EMPLOYMENT TRIBUNALS

Claimant: **Ms E Dixon**

Respondent: **Westminster City Council**

Heard at: London Central (in person)

On: 24, 25, 26, 27, 28 February; 3, 4, 5, 6, 7, 10, 11, 12 March 2025
13, 14 March and 6, 8 May 2025 (in chambers)

Before: Employment Judge B Smith (sitting with members)
Tribunal Member Carroll
Tribunal Member Shaah

Representation
Claimant: Mr A Sendall (Counsel)
Respondent: Ms S King (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of direct disability discrimination is not well-founded and is dismissed.

2. The complaint of unfavourable treatment because of something arising in consequence of disability is not-well founded and is dismissed.

3. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

4. The complaint of harassment related to disability is well-founded in respect of allegation 45 in the Amended Particulars of Claim, in which the claimant

was not shortlisted for a role in Public Health on or around 24 February 2023.

5. The complaint of harassment is not well-founded in respect of the other allegations and is dismissed.

REASONS

Introduction

1. The claimant has been employed at the respondent, a local authority, since 17 September 2018. Her role started via the Local Government Association's National Graduate Development Programme ('NGDP') which is a two-year fast-track management training scheme. She then effectively became a floating resource within the respondent. ACAS conciliation commenced on 18 May 2023 and concluded on 18 May 2023. The claim was presented on 21 May 2023.

2. The claimant brings claims of:

   (i) direct disability discrimination;

   (ii) unfavourable treatment because of something arising in consequence of disability;

   (iii) failure to make reasonable adjustments for disability; and

   (iv) harassment related to disability.

3. The respondent agreed that the claimant was disabled for the purposes of s.6 EQA 2010 at the material times. The conditions were:

   (i) Hypermobility Ehlers-Danlos Syndrome ('hEDS');

   (ii) Attention deficit hyperactivity disorder ('ADHD');

   (iii) Autistic spectrum disorder ('ASD');

(iv) Dyslexia; and

(v) Depression and anxiety.

4. Some elements of knowledge of disability were in dispute.

Procedure, documents, and evidence heard

5. The claimant was represented at the final hearing, and at some previous preliminary hearings, by Mr Sendall (Counsel) acting via Advocate on a pro bono basis. The Tribunal is always particularly grateful to those acting in those circumstances.

6. The adjustments required by the claimant were agreed and are set out by order of EJ Isaacson dated 8 May 2024 at **Appendix A**. The Tribunal also amended the timetable to enable the claimant to attend a psychotherapy appointment during the final hearing. With the agreement of the parties, the Tribunal had breaks for around 15-20 minutes during the mid-morning and mid-afternoon periods, and as required by the claimant if she became distressed. The Tribunal was satisfied that all adjustments as were required for a fair determination of the claims were in place and were followed. The parties confirmed (generally) that the breaks allowed, including for lunch, were appropriate. It was made clear to the claimant that if she wanted time to speak to her representative at any time that her request would be granted. Although the Tribunal did make some limited indication that cross-examination would be time limited, this was not generally required. When any cross-examination was time limited the advocates were given clear and regular warnings of this with sufficient time to adapt their questions. No requests for additional time to cross-examine any witness were made and it was not submitted that the hearing was unfair as a result of the time allowed to cross-examine any witness.

7. The Tribunal took into account and applied the Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings, and the relevant parts of the Equal Treatment Bench Book ('ETBB'), as

appropriate throughout the hearing, for example, by using clear explanatory language where appropriate and keeping, as far as practicable, to a predicable sitting pattern. This included granting the claimant's request for a timetable amendment to attend a psychotherapy session at the earliest opportunity. The Tribunal also, in so far as reasonable and practicable, sought to explain certain procedural matters to the claimant, particularly during her oral evidence (when the claimant could not take advice from her counsel) relating to why certain questions were being asked (such as the respondent's duty to put their case). The Tribunal also proactively ensured that it was clear, for example, that the order of closing submissions was ascertained in advance so as to be more predictable for the claimant. Also, the Tribunal timetabled the exchange of closing submissions to allow the claimant a greater period of time to liaise with her counsel on the content of her written submissions and sufficient time to read the respondent's closing submissions, also taking into account her childcare commitments.

8. The claimant's counsel confirmed during closing submissions that no suggestion was made that the Tribunal had failed to adhere to the ETBB during the course of the hearing.

9. Although the Tribunal was aware of one of the respondent witnesses' conditions, no particular adjustment was required other than making sure that the witness was given additional reading or processing time if required. No other adjustments were required for the respondent's witnesses.

10. The witnesses all gave evidence under oath or affirmation. The respondent's witnesses were all cross-examined. For the claimant, only she and Mr Humphries were cross-examined.

11. The claims were subject to further information and particulars and amendments before the final hearing. The claims as made at the final hearing were as set out in the Amended Particulars of Claim ('APOC') at p327 of the final hearing bundle. By the time of the final hearing there was an agreed list of issues. This can be found at **Appendix B**. The parties confirmed at the start of the hearing that no applications to amend the claims

or response were required. The claimant had the assistance of her counsel in agreeing the list of issues and the creation of the APOC, however we accept counsel's explanation that the drafting of the APOC was not done by reference to the underlying documents and his input was more around refinement of existing pleadings.

12. Claims of maternity discrimination and indirect disability discrimination were dismissed upon withdrawal as set out in earlier judgments. A claim of victimisation and some elements of the other claims were also dismissed upon withdrawal as set out in a separate Judgment.

