justified in returning to the existing capability process stage. The approach it chose to adopt instead was reasonable and fair and we do not consider that the claimant could reasonably criticise that.

112. Looking at the decision taken by Ms Moss that it was necessary to move into the formal process in October 2017, we did not accept the claimant's complaint that that amounted to harassment related to disability. We found Ms Moss to be a thoughtful and measured witness. She was clearly very sympathetic to the claimant's situation and what she had gone through, but she was also a clinical lead responsible for the management of care for vulnerable people. She was required to apply the respondent's procedures to ensure staff were working to the required standards to meet those clinical needs. The capability process which she applied was not related to the claimant's disability, it was related to the need of the claimant to meet the standards required for the service users. That was what drove the process, that was what drove the decisions that were being taken by Ms Moss.

113. Even if we are wrong that the decisions being taken were not related to disability, the claimant could not reasonably perceive that the application of those procedures could have the prohibitive effect required for it to amount to harassment.

Everything possible had been done to provide her with support. The claimant may have been worried about her ability to meet the required standards, but she could not reasonably perceive that the respondent applying standards to ensure the quality of care provided to vulnerable people was the conduct which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her given the reasons for the action being taken and the support provided during the process. The respondent simply sought to get the claimant to reach the required standards. The claimant could not reasonably perceive that as unlawful harassment.

Alleged harassment by Mrs Hunt

114. The other allegations of harassment relation to interactions between the claimant and the new nonclinical line manager who had come into post when she was of work following her husband's death, Theresa Hunt. The numbering in the list of issues is somewhat odd but the allegation is that Theresa Hunt had micromanaged the claimant from July 2018 until her retirement in 2021 in that

Issue 3.1.2 Theresa Hunt accused the claimant of being one hour late, when manager's own time on phone was depicted an hour disparity on 19 July 2018;

Issue 3.1.3 Theresa Hunt sent an email on 22 March 2019 to Lisa Jones, Jude Moss and David [sic] Radcliffe;

Issue 3.1.4 When the Claimant called on 3 April 2019 to request carers leave when her 12-year-old child was unwell, Theresa Hunt commented, "Can't he be left since you live so close to work";

Issue 3.1.5 Theresa Hunt turned up at the claimant's house on 21 April 2020 during lockdown and accused the claimant of breaching the respondent's Loneworking Policy, threatening to report the claimant despite the claimant having explained to Theresa Hunt that she was on the phone to a provider. Theresa Hunt was rude and abrupt.

Each allegation is considered in turn below:

Issue 3.1.2 that Ms Hunt accused the claimant of being one hour late on 19 July 2018 when the manager's own time on her phone depicted an hour disparity.

115. The evidence that we heard from both the claimant and Mrs Hunt about this was at times somewhat difficult to follow, and it seemed to us that this at no doubt reflected the many years that had passed between what happened and evidence being given to us. It was clear that the delay in the complaints being brought had impacted in the quality of recollection of both women.

116. What is clear is that the background to this had been that the claimant had attended Accident and Emergency with her son and had then texted Mrs Hunt to say that she was on her way back to the office and would be about five minutes. On the claimant's own account, she did not go straight to the office as her text had suggested she would, she went home. The claimant lives very close to work, but her evidence

was that she waited for her adult son and his wife to wake up and she took time to ensure that her son was settled before she came into the office. The claimant says this took only 17 minutes. However close the claimant lives, that seemed implausible to us. Mrs Hunt told us that she genuinely thought that the claimant had arrived about an hour later from when she had received the text. After receiving the text, she had completed some work and had then gone into the kitchen and only then saw the claimant arrive.

117. We accepted that Mrs Hunt had genuinely perceived that the claimant had been significantly late into work and accept that longer than 17 minutes will have passed. Mrs Hunt was entitled to raise with the claimant because she had been much later into work than she had suggested she would be. The claimant had sent a somewhat misleading text which seemed to suggest she was practically at the office door, when in fact she was on her way home to drop her son off and get him settled before she came into the office. The claimant could not reasonably perceive being asked about that as amounting to the creation of a hostile working environment or otherwise having the prohibited effect. What is more, the claimant failed to explain to us who this was related to her disability. The reason why the claimant was late into work was related to the claimant's attendance at A & E with her son. We found nothing in the evidence that we were presented with which suggested a connection in any way to the claimant's disability.

118. It was clear to us that there were tensions in the relationship between the claimant and Mrs Hunt, but the claimant failed to show us why that that was related to her disability. We accept that Mrs Hunt was concerned about that the claimant's timekeeping and the way she asked for leave and her failure to follow some of the office procedures. The claimant had childcare concerns and she referred to her children's vulnerability in her evidence to us, but she did not suggest any relationship between her disability and her leave requests.