13. The agreed documents were:

    (i) Hearing bundle paginated to 3872;

    (ii) Witness statement bundle paginated to 329;

    (iii) Claimant's supplementary bundle of 90 pages paginated to 3960, starting with 3872A (as amended), extended to page 3961 by consent during the hearing;

    (iv) Agreed reading list;

    (v) Cast list (not agreed); and

    (vi) Chronology (not agreed).

14. The Tribunal only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. The parties were made aware of this from the outset and both parties indicated specific pages for the Tribunal to read.

15. Both parties relied on written submissions at the close of the evidence. Both parties also made oral submissions, largely in reply to the written submissions. It was made clear to the parties from the outset that if they relied on any specific findings of fact other than those inherent in the list of

issues then this must be clearly drawn to the Tribunal's attention. We have only resolved the issues of fact necessary to make our decisions.

16. For ease of reading, the Tribunal has departed from its traditional structure which entirely separates the findings of fact from the conclusions on the claims. That structure remains, to a degree, to the extent that there are separate headings for findings of fact and conclusions below. However, resolution of the claim required the Tribunal to consider whether a very significant number of paragraphs of the APOC amounted to different types of discrimination. These Reasons would become unwieldy and difficult to read if our conclusions in respect of each claim repeated paragraphs 13-50 (etc.) of the APOC because of the amount of cross-referencing that would be required. We therefore have expressed certain conclusions on the basis of paragraph by paragraph of the APOC as opposed to leaving those conclusions to the final section of these Reasons. However, nothing in the structure of these Reasons should be taken by any reader as suggesting that the Tribunal has confused its task of making findings of fact and then applying the law to them, to reach a conclusion on whether the claims are successful or not. The structure of these Reasons illustrates an approach so that the reader may more easily understand its decision and does not reflect a different type of analysis by the Tribunal.

17. Also, given a degree of factual overlap between some of the allegations, although some factual findings are expressed by reference to particular paragraphs of the APOC, our overall findings and conclusions were made based on the findings as a whole. Any particular factual finding or conclusion is not limited in its relevance to the particular section of the APOC identified.

18. Given the sheer number of allegations made under several different headings of claim, we have sought to keep these reasons proportionate. The omission of a detailed discussion of every argument made or detail suggested by the parties in their submissions does not mean it was not taken into account by the Tribunal.

Relevant Law

(i) Burden of proof in EQA cases

19. The burden of proof for the EQA claims is governed by s.136 EQA:

> *(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 explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *[…]*

20. It was held in Field v Steve Pie [2022] EAT 68 at [37]:

> '*In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities*.' Further at [41] that '*if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment*.'

21. It is not sufficient for the employee to only prove a difference in protected characteristic and a difference in treatment in order to shift the burden of proof: Madarassy v Nomura International Plc [2007] EWCA Civ 33.

22. Once the burden has shifted, the employer must prove that less favourable treatment was in no sense whatsoever because of the protected characteristic: Wong v Igen Ltd [005] EWCA Civ 142.

(ii) Disability

23. Disability is defined in section 6 EQA:

(1) 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.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability -

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability

[…]

24. Substantial means more than minor or trivial: s.212(1) EQA.

25. Long term is defined in schedule 1 paragraph 2 EQA:

(1) 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.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

26. We applied and took into account the EHRC Code of Practice ('the Code') where relevant.

(iii) Direct discrimination on grounds of disability

27. Direct discrimination is prohibited conduct under s.13 EQA:

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

28. Section 39 EQA reads:

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

(a) […]

(b) in the way that A affords B access, or by not affording B Access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or services;

(c) […]

(d) by subjecting B to any other detriment.

29. Detriment means a disadvantage. In Shamoon:

[34] … the court or Tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.

[35] … this is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to

'detriment': Barclays Bank plc v Kapur (no 2 IRLR 87. But, contrary to the view that was expressed in Lord Chancellor v Coker [2001] ICR 507 on which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence.

30. The comparator's circumstances must be the same as the claimant's, or at least not materially different. This is because s.23 EQA says:

(1) On a comparison of cases for the purposes of section 13 … there must be no material difference between the circumstances relating to each case.

[…]

31. The protected characteristic need not be the only reason for the less favourable treatment, or the main reason: London Borough of Islington v Ladele [2009] IRLR 154 (EAT). The decision must be more than trivially influenced by the protected characteristic.

32. The question of less favourable treatment can be intertwined with the reason for that treatment: the principal question is why was the claimant treated as he was? If there were discriminatory grounds for that treatment then '*usually be no difficulty in deciding whether the treatment …was less favourable than was or would have been afforded to others.' There is a single question: did the complainant, because of a protected characteristic, receive less favourable treatment than others'*: Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337 HL.

33. Also, in Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA, Lord Justice Mummery stated: *'I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The*

finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment'.

34. Where the question is addressed in this order the Tribunal need not necessarily identify the precise characteristics of the hypothetical comparator: Law Society and ors v Bahl 2003 IRLR 640 EAT.

(iv) Unfavourable treatment because of something arising in consequence of disability

35. Section 15 EQA says:

> *(1) A person (A) discriminates against a disabled person (B) if—*
>
> *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
>
> *(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

36. 'Unfavourably' is not defined in the EQA. The Code at [5.7] says that this means that the disabled person must have been put at a disadvantage.

37. Subsection (2) above provides for a knowledge defence. Paragraph 5.15 of the Code includes that '*The employer must, however, do all they can be reasonably expected to do to find out whether this is the case. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.'*

38. If a Tribunal decides that an employer could reasonably have made enquiries then it must also consider what the result of those enquiries would

have been: A Ltd v Z [2020] ICR 199. A Tribunal is entitled to find that if a claimant would have continued to supress information about their mental health problems then their employer could not reasonably have been expected to know that they are disabled.