Issue 3.1.3 Theresa Hunt sent an email on 22 March 2019 to Lisa Jones, Jude Moss and David Radcliffe

119. This allegation of micromanagement amounting to harassment relates to an email sent by Mrs Hunt to Lisa Jones, Ms Moss and Mr Ratcliffe. This was not an email which Mrs Hunt ever expected the claimant to see. It was not conduct which Mrs Hunt had directed towards the claimant. However, it is perhaps likely that it would have been worded in quite such blunt terms if Mrs Hunt had thought the claimant would see it.

120. We accept that the email reflects the tensions in the relationship between the claimant and Mrs Hunt already referred to and the fact Mrs Hunt had genuine concerns about the claimant's timekeeping which it is clear she did not think were being managed by Dr Ratcliffe as the clinical supervisor. We concluded that Mrs Hunt's concerns arose not from the claimant's disability, but from Mrs Hunt's perception that the claimant was failing to follow the leave procedures appropriately. For example, by not seeking leave from managers and using what was intended as emergency leave for routine appointments, perhaps especially when the claimant had some flexibility because she did not work Fridays.

121. We accept that Mrs Hunt had concerns about the claimant's timekeeping, and she raised that with the claimant. We do not accept the claimant's description of that as micromanagement, which suggests a manager or manager seeking to control aspects of their employees' work and decision-making to an extreme degree. It was appropriate management by a line manager of an employee not following procedures. by her team line manager. Teresa Hunt had been brought in to manage that team and part of her role was to ensure that they were following policies and procedures.

122. We accept that the claimant was offended by the email when she saw some time after it was sent, but it was not related to her disability.

Issue 3.1.4 when the claimant called on 3 April 2019 to request carer's leave when her 12 year old child was unwell Mrs Hunt commented, "can't he be left since you live so close to work?"

123. There is a dispute about precisely what was said when the claimant spoke to Mrs Hunt on 3 April 2019, but Mrs Hunt herself acknowledged in her evidence that she asked the claimant whether the claimant's child needed someone with him if he was resting or sleeping as the claimant lived locally and could be readily available. In her cross examination the claimant told us that it was not unreasonable as a suggestion, but she said a manager should be respectful and professional in making that suggestion. In light of that concession, we conclude that the claimant could not reasonably perceive the comments as having the prohibited effect. It was put to Mrs Hunt by the claimant that her allegation is about Mrs Hunt's tone when she questioned the arrangements, which the claimant says she found intimidating and challenging. The claimant's evidence for that was that Mrs Hunt had been huffing and puffing during the conversation, but Mrs Hunt explained that this was simply because she had been walking down a long flight of stairs and was slightly out of breath during the telephone conversation.

124. The context of the interaction is relevant. It followed closely from the email Mrs Hunt had sent to the other managers expressing concerns about how the claimant was managing requests for leave. It is very clear that Mrs Hunt had concerns about the claimant's time management, but the claimant has failed to offer any evidence from which we could conclude that those concerns were related to the claimant's disability. It was clear to the Tribunal that the claimant believed that Mrs Hunt was unsympathetic to the needs of her children following the loss of their father and the pressure that she was under as a single parent. She might be right about that, but that was not evidence that the comments were related to the claimant's disability.

125. In short although the comment made was undoubtedly unwanted conduct, the Tribunal did not accept that the comment itself had the prohibited effect on the claimant and insofar as what the claimant objected to was Mrs Hunt's tone, we did not accept that the claimant could reasonably perceive the fact that Mrs Hunt was out of breath when they had the conversation and she did not feel that Mrs Hunt was being sympathetic was sufficient for claimant to reasonably perceive the comment as creating a hostile working environment when she did not actually think it was wrong for the question to have been asked.

Issue 3.1.5 that Mrs Hunt turned up at the claimant's house on 21 April 2020 during the Covid-19 lockdown and accused the claimant of breaching the respondent's lone working policy, threatening to report the claimant despite the claimant having explained to Teresa Hunt that she was on the phone to a provider and that Teresa Hunt was rude and abrupt. This is also alleged to be an act of victimisation.

126. The claimant had been working from home during the first Covid-19 lockdown. There had been a "Teams" meeting in the morning which the claimant was due to attend – she had not turned down the invite nor did she send apologies. When the claimant did not attend the meeting attempts were made to contact her. The claimant acknowledged that she was aware of Dr Ratcliffe trying to contact her, but the respondent says that other staff also tried to phone her. The claimant did not reply to those attempts to contact her and was not in contact with any of her colleagues.