39. Knowledge of disability includes all of the elements of disability as defined in s.6 EQA, such as substantial disadvantage and longevity: Gallacher v Abellio Scotrail Limited UKEATS/0027/19/SS at [43]; Seccombe v Reed in Partnership Ltd UKEAT/0213/20/OO at [40-41].

40. In Godfrey v Natwest Markets plc [2024] EAT 981 a relevant question on the issue of constructive knowledge is whether the employer might reasonably have been alerted to the need to make further enquiry about, generally, the possible effects of some mental impairment by a change in behaviour (at [59]).

41. The proper approach to determining s.15 EQA claims was summarised by Mrs Justice Simler in Pnaiser v NHS England and anor [2016] IRLR 170 EAT at [31]:

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

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

unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: … A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises…

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

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

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

(g) […]

(h) Moreover, the statutory language of section 15(2) makes clear … that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. … … it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal

might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

42. It follows that the something that causes the unfavourable treatment does not need to be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment and so amount to an effective reason for or cause of it: *Pnaiser v NHS England* (above) at [31(b)].

43. A claimant bringing a complaint under s.15 EQA bears an initial burden of proof. They must prove facts from which the Tribunal could decide that an unlawful act of discrimination has taken place. This means that the claimant has to show that they were disabled at the relevant times, they have been subjected to unfavourable treatment, a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment, and evidence from which the Tribunal could infer that the something was an effective reason or cause of the unfavourable treatment. If the claimant proves facts from which the Tribunal could conclude that there was s.15 discrimination the burden shifts under s.136 EQA to the respondents to provide a non-discriminatory explanation or to justify the treatment under s.15(1)(b).

44. Direct evidence of discrimination is rare and the Tribunal may have to infer discrimination from all of the available facts.

45. Whether or not unfavourable treatment is a proportionate means of achieving a legitimate aim involves a balancing exercise between the reasonable needs of the respondents and the discriminatory effect on the claimant: Hampson v Department of Education and Science [1989] ICR 179 CA. Factors to be considered include whether a lesser measure could have achieved the employer's legitimate aim.

(v) Harassment related to disability

46. Harassment is prohibited conduct under s.26 EQA:

> *(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.*

47. The purpose or effect of the conduct must be considered separately. In deciding whether conduct has the effect, we must 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. In terms of effect, we must ask first whether the claimant genuinely perceived the conduct as having that effect, and whether in all the circumstances, was that perception reasonable: Pemberton v Inwood [2018] EWCA Civ 564.

48. The statutory language of violating dignity, and intimidating, hostile, degrading, humiliating or offensive, involves the use of '*significant'* words which are an important control to prevent trivial acts causing minor upsets being included in the concept of harassment: Grant v HM Land Registry [2011] EWCA Civ 769 (Elias LJ).

49. When deciding whether the conduct related to a protected characteristic we bear in mind that we must evaluate the evidence in the round and recognise that witnesses will not readily volunteer that conduct was related to a protected characteristic: Hartley v Foreign and Commonwealth office Services [2016] ICR EAT. 'Related' is a reasonably broad word, on its face, and is a looser statutory requirement than direct causation. Also, at [24]:

'A's knowledge or perception of B's characteristic is relevant to the question whether A's conduct relates to a protected characteristic but there is no warrant in the legislation for treating it as being in any way conclusive. A may, for example, engage in conduct relating to the protected characteristic without knowing that B has that characteristic. A may not even know that B exists. Likewise, A's own perception of whether conduct relates to a protected characteristic cannot be conclusive of that question. A's understanding of the protected characteristic may be incomplete or incorrect, whether from the best of motives or from prejudice or the acceptance of myth.'

50. The context of any given conduct is important: Warby v Wunda Group plc EAT 0434/11.

51. It is necessary for the Tribunal to identify the specific features of the factual matrix which lead it to the conclusion that the conduct in question is related to the particular characteristic in question and in the manner alleged by the claim: Tees Esk and Wear Valleys NHS Foundation Trust v Aslam UKEAT/0039/19/JOJ at [25].

52. If there are facts from which a Tribunal could find that the conduct was related to disability it is then for the respondents to discharge the burden of proof that it was not.

(vi) Failure to make reasonable adjustments

53. The duty to make reasonable adjustments is found in s.20 EQA. That duty applies to employers: s.39(5) EQA. Failure to comply with the duty is at s.21 EQA. The relevant questions are:

(i) what is the provision, criterion or practice ('PCP') relied upon;

(ii) how does the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled;

(iii) can the respondents show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage; and

(iv) has the respondents failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?

54. The Code says at [6.10] that PCP '*should be construed widely so as to include, for example, an formal or informal policies, rules, practices, arrangements or qualifications include one-off decisions and actions'*.

55. Pendleton v Derbyshire County Council [2016] IRLR 580 and Nottingham City Transport Ltd v Harvey [2013] ALL ER(D) 267 EAT demonstrate that, generally, a one-off incident will not qualify. However, a practice does not need to arise often to qualify as a PCP. In Ishola v Transport for London [2020] ICR 1204 the Court of Appeal said the term PCP does not apply to every act of unfair treatment of a particular employee (at [37]). Rather, the words provision, criterion or practice '*carry a connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again*.'

56. Substantial disadvantage means more than minor or trivial: s.212 EQA. It must also be a disadvantage which is linked to the disability.

57. A PCP is unlikely to be considered proportionate if there is a way of achieving the aim which imposes less detriment: Chief Constable of West Yorkshire Police v Homer [2012] ICR 704.