127. The claimant told us that that she was on the phone constantly to a service provider for four hours. Her own phone records show there were three calls. It was true she was on the phone for around 4 hours. The first one started at 11.39am and lasted for around 3 and half minutes, the second was at 11.51 and lasted for just over 2 hours and the third was from just past 2.00pm for just under two hours. What is not explained by the claimant is why she could not have contacted the office to let them know what she was doing that day or why she did not seem to have made any attempt to contact colleagues when she could see them trying to contact her and knowing that she had missed a meeting.

128. In the meantime, staff had become concerned about the claimant. We found it difficult to see on what basis the claimant could be critical of the respondent about that. The respondent's lone-working policy, which we are satisfied the claimant had been made aware of before this incident, applied during working hours whether staff were working at home or in the office, and that required employees to keep colleagues informed of where they were. The claimant told us that she did not think the respondent had reason to be concerned because she was at home, but we accept that during this particular period of time the respondent had every reason to be concerned about staff if it did not know their whereabouts and what was happening. In the early stages of Covid there were very high levels of concern about people becoming unwell. The claimant had not only failed to explain her whereabouts in terms of the Teams meeting, but she had not completed any of the internal logs or sign-in arrangements which would have pointed the respondent to the fact that she was working at home, and we accept that the respondent had legitimate concerns about the claimant's well-being and acted on those.

129. We accept that Mrs Hunt had been unsure what to do and she contacted Mr Cruickshank from the HR team. Mr Cruickshank told Mrs Hunt that a welfare visit would be required. That in turn led Mrs Hunt and another member of staff (Julie Lomax) to visit the claimant's home. Mrs Hunt says that the claimant came to the door visibly angry. That is disputed by the claimant. In assessing this evidence, we took into account a witness statement which had been received from Julie Lomax who gave evidence that Teresa Hunt had been calm and not aggressive. At this hearing the claimant has disputed what was said by Ms Lomax about that incident, but that witness

statement had been previously agreed. We concluded that in those circumstances we could not place any weight on the evidence the claimant has given about that when she had the opportunity to say if she disputed Ms Lomax's evidence. If she had, Ms Lomax could have attended this hearing, and we could have heard those issues of contention.

130. We accept that although there was a tense exchange between Mrs Hunt and the claimant, Mrs Hunt had not behaved in the way described by the claimant in her evidence. We have no doubt that the claimant found the visit to be intrusive and unwelcome, but we consider that to be an unreasonable position for the claimant to take. The respondent had been following its lone working policy, something which is there to protect staff not to penalise them. The claimant knew that numerous attempts had been made to contact her. We accept what Mrs Hunt told us – that she had been reluctant to go and visit the claimant's home because of her concerns about how her presence could be perceived, but she had been told that because she was the line manager it was her responsibility to do that, and she had undertaken the visit reluctantly. There was nothing in this which suggested a connection or relationship to the claimant's disability. It was not done for a prohibited purpose and the claimant cannot reasonably perceive it as having that effect.

Conclusion in relation to harassment

131. We concluded that none of the harassment related to disability complaints were well founded.

Victimisation

Issue 6

Victimisation (Equality Act 2010 section 27)

6.1 Did the claimant do a protected act as follows:

6.1.1 Submit a grievance in April 2019?

6.2 Did the respondent do the following things:

6.2.1 Theresa Hunt went to the claimant's house and accused her of breaching the Respondent's Lone Working Policy when the claimant was working from home during lockdown;

6.2.2 Theresa Hunt said she would report the claimant despite the claimant explaining that she was on the phone to a provider;

6.2.3 Theresa was rude and abrupt?

132. It was accepted that the claimant had done a protected act for the purposes of the Equality Act 2010 when she submitted a grievance in April 2019. The question

was whether the reason for the visit to the home and the alleged behaviour of Mrs Hunt was the grievance.

133. We accepted Mr Sugarman's submissions. Mrs Hunt had been reluctant to attend the claimant's home because she was worried about how it might be perceived. Mrs Hunt's reason for attending the claimant's house was the management instruction she had received. We did not accept the claimant's evidence that Mrs Hunt told the claimant she would report the claimant for breaching the lone working policy as the claimant alleged in her evidence which Mrs Hunt denied. We accept that Mrs Hunt had no reason to say she was going to report a breach – the respondent already knew the claimant was in breach of the lone working policy, that was why Mrs Hunt had been told by HR she had to visit the claimant. We conclude that it is likely that Mrs Hunt had tried to explain the reason why she was visiting the claimant, but she did not make a threat of possible disciplinary action. She was simply explaining why she was there.

134. In terms of whether Mrs Hunt was rude and abrupt, we accepted that this was no doubt a tense conversation in a tense situation and that was reflected in the evidence that we received from Ms Lomax, but we do not accept that Mrs Hunt was rude as alleged. We accept that the tension in the interaction, which we think was likely to be shown by both women, arose from the fact Mrs Hunt had not wanted to go and the claimant was very unhappy to see her there. Both parties were somewhat unhappy dealing with each other, but it was not an act of victimisation.