58. The Tribunal must also consider the extent to which the step will prevent the disadvantage to the claimant.

59. In the context of reasonable adjustments claims, the claimant must prove facts from which it could reasonably be inferred, absent an explanation, that

the relevant duty has been breached: Project Management Institute v Latif [2007] IRLR 579 EAT at [54]. The burden then shifts to the respondent under s.136 EQA. In Rentokil Initial UK Ltd v Miller [2024] EAT 37 it was then held at [43] that '*What Latif means is that the burden is on the employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment.'*

60. A PCP can include an expectation, and the identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach and a Tribunal should widely construe the statutory definition: Ahmed v Department for Work and Pensions [2022] EAT 107 at [25].

61. The identity of non-disabled comparators may be clearly discernible from the PCP under consideration: Fareham College Corporation v Walters [2009] IRLR 991 EAT. The fact that disabled and non-disabled people may both be affected by a PCP does not in of itself preclude a finding of substantial disadvantage where the likelihood and or frequency of the impact is greater for a disabled person: Pipe v Coventry University Higher Education Corporation [2023] EAT 73.

62. The Code at [6.28] lists factors which might be taken into account when deciding if a step is reasonable to take, including whether taking any particular steps would be effective in preventing the substantial disadvantage, the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources, the availability of the employer of financial or other assistance to help make an adjustment, and the type and size of the employer.

63. A knowledge defence applies (paragraph 20, Schedule 8 EQA):

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

Findings of fact (with conclusions on specific paragraphs of the APOC)

64. There is no dispute about the authenticity of the documents.

(i) Overview

65. The claimant has been employed at the respondent, a local authority, since 17 September 2018. Her role started via the Local Government Association's National Graduate Development Programme ('NGDP') which is a two-year fast-track management training scheme. ACAS conciliation commenced on 18 May 2023 and concluded on 18 May 2023. The claim was presented on 21 May 2023.

66. The claimant was assessed for the NGDP on 25 June 2018. During this she shared her career plans with senior officials. The assessment day included an interview process.

67. It was part of the NGDP that the claimant would complete the Institute for Leadership and Management ('ILM') certificate (a level 7 qualification), which was provided by an external provider subject to government funding requirements.

68. The NGDP included four placements. The first placement was allocated by the respondent. The other placements were advertised internally by the relevant department and the graduates, including the claimant, could apply for them. Where there were more applications than spaces on any given placement then a decision was made about who should get that placement based on experience. The placement bid system was documented by the respondent. Graduates could also, effectively, create their own placements by liaising with the relevant department (by agreement and subject to business need). No placements were ever guaranteed by the respondent. The relevance of organisational need was made clear in the NGDP Three-way partnership agreement which included the respondent and the Graduate. The claimant's own evidence included that the placements would be based on business need (in addition to the Graduate's career ambitions, claimant witness statement at paragraph [21]).

69. The claimant's first placement was between September 2018 and March 2019 as a Projects and Programme Assistant in Community Services. Her placement manager was Alison Davies from the perspective of the department, and there was also an Organisational Development ('OD') adviser for the NGDP programme (Sam Reilly).

70. Between April 2019 and September 2019 the claimant's placement was as a Community Partnership Coordinator in Housing and Regeneration. The relevant OD adviser was Sam Reilly until May 2019, with Nadine Anderson effectively caretaking the NGDP programme until 27 August 2019. From 28 August 2019 the OD adviser was Emma Highland.

71. Between October 2019 and January 2020 the claimant's placement was in Place Shaping. Her placement manager was Nkechi Okeke-Aru and the OD adviser was Emma Highland.

72. Between January 2020 and March 2020 the claimant's placement continued in Place Shaping, with her placement manager changing to Adam Summerfield and the OD adviser remaining Emma Highland.

73. Between April 2020 and September 2020, still in Place Shaping, the claimant's line manager was Adam Summerfield and the OD adviser was Emma Highland until June 2020, and Jackie Gibson thereafter.

74. From October 2020 the claimant became a floating resource within the respondent under Jackie Gibson as her post NGDP line manager. Work in October 2020 included on the respondent's disability policy and disability network (known as ABLE). Between November 2020 and February 2020 the claimant was a Policy Officer in Strategy and Intelligence with her placement manager being Fiona Ugoji and her post-NGDP line manager being Jackie Gibson.

75. The claimant took maternity leave between February 2021 and February 2022, still as a floating resource, with her line manager still being Jackie Gibson. The claimant was on sick leave from February 2023 to May 2023, still as a floating resource. Her line management during this period was under Nadine Anderson, and Claire Weeks ('CW') took responsibility for assisting the claimant in her return to work from 2023. The claimant did not return to work and this continues to be the case.

(ii) *The specific allegations*

76. Given the numerous nature of the claimant's complaints, we address them by reference to the paragraphs of the APOC.

77. Paragraphs 11 and 12 were withdrawn by the claimant in respect of claims of direct discrimination. In terms of assessing the content of paragraph 11, this was, in any event, more of a background and high level summary of the claims. In general, we do not find it proven on the evidence. The allegations raised by the claimant are more specifically expressed in the paragraphs that follow, and our more detailed factual findings are thus made by reference to each paragraph. We also consider that our specific factual findings below, with reasons, explain why paragraph 11 is not proven, generally. Overall, we do find specifically that the general problem that the

claimant had in terms of her career progression was a lack of direct experience in a local authority of Public Health work, as opposed to any blocking of that career path by those at the respondent. This is because of the overall evidence about the various jobs the claimant applied for, and her documented level of experience. Although the claimant had a relevant masters qualification, there was also plainly a difference between academic experience of public health and local authority work-based experience in that area. Also, it was explained from an early stage to the claimant by Sarah Crouch that she did not have enough public health experience (accepted by the claimant by email, p1898, as of 5 February 2020).