Indirect Disability Discrimination contrary to s19 of the EqA

135. This complaint was withdrawn by the claimant and is dismissed.

Reasonable Adjustment Complaint (sections 20 and 21 Equality Act 2010)

136. Our conclusions about whether the respondent knew or could reasonably be expected to know that the claimant had a disability are set out above.

137. There were a number of alleged PCPs. The list of issues says this

“5.2 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:

5.2.1 A Capability Policy;

5.2.2 A Managing Attendance Policy;

5.2.3 Failure to refer to occupational health after employee claiming that too stressed during meeting;

5.2.4 The requirement to go on visits to clients' homes;

5.2.5 Advice to work from focus room with ruler and calculator to check assessments scales;

5.2.6 Failure to respond to GP letters indicating employee unwell and unable to cope with pressure due to mental health and grief.”

138. The list of issues says this about disadvantage:

“5.3 Did any of the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that they , or any one of them:

5.3.1 Caused the claimant extreme stress and deterioration in mental health; feeling of inability to cope and/or focus to meet objectives resulted. Progressing to the next stage of the capability process, knowing the claimant was unable to cope with the pressure of the process;

5.3.2 Feeling least powerful and stressed results. The claimant felt isolated and intimidated, unable to concentrate to be able to meet the objectives;

5.3.3 Deterioration in mental health and continued pressure. The claimant often locked herself in toilets and cried;

5.3.4 Loss of confidence in producing work and unable to meet objectives, unable to enjoy work and progress (personally and professionally). The claimant was micromanaged and set up to fail;

5.3.5 Continued to feel alone and distressed. The claimant had to meet objective despite struggling and research indicating that trauma, grief, depression and fatigue affect brain function?”

Our conclusions about PCP 5.2.1 the capability process

139. As the respondent pointed out in the course of the hearing and in submissions, it is somewhat difficult to discern what the claimant's case is about the capability policy. No specific aspect of the policy had been identified as causing a disadvantage in the claimant’s witness statement and we had no more than the somewhat unhelpful list of issues. The best we can understand from what the claimant told us is that applying the capability policy to her at all during this period of time caused her a disadvantage because of her disability compared to someone who was not disabled because she found it stressful and difficult to cope with.

140. We faced a number of difficulties with the claimant’s case. To be subject to any sort of capability process which may lead to dismissal and the loss of livelihood is stressful and difficult – it is stressful and difficult for most if not all employees, but especially for those who are their family’s primary breadwinner. It is not uncommon for employees who are not disabled to go off work with stress in such circumstances. We were not convinced that the claimant had shown us that the application of the capability procedure placed her at “a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled”. However, we accepted that the claimant experienced stress and anxiety as a result of the capability procedure and the respondent knew that. We considered the steps the respondent had taken to minimise the stress.

141. In terms of the adjustments that the claimant says should be made for her, she suggested that the respondent should have frozen the process until she was mentally stable. We found that suggestion as a reasonable adjustment to be somewhat difficult to follow. If it is the claimant’s case that she was not mentally stable when she returned

to work, she should have continued her absence. The claimant was after all an assistant psychologist so she might be expected to have some self-awareness. However, the evidence does not support that the claimant was mentally unstable in the usual meaning of the word during this period, in any event. The claimant was seen by her GP and Occupational Health. They had confirmed that the claimant was fit for work, subject to certain adjustments being put into place.

142. What we think the claimant means is that the respondent should have waited until she was no longer showing signs of stress. However, as we have noted, the process was inevitably going to cause some stress. An adjustment to proceed only if the claimant was stressed by that would make any action impossible and that cannot be reasonable.

143. In the course of the grievance process the claimant had suggested that the capability process should be quashed, and in essence we understand the claimant's position to be that the respondent should not have applied any capability process to her at all in light of the stress and the grief that she had experienced from September 2015.

144. As I have already identified, we found aspects of the claimant's evidence about the significance of her role and what she did and whether she should have been subject to any formal capability process at all, somewhat contradictory at times. We were concerned that at times, the claimant did not accept the significance of the work that she was undertaking and why the respondent would have a need for that work to be completed with absolute accuracy given that it relates to the clinical care provided to vulnerable people and that mistakes made in the assessment process may delay those people receiving appropriate care.

145. In terms of the complaint about a failure to make reasonable adjustments, no duty to make any adjustment arose before the claimant became disabled at the beginning of November 2017, but in fact the respondent had in practice been making adjustments for the claimant since her bereavement in 2015. As the claimant accepted in her cross examination, the review periods that she was being subject to were extended to give her more time to meet the requirements and show improvement. The process was put on hold while she undertook the phased return to her full working hours, and very significant reductions had been made to the claimant's workload throughout that period. The claimant was not being expected to perform her full role within her working hours. The number of cases she was required to assess was very significantly reduced on her initial return to work and only gradually increased over time without her ever returning to the full requirements that she had previously been subject to. When the respondent applied the capability process after the claimant's absence from 2015 to 2016, it was assessing the claimant's performance in terms of accuracy in the context of a significantly reduced workload and adjustments had already been put in place for her. None of this was labelled as reasonable adjustments, and indeed as the claimant was not disabled at this time, the duty had not been triggered, but the respondent had taken significant steps to reduce the demands on the claimant.

146. The adjustments which had been put in place were continued when the claimant became disabled in November 2017. That can be seen through the extension of time periods for improvement. Meetings were delayed to enable her to secure trade union representation. Time was taken to discuss with the claimant and her trade union representative whether there were further adjustments which could be identified which might enable her to meet the required standards of performance. That was done on several occasions, and no-one was able to identify anything further which could be done to improve the claimant's accuracy to avoid future errors. There were times when the claimant was able to successfully complete the work that was required of her, and this too resulted in the processes being extended, so the respondent was not dealing with a consistent picture of poor performance, and it showed tolerance and patience in its management of the claimant.

147. In terms of the process, Dr Ratcliffe identified further errors in the autumn of 2017 that could have immediately taken the claimant to the next stage of the process without further significant delay even if the claimant was unwell. Many employers would have continued the process at that stage, but the process was further paused for a considerable period of time while the claimant was off work. When she returned to work in June 2021, the capability process was not restarted until she had been able to resume her contracted hours, but still with the reduced caseload. Again, adjustments continued to be considered at each stage of the process.

148. At the point that a conclusion was reached that the claimant's case would be referred to the capability panel under stage 3, the claimant submitted a grievance, and the capability process was put on hold again to enable the grievance and appeal to be considered. The respondent would have been entitled to continue with the process if it considered that was appropriate. Despite the fact the claimant's grievance was not upheld, when the point was reached for the capability process to be restarted, a decision to taken to restart the capability process at the informal stage. As Mr Sugarman pointed that, that mean the original capability process was effectively quashed, the outcome the claimant had sought.

149. To be clear, although the tribunal was sympathetic to the very difficult circumstances that the claimant and her family faced, for the reasons already identified above, we accepted that the respondent had good grounds to insist that the claimant undertook accurate assessments of service users, and that the errors, some of which predated the claimant's disability by some time, were not matters the respondent could ignore. It would not have been a reasonable adjustment for the capability process to be abandoned altogether.

150. There was one further specific adjustment in this regard which we considered.

151. The claimant argued that the respondent failed to provide a mentor despite it being suggested by Occupational Health. The suggestion of that adjustment was made in the OH report in May 2016 which we concluded was before she became disabled and to a certain extent there is an argument that there was no need for us to consider that, but we did look at the evidence which we had.

152. The claimant suggested that if a mentor had been in place they could have checked her work before it was submitted to the clinical supervisor. It is not entirely

clear how this is an adjustment to the capability PCP or indeed any of the others. We understand it to be a suggestion of an adjustment which if in place could have avoided the application of the capability procedure altogether. That does not seem to be consistent with the pleaded case, but we considered this issue for the sake of completeness.

153. OH had not identified what support they envisaged that the mentor would provide. We accept the submission of the respondent that the claimant's explanation of how she thought a mentor would have assisted her seems to suggest a fundamental misunderstanding of what the role of a mentor is, at least in the experience of this tribunal. We agree with the respondent that the usual role of a mentor is to be a sounding board; to encourage and help someone as they move through their career and to help them to access support as they need it, but it is not the usual role of a mentor to do or check someone's work for them or to enable them to avoid appropriate scrutiny.

154. It seems to the Tribunal that what the claimant thought OH were recommending was some sort of proofreader to check her work. However, given the nature of the work that was being undertaken (which is technical in nature), in essence what the claimant is suggesting is that a reasonable adjustment would have been the allocation of a specially trained person to spend a significant amount of time re-doing clinical work for it in turn to be checked by a supervisor. We accept that the NHS (given its resources) is entitled to conclude that that would not be a reasonable thing for it to do.

155. We accept that when the suggestion that a mentor should be appointed was made, careful consideration was given to the current supervision of the claimant at that time. We were satisfied that the respondent sought to provide the claimant with appropriate support at what was recognised to be a difficult time and a change was made to supervision arrangements, so she was supervised by Dr Ratcliffe rather than her previous supervisor, Nicola Jervis. That was agreed with the claimant.