Paragraph 12 - findings

78. Paragraph 12 asserts that both Sam Reilly and Daphne Clark focussed on certain issues in the claimant's early probation reviews. The claimant accepts now that Ms Clark was not in fact present at those reviews. We focus only on the allegedly negative parts of those reviews.

79. We find that in respect of the December 2018 probation review, Ms Reilley did include that the claimant can become upset if she does not receive a timely response to questions via email from colleagues and can take this personally, and this can knock her confidence in approaching them in a more effective way. It also included that she can become frustrated which has been interpreted as rudeness. It also included that she was 'unable to read the room' in a particular instance with the Lord Mayor where the Lord Mayor was visibly embarrassed by the claimant's comments. These points are proven by the documents (p991). Those comments were made in the context of the claimant potentially being at risk of failing her probationary period, and the claimant accepted in cross-examination that it was important for these matters to have been raised at that stage to give her a chance to improve (although she would have preferred that notice to have been given earlier).

80. We do not find that the claimant was perceived as lacking emotional intelligence. This is because of a lack of evidence that this was the case.

81. However, the 12 March 2020 review (p1030) does not prove the alleged facts. This review was positive, as is clear from the documents. It refers to the claimant having thrived since the last probation meeting, having taken responsibility for her personal development and she has '*really developed her emotional intelligence and interpersonal skills. She is now able to get the best out of others by tailoring her approach and understanding why and how people respond in different ways. The feedback Liz has been receiving is great…'*

82. We also did not consider that the claimant provided cogent evidence of fact as to her reaction to the December 2018 review, beyond asserting that she was surprised, very upset, and disappointed (claimant's witness statement, paragraph [65]-[66]). The claimant described having been '*quite disappointed'* in an email to Ms Reilly dated 21 December 2018 (p989).

Paragraph 12 – conclusions

83. We do not consider that the 12 March 2019 could form part of any claim under s.15 because it was demonstrably positive, and therefore not unfavourable treatment. It was also not, on the evidence, because of anything arising in consequence of the claimant's disabilities. Also, it was not on its face negative. It therefore cannot amount to harassment, in terms of effect or any such reasonable effect. It also is not related to the claimant's disabilities.

84. In terms of the December 2018 review, we find that those points found proven from the documentary evidence were not unfavourable treatment. This is because, objectively speaking, we consider that the comments made in the probation review were not a focus on manifestations of the claimant's disability, rather, they were nothing more than objective performance feedback. In circumstances where the claimant was potentially going to fail her probationary period it is not unfavourable for the respondent to provide her with honest, accurate and objective feedback. In fact, to not have provided that feedback, and then left the claimant at greater risk of failing her probation, would have been unfavourable to her. The fact that the

claimant took the feedback on board and then significantly improved her position – as demonstrated by the March 2019 review – is also consistent with the feedback not having been unfavourable treatment. No reasonable employee would consider it to be unfavourable treatment in all the circumstances. Also, we do not consider that the claimant has established facts from which we could infer that this feedback in fact was about manifestations of the claimant's disability. This is because the specific behaviours raised are just as consistent with someone who does not have the claimant's disability. There is a lack of cogent evidence analysing the claimant's behaviours from the perspective of her disability, and we do not consider these particular instances of behaviour to have been proven to be more likely than not to be manifestations of the claimant's disability. Given the nature of the behaviour described, on the evidence, the only condition engaged for this element of the claim is the claimant's autism.

85. We also note that these allegations significantly predate the claimant's diagnosis of ASD, and so were before even she knew about it. We also repeat our conclusions below about the extent of the duty on the respondent to enquire about her disability (in the context of the reasonable adjustments claim). Given that we have found that the respondent was not under a duty in all the circumstances to make further enquiries at that stage about the claimant's condition, that also suggests that the respondent could not reasonably have been expected to know that the claimant had ASD at that time. There is also nothing to suggest that further enquiries on the part of the respondent about potential ASD would have resulted in them knowing about it at that time, given the inevitable delays in a diagnosis being obtained. Also, there was no clear pattern of behaviour that would have been sufficient to put the respondent on notice of ASD, in our judgment. This is because the behaviours exhibited by the claimant also arise in people without ASD.

86. Also, we do consider that this can form part of a claim for harassment. This is because the claimant has failed to prove facts from which we could infer that the treatment had the statutory effect. If we are wrong about this, any

such effect would not have been reasonable. This is because the feedback was objective and not, in the circumstances, unfavourable.

Paragraph 13 APOC – findings

87. This allegation is about whether or not the claimant was assisted by the respondent in talking to her ILM provider or ensuring that she was included in her cohort's ILM work group. This is not actively disputed: the respondent did not do these things, but resists this allegation on the basis it was not under a duty to (or to do more than it did).

88. We do find, on the basis of the claimant's evidence, the claimant did not find the course particularly engaging on the basis that she found it to be '*woolly'* and she considered it to be more suitable for someone with a humanities background as opposed to the claimant's more scientific background. It was also part of the graduate's responsibility to complete the programme and it was provided by an external provider. The claimant did not complete the ILM.

89. We also agree with the respondent that the reason for the claimant not completing the ILM was because she did not see its value, based on her own evidence about it. The claimant was also given an opportunity to arrange an extension for an element of the work and was, accepting the evidence of Ms Anderson, encouraged to complete it. The claimant was reminded by email to complete her assignment on 14 May 2020, and the claimant did not seek an extension.