156. This falls outside of the scope of the reasonable adjustments complaint because the claimant was not disabled at that time but, in any event, we accepted that providing a mentor would not have been a reasonable adjustment. What the respondent did was to make changes to the supervision arrangements to provide some additional support for the claimant, which was a reasonable and supportive thing for the respondent to do.

Our conclusions about PCP 5.2.2: the managing attendance policy

157. The Tribunal found some difficulty with this complaint. We agree with Mr Sugarman. It is not clear from the claimant's witness evidence, her claim form and the List of Issues, precisely what it is about the managing attendance policy she says caused her any sort of disadvantage. none of the adjustments identified in the list of issues appear to relate to the MAP. The claimant did not cross examine any of the respondent's witnesses about the MAP.

158. On that basis this complaint had not been pursued at the hearing and we conclude that the claimant has not shown that it was well founded. We have made the following observations to help the claimant understanding what we concluded.

159. Despite taking quite significant amounts of time off due to ill health, the claimant was not subject to any formal managing attendance policy in the usual way. From the claimant's evidence we thought it was likely what she objected to was the process that was managed by Lisa Jones, which was a process to manage her return to work after her sickness absence. That was done through consultation with the claimant, with advice from HR, and except on one occasion in 2016, with advice from Occupational Health. In the view of this tribunal that was all entirely appropriate. Lisa Jones had ensured that adjustments were being put in place for the claimant in consultation with the clinical team. Very significant adjustments were made, not only in terms of the nature of the work the claimant was required to undertake when she initially returned, but also in terms of the expectations of work output which only gradually increased. It is difficult to see anything in that which can be said to have subjected the claimant to any substantial disadvantage. It seemed that perhaps one of the issues which caused the claimant concern was that, in her words, she was managed by three or four people, but again we found nothing inappropriate in what was being done by the respondent. The claimant was undertaking work which feeds into a clinical process, although she is not herself a clinician. That requires clinical supervision to ensure that it is appropriate, and that was the work that was undertaken by Dr Ratcliffe.

160. We agree with Mr Sugarman that when concerns were raised about the claimant's capability and the quality of that work by Dr Ratcliffe, it was entirely appropriate (and indeed in the claimant's interests) that those concerns were looked at by somebody else and at a higher level. That was the work that was undertaken by Ms Moss as the clinical lead.

161. We accept that it would not have been appropriate for Ms Moss to be the clinical supervisor and that it would not have been appropriate for Dr Ratcliffe to be the one to consider the capability process. It was in the interests of the claimant that there was a separation between the roles they undertook.

162. We accept that it was entirely appropriate for the NHS to allocate clinical resources to the provision of clinical care but to have non-clinical staff managed by non-clinical managers. Day-to-day management of the claimant was dealt with by Mrs Hunt at an appropriate level. The managing of her return to work, when that proved necessary, was being dealt with by Lisa Jones to ensure consistency and because Lisa Jones had taken that over while there was an absence of a manager in the team. It is hard to see how there could be any disadvantage to the claimant from Lisa Jones maintaining her input into that at the most senior level, rather than passing that back to Mrs Hunt. That particularly became so when the relationship between the claimant and Mrs Hunt became somewhat strained.

163. The claimant had failed to show that she was subject to any disadvantage by the application of the MAP and the duty to make reasonable adjustments had not been triggered.

Our conclusions about PCP 5.2.3: Failure to refer to occupational health after employee claiming that too stressed during meeting

164. When the claimant was asked about this, she told us that she thought it would have been a reasonable adjustment for her to be referred to Occupational Health.

Referring an employee to Occupational Health is a way for the employer to obtain medical advice on an employment's medical condition and its impact in the workplace. Whether a referral is made when it should be may be relevant to the question of whether an employer ought to have known that the claimant was disabled, but it is not an adjustment to the workplace itself. We accept Mr Sugarman's submissions about that.

165. In any event it is clear that the respondent did have a practice of referring employees to Occupational Health. The claimant attended OH regularly. There had been a one-off failure on the part of Lisa Jones in October 2016 to make a referral to Occupational Health and she could not recall why that had been, but the claimant was referred to Occupational Health for advice. At the time of Lisa Jones' failure to refer her the claimant was not disabled.

166. In the circumstances we concluded that the claimant had failed to show that this complaint was well founded.

Our conclusions about PCP 5.2.4: The requirement to go on visits to clients' homes

167. This was a PCP. It was a requirement of, and indeed a fundamental part of, the claimant's role. The claimant's role involves assessing people who are vulnerable, and it will not always be possible for that assessment to be undertaken remotely or at the respondent's premises.

168. The issue around visits to client homes predates the claimant being disabled, but for the sake of completeness we considered this allegation, and I will make clear what our findings were about it.

169. In requiring or expecting the claimant to undertake home visits the respondent was following advice it had received from Occupational Health and what the claimant herself had told them about her ability to do that. It was recognised that it was something that the claimant had concerns about when she first returned to work following the sad death of her husband. The reintroduction of this was delayed. There were discussions with the claimant about whether it was appropriate to ask her to return to making visits to client homes. It was not something which was imposed straightaway or without consultation.

170. When the respondent raised the claimant beginning home visits, there were discussions about putting in place an adjustment – that was that she would attend such home visits with Dr Ratcliffe. That was an appropriate and sensible thing for the respondent to do.

171. In fact, an explicit management instruction was given to the claimant that when she first started making home visits again, she should do so accompanied by Dr Ratcliffe. Despite having been given that management instruction, the claimant chose to disregard it and undertook the home visits on her own without Dr Ratcliffe. Disregarding the instruction was potentially an act of gross misconduct and if, as the claimant appeared to suggest at times, the respondent was looking for an excuse to

drive her from the workplace, that would have been an opportunity for it to dismiss her if that is what it wanted to do.

172. The claimant has failed to explain to us what disadvantage she says the requirement to undertake home visits caused her. She was nervous when she first restarted the home visits, but there is nothing in her evidence to suggest that once she started making the home visits that they caused any ongoing issues. In those circumstances the duty to make reasonable adjustments to that PCP does not arise.

Our conclusions about PCP 5.2.5: Advice to work from focus room with ruler and calculator to check assessment scales;

173. We concluded that this was not a PCP. It was a suggestion made to the claimant in the course of the capability process to her to work more accurately and to help her stop making the errors that the respondent was concerned about. It was a suggestion for her to consider, not something that was imposed on her or anyone else. In addition, the claimant has not explained to us how that can have caused her any sort of substantial disadvantage compared to employees who are not disabled.

Our conclusions about PCP 5.2.6: Failure to respond to GP letters indicating employee unwell and unable to cope with pressure due to mental health and grief

174. The final thing on that list is a failure to respond to GP letters indicating that the employee was unwell and unable to cope with pressure due to mental health and grief.

175. The claimant did not explain this allegation in her witness statement. The respondent suggests that this PCP seems to refer to a comment made on a fit note sent by the claimant's GP in October 2016 and the respondent did not suggest otherwise in the course of this hearing.

176. Insofar as that was the claimant's allegation, it was something which happened before the date that we found the claimant was disabled – we would not have needed to consider it any further. It is also a one-off incident and in any event the respondent had responded to that note from the GP, because following receipt of the fit note there was a meeting between the claimant and managers and the next informal capability meeting was significantly delayed, in fact until the following February, so it appears that an adjustment was made in response to receipt of the fit note even though it did not have to be.

Conclusion about reasonable adjustments

177. We concluded that none of these complaints were well founded.

Approved by Employment Judge Cookson

Date: 16 May 2025

REASONS SENT TO THE PARTIES ON

6 June 2025

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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LIST OF ISSUES

1. Time limits

1.1 Given the date the claim form was presented and the effect of early conciliation, any complaint about something that happened before 4 July 2021 may not have been brought in time.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

2.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about, May 2015 to date? The Tribunal will decide:

2.1.1 Did she have a physical or mental impairment: Post traumatic stress disorder (PTSD), depression stress and/or grief?

2.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

2.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairments?

2.1.4 If so, would the impairments have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

2.1.5 Were the effects of the impairments long-term? The Tribunal will decide:

2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

2.1.5.2 if not, were they likely to recur?

3. Harassment related to disability (Equality Act 2010 section 26)

3.1 Did the respondent do the following alleged things:

3.1.1 Theresa Hunt and or Jude Moss micromanage the claimant from July 2018 until Theresa Hunt retired in 2021, in that ;

3.1.2 Theresa Hunt accused the claimant of being one hour late, when manager's own time on phone was depicted an hour disparity on 19 July 2018;

3.1.3 Theresa Hunt sent an email on 22 March 2019 to Lisa Jones, Jude Moss and David Radcliffe;

3.1.4 When the Claimant called on 3 April 2019 to request carers leave when her 12 year old child was unwell, Theresa Hunt commented, "Can't he be left since you live so close to work";

3.1.5 Theresa Hunt turned up at the claimant's house on 21 April 2020 during lockdown and accused the claimant of breaching the respondent's Loneworking Policy, threatening to report the claimant despite the claimant having explained to Theresa Hunt that she was on the phone to a provider. Theresa Hunt was rude and abrupt;

3.1.6 Jude Moss set an action "To continue to check the Claimant's work after capability over, and if any error found to resume stage 3 of the capability policy" from 2 October 2017 to date.