90. Also, we accept that Nadine Anderson make some limited enquiries to the group about whether or not the claimant was excluded by them, but we also accept that there is a limit to what actions those at the respondent could take in relation to this externally arranged course.

91. We accept that some of the claimant's cohort did not engage with her in terms of group work, and created a second Whatsapp group that she was not part of.

92. To that extent, we find paragraph 13 not proven in so far as the claimant has not demonstrated a specific duty or responsibility, as a matter of fact, for the respondent to do more than it did. However, to the above extent some factual matters in relation to paragraph 13 are proven.

93. We also accept Ms Anderson's evidence that she would have taken the same approach to any candidate at the time, regardless of disability. There is no good reason to find otherwise.

94. We find that the actions of the claimant's cohort may well have had a negative effect on the claimant in particular in terms of how they created a second Whatsapp group that the claimant was not part of. However, we do not find that the evidence shows that any of the respondent's omissions as a matter of fact had any such effect on the claimant, at least to any material degree.

95. We also do not find, as a question of fact, that the proven omissions arose from anything in consequence of the claimant's disability. This is because the omission of support had nothing to do with the claimant's disability. The omission of support arose purely because the relevant individuals decided it was outside of their remit: it being an external course and the individual actions of the other students and who they chose to study with was not part of Emma Hyland or Nadine Anderon's responsibility. This was the case regardless of anything arising from the claimant's disabilities. As with other conclusions on the s15 claim, we reminded ourselves of the limited nature of the pleaded 'something arising' as set out below.

Paragraph 13 APOC – conclusions

96. For the claim of direct disability discrimination, we conclude there are no facts from which we could infer that the respondent would have treated the claimant any differently if she did not have a disability, that it did treat her differently because she had a disability, or would had provided more support (or would have put in place the omitted support) to those without a disability. We also accept Ms Anderson's evidence that she would have taken the same approach to any candidate at the time, regardless of disability.

97. Also, as set out above, we accept that Nadine Anderson make some limited enquiries to the group about whether or not the claimant was excluded by them, but we also accept that there is a limit to what actions those at the respondent could take in relation to this externally arranged course. In the circumstances, to the extent the facts of paragraph 13 were proven, this did not amount to direct discrimination on grounds of disability.

98. For the claim of harassment, we did not find, as set out above, that the omissions of the respondent in fact had the statutory effect on the claimant. The fact that the actions of some of her cohort, completing an externally provided course, may have had this effect is not sufficient in terms of the allegations made against the respondent. If we are wrong about this, then we alternatively find that any such effect on the claimant (in terms of the respondent's actions or omissions) was not reasonable. This is because the respondent was a very limited duty to intervene in the private study arrangements on that course.

99. For the s.15 EQA claim (discrimination because of something arising from disability), this cannot succeed for this paragraph. This is because we did not find as a matter of fact, for the reasons above, that the proven omissions by the respondent in actually arose from anything in consequence of the claimant's disability.

Paragraph 14 APOC - findings

100. We find as follows. It was not in dispute that there was a particular incident on 13 March 2020 that Ms Simon did not respond to a specific in person request from the claimant to meet there and then. There is no independent corroborating evidence that Ms Simon said she was too busy to meet the claimant as part of a formal mentoring arrangement on that particular occasion, Ms Simon was transparent in emailing the claimant that day stating that she did not like the claimant's tone in how she requested a meeting in that way, the claimant subsequently apologised by email (p1777-8), and the claimant acknowledged that she had come across as pushy. We do not find that the claimant has proven this allegation. The burden is on the claimant and due to the passage of time there is no independent evidence as to the frequency of meetings or calls. Ms Simon denied that she had not met or spoken to the claimant as part of the mentoring arrangement. There is no good reason to doubt that evidence. This allegation is not proven. Ms Simon also felt that in fact she had met with the claimant more than other mentees, although equally there was no independent evidence of this either. There is also no cogent evidence that Ms Simon made time to meet other staff in a mentoring capacity.

101. As a matter of fact, there was no cogent evidence of that the frequency of mentoring with Ms Simon, or the extent to which Ms Simon was available to mentor the claimant, was because of anything arising on consequence of the claimant's disability. The claimant also herself acknowledged by email that in relation to the one evidenced incident about mentoring, the claimant accepted that that with hindsight it was wrong to approach Ms Simon with a sense of urgency that would have come across as being pushy but this was because the claimant was having a 'rotten day'.

102. As a matter of fact, we do not find also that the mentoring arrangements with Ms Simon had any particular effect on the claimant. This is because there is insufficient cogent evidence of this.

Paragraph 14 APOC - conclusions

103. For the direct discrimination claim, we consider in any event that there is no evidence from which could conclude that the claimant's frequency of mentoring meetings with Ms Simon was different to non-disabled mentees. This element of the direct discrimination claim must also fail for that reason.

104. For the s.15 claim, the factual findings above are such that we conclude that this element of the s.15 must fail.

105. For the harassment claim, we also did not consider that there was cogent evidence that the mentoring arrangements with caused the statutory effect on the claimant. In the alternative, if this is wrong, we concluded that it would not have been reasonable for it to have done so. This is because a mentor being too busy is not serious enough act for it to reasonably have that effect on the claimant.

106. We also conclude that, in the circumstances as they were, the mentoring arrangements were not related to the claimant's disability.

Paragraph 15(1) APOC - findings

107. Paragraph 15 relates to allegations of systematic denial of opportunities and support for career progression.

108. We not find allegation 15(1) (refusal of project management training) proven as a matter of fact. Firstly, the claimant was not refused project management training. A one day course was provided as part of the NGDP (p1484). The claimant also did not have an evidenced need for additional training, having rated herself as 4/5 on project management skills (p1598). It is correct that the respondent did not provide a specific training course on project management that the claimant requested, however, we accept the evidence of Ms Anderson that any further training had to be funded by the placement manager (the claimant having been referred to the placement

manager to make that request) and that this was dependent on the work being undertaken. We accept Ms Anderson's evidence that she had advised other graduates the same. We find that to the extent that the claimant did not receive this additional training, it was because it was not essential to her role.

109. There was no particular cogent evidence of these events having any particular effect on the claimant.

Paragraph 15(1) - conclusions

110. To the extent of the facts found proven above, we conclude for the direct discrimination claim that there is no evidence that the claimant did not get this training because of her disabilities.

111. For the s.15 claim, we conclude that there is no evidence that the claimant did not receive this training because of anything arising from her disabilities.

112. For the harassment claim, we conclude that there is also no cogent evidence that this lack of additional training caused the statutory harassment effect on the claimant. If this is wrong, then it would not be reasonable for it to do so. This is because the additional project management training was not essential to the claimant's role.

Paragraph 15(2) - findings

113. We do not find, as a matter of fact, that the claimant was not provided with support to complete the ILM course. This is because we accept Ms Anderson's evidence that she did speak to the claimant about the difficulties she was having on the ILM: Ms Anderson did tactfully explore with the claimant how she could improve her relationship with her cohort, and the claimant was encouraged to complete the course and request if required. We accept that the claimant asked Emma Hyland to organise a call with the

ILM provider about the claimant's issues with her cohort. This allegation fails on the facts.

Paragraph 15(2) - conclusions

114. For the direct discrimination claim, we conclude in any event that there is no evidence that any of this treatment by the respondent (as proven) had anything to do with the claimant's disabilities. There is no evidence from which we could properly conclude that more support would have been given to a non-disabled individual, or that Ms Hyland in not arranging the requested call treated the claimant differently because of her disabilities.

115. For the s.15 claim, we also conclude that there is also no cogent evidence that the level of support the claimant received was because of anything arising in consequence of her disabilities.

116. For the harassment claim, we also do not consider that there is sufficient evidence to suggest that the level of support by the respondent (as opposed to the claimant's evidently difficult relationship with her cohort) had the statutory effect of harassment. If we are wrong about that, we conclude that even if it did, it would not have been reasonable for it to do so. This is because it an omission of this type of support to a graduate undertaking an external course would not be so serious as to justify such a reaction.

Paragraph 15(3) – findings

117. It was not in dispute that the claimant was not eligible for the respondent's emerging leaders apprenticeship programme. However, the claimant was not eligible because she had already started the ILM qualification and this precluded the respondent have funding through the apprenticeship levy of a similar level of qualification. We accept the respondent's evidence on this corroborated by an email thread.

118. In terms of the facts, there was no cogent or sufficient evidence that this had a particular effect on the claimant beyond dissatisfaction.

Paragraph 15(3) - conclusions

119. For the direct discrimination claim, it follows from our findings above, that this was not anything to do with the claimant's disability, or that any non-disabled person would have been eligible.

120. For the s.15 claim, it also follows from our findings above that this decision was not in any way because of something arising from the claimant's disabilities. Also, there was no cogent evidence that this had the statutory effect or harassment, nor would it have been reasonable to do so. This is because the situation arose from funding arrangements and it would not be reasonable to find that the consequences funding arrangements had the statutory effect.

Paragraph 15(4) - findings

121. This allegation is that coaching was not arranged for the claimant following and Access to Work Report in November 2020. However, we find as a matter of fact that coaching was arranged by the respondent, and so this allegation fails as a matter of fact. This is because it was purchased for the claimant (invoice dated 16 February 2021). It was recommended in an Access to Work report sent to Ms Gibson on 5 November 2020. However the claimant had her baby on 17 February 2021 and did not return to work after that date. We were satisfied on the respondent's evidence that the reason for the coaching not being implemented was because the claimant's maternity leave was coming up and the claimant was therefore due to have a significant period out of work. Also, the nature of her role after maternity leave was unknown. Also, during the claimant's maternity leave, the claimant was (at least in part, at some time) supportive of her line management (p2170).

122. As an issue of fact, there is also no cogent evidence that the delay in implementing the purchased coaching was because of the claimant's disability, or because of anything arising in consequence of her disability. This is because the delay was because of the claimant's maternity leave.

123. We did not consider that there was any particularly cogent evidence of fact as to the effect this had on the claimant.

Paragraph 15(4) – conclusions

124. For the direct discrimination claim, in light of our findings on the reasons for delaying implementation of the coaching, which in our judgment was perfectly reasonable in those circumstances, we do not find that the treatment was because of the claimant's disabilities. Also, it was not in those (reasonable) circumstances less favourable.

125. For the s.15 claim, we did not conclude in light of the factual findings above that the delay was because of anything arising on consequence of the claimant's disability (as pleaded).

126. For the harassment claim, there was no cogent evidence that this had the statutory effect or harassment, nor would it have been reasonable to do so: the respondent acted reasonably in purchasing the coaching and waiting for the claimant's return to implement it.

Paragraph 16 – findings

127. It is correct that in February 2020 the claimant's application for the position of Public Health Business Partner Band 4 was rejected.