3.2 If so, was that unwanted conduct?

3.3 Was it related to disability?

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

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

4. Indirect discrimination (Equality Act 2010 section 19)

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

4.1.1 The requirement to go on visits to client's homes;

4.1.2 A Capability Policy;

4.1.3 A Special Leave Policy?

4.2 Did the respondent apply any of those the PCPs to the claimant?

4.3 Did the respondent apply any such PCP to persons with whom the claimant does not share the disability or would it have done so?

4.4 Did the PCP put persons with whom the claimant shares the disability at a particular disadvantage when compared with persons with whom the claimant does not share the disability, in that:

4.4.1 Cognitive processes affected – poor working memory; brain fog, poor procedural memory (difficulties following processes); home visits triggered PTSD symptoms – panic attacks being placed in clients' homes due to severe trauma; around family dynamics affected by death of Mr Lacey, nephew and brother;

4.4.2 Caused the claimant extreme mental pressure; helplessness; hindering the claimant's recovery; mental breakdown in October 2019;

4.4.3 Other employees allowed work-life balance by being able to take annual leave and working from home, whereas the claimant was not?

4.5 Did the PCP put the claimant at that disadvantage?

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

4.6.1 to ensure the provision of effective and seamless health and social care in the community to vulnerable adults with a learning disability, tailored to their particular needs;

4.6.2 to manage concerns with employees' performance to ensure clients receive safe and effective care;

4.6.3 to support and improve employees' ability to do their job and maintain required standards of performance and compliance with relevant laws and professional standards;

4.6.4 to ensure the effective deployment of finite resources;

- 4.6.5 to ensure special leave is applied fairly and consistently in appropriate circumstances;
- 4.6.6 to ensure public funds are used appropriately.

4.7 The Tribunal will decide in particular:

- 4.7.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;
- 4.7.2 could something less discriminatory have been done instead;
- 4.7.3 how should the needs of the claimant and the respondent be balanced?

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

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

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

- 5.2.1 A Capability Policy;
- 5.2.2 A Managing Attendance Policy;
- 5.2.3 Failure to refer to occupational health after employee claiming that too stressed during meeting;
- 5.2.4 The requirement to go on visits to clients' homes;
- 5.2.5 Advice to work from focus room with ruler and calculator to check assessments scales;
- 5.2.6 Failure to respond to GP letters indicating employee unwell and unable to cope with pressure due to mental health and grief.

5.3 Did any of the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that they , or any one of them:

- 5.3.1 Caused the claimant extreme stress and deterioration in mental health; feeling of inability to cope and/or focus to meet objectives resulted. Progressing to the next stage of the capability process, knowing the claimant was unable to cope with the pressure of the process;
- 5.3.2 Feeling least powerful and stressed results. The claimant felt isolated and intimidated, unable to concentrate to be able to meet the objectives;
- 5.3.3 Deterioration in mental health and continued pressure. The claimant often locked herself in toilets and cried;
- 5.3.4 Loss of confidence in producing work and unable to meet objectives, unable to enjoy work and progress (personally and professionally). The claimant was micromanaged and set up to fail;
- 5.3.5 Continued to feel alone and distressed. The claimant had to meet objective despite struggling and research indicating that trauma, grief, depression and fatigue affect brain function?]

5.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

5.5 Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable:

- 5.5.1 The Capability process should have been 'frozen' until the claimant was mentally stable;
- 5.5.2 The Claimant should not have been placed onto full home visits;
- 5.5.3 Lisa Jones should have referred the claimant to occupational health for another year;
- 5.5.4 the respondent should have waited for the claimant's mental health to have stabilised
- 5.5.5 the respondent should have provided a mentor for the claimant for support.

5.6 By what date should the respondent reasonably have taken those steps?

6. Victimization (Equality Act 2010 section 27)
 - 6.1 Did the claimant do a protected act as follows:
 - 6.1.1 Submit a grievance in April 2019?
 - 6.2 Did the respondent do the following things:
 - 6.2.1 Theresa Hunt went to the claimant's house and accused her of breaching the Respondent's Lone Working Policy when the claimant was working from home during lockdown;
 - 6.2.2 Theresa Hunt said she would report the claimant despite the claimant explaining that she was on the phone to a provider;
 - 6.2.3 Theresa was rude and abrupt?
 - 6.3 By doing so, did it subject the claimant to detriment?
 - 6.4 If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?
 - 6.5 If so, has the respondent shown that there was no contravention of section 27?
7. Remedy for discrimination or victimisation
 - 7.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
 - 7.2 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
 - 7.3 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 8.12 Should interest be awarded? How much?