128. We do not find it more likely than not that Doreen Ryan was excluded by the panel in making this decision (as alleged by the claimant). This was disputed by Mr Lake, who was tested under cross-examination, who denied that this was the case. The claimant had no direct evidence of this being

something that had happened, and relied only on what she had been told by Ms Ryan. However, this is indirect evidence and Ms Ryan was not a witness who could be tested in cross-examination. The claimant's version of events is reliant on hearsay and denied by the direct witness to events. We do not consider this allegation proven.

129. We accept that the claimant had a discussion about the reasons for her failure with Sarah Crouch after the interview; this is mentioned by the claimant in an email dated 18 May 2020 to Ms Flaherty. However, we do not have any evidence from Ms Crouch as to the exact words used. We consider it unlikely that Ms Crouch used the words that the claimant wasn't senior enough because there was no clear evidence that the claimant's seniority was in issue, rather it was her lack of public experience that was the reason for her being unsuccessful, that the claimant admits was mentioned by Ms Couch in her email (1898). This is also more consistent with Mr Lake's evidence about why the claimant unsuccessful. Mr Lake's evidence was that the successful candidate would be an experienced Public Health practitioner, which the claimant was not. We find that this was the real reason that the claimant did not get this role. The claimant had never worked for a local authority Public Health department and had not undertaken a Public Health placement during the NGDP. The claimant's previously voluntary and work experience was clearly, on its face, not the equivalent to having worked in a Public Health department. Nor was the claimant's academic masters qualification the same. We find that the reason for the decision not to appoint the claimant was because of her lack of relevant experience.

130. Also, it is relevant that no one was appointed to that role.

131. We accept the claimant's evidence that she found not getting any of the Public Health roles she applied for to be very upsetting.

Paragraph 16 - conclusions

132. For the direct discrimination claim, there is no evidence that the respondent would have treated someone without a disability any differently in the application round, or that the treatment was because of the claimant's disability.

133. On the basis of our factual findings, also conclude that there was nothing to suggest that what happened was anything arising in consequence of the claimant's disability.

134. Having found that the claimant found not getting the Public Health roles was very upsetting, we do find that this had the statutory effect of harassment insofar as it created a humiliating environment. However, we conclude that it was not reasonable in the circumstances for the claimant to have felt this way in those circumstances. This is because there were good and evidenced reasons for her not getting the role, due to her lacking the relevant experience. It was not reasonable to find this humiliating in all the circumstances.

Paragraph 17 - findings

135. This relates to the claimant seeking Public Health as her final NGDP placement. It is correct that the claimant did seek to create a placement for herself in Public Health in February 2020. However, there was no specific placement advertised. It is right that this request was not accepted by the respondent. However, we accept Mr Lake's evidence that there was no opportunity for the claimant to work in Public Health. This is because of his evidence that Public Health were heavily involved in the Covid-19 pandemic and had made the decision to retain the existing two graduates in place because they lacked the capacity to train and supervise in additions, and we accept Ms Gibson's evidence that any training would be front loaded. We also accept that those two graduates were in a significantly different position to the claimant as a matter of fact because they were already in

role. This was understood by the claimant, on the basis of an email dated 6 November 2020 from the claimant expressing that she understood this distinction.

136. It is important to find also that having her final placement in Public Health was the claimant's plan as evidenced by an email from her to Ms Flaherty dated 14 May 2020 (p1898). This suggests that not doing a Public Health placement before then was part of the claimant's choice. Also, in the same email the claimant accepts that in the context of the pandemic it would not be possible to provide the support and skill development that an average NGDP placement would require. However, the claimant's perception at that time was that she was not the 'average' graduate.

137. We accept that this, along with other rejections, left the claimant upset. An example of the evidence of this is in the claimant's email dated 14 May 2020 above.

Paragraph 17 – conclusions

138. In light of our findings, for the direct discrimination claim we do not conclude that there is any evidence that the claimant was treated any differently because of her disability. This is because she was not given the placement for evidenced reasons entirely unrelated to disability.

139. For the s.15 claim, we do not conclude that there is any evidence that this treatment was because of anything arising from the claimant's disability. This is because she was not given the placement for the reasons we have found.

140. For the harassment claim, we accept that the claimant found this upsetting, and that this could amount to the statutory effect of creating a humiliating environment. However, we do not find that this was reasonable in the circumstances as they were. There were good evidenced reasons for the claimant not having that placement and no placement was guaranteed. The

claimant also understood, in reality, there were good reasons why that placement was not available and why others were in a different position to her.

Paragraph 18(1) - findings

141. These paragraphs related to whether the claimant was given particular labels during her employment. It is correct that in an email dated 20 March 2020 Ms GIbson referred to claimant in an email to Nadine Anderson '*Oh Nadine….that's an excellent response. What Liz does not realise is that her combative style is exactly why she will not be asked to do things, particularly in these circumstances….'* (p1623). We find that this does not in fact amount to labelling the claimant. Rather, it is an objective description of a particular email that the claimant had sent. The context of the email was that the claimant had sent its full staff home that day, the claimant had emailed Nadine Anderson asking to speak to her fairly urgently, Ms Anderson explained that she was having to deploy people in response to Covid and would make time for the claimant if it was '*life&death urgent*' (p1621), and the claimant sent a very long email complaining about not being part of the Covid response and her career.

142. The claimant did not read the relevant email until a significant time after because it was not sent to her: it was only revealed through a DSAR request. However, we accept that the claimant found it very upsetting to read this email, based on her correspondence subsequently about this phrase.

Paragraph 18(1) - conclusions

143. For the direct discrimination claim, we conclude that in light of the words used being an accurate description, it was not less favourable treatment nor was there any evidence that someone without a disability would have been treated any differently. This wording was not because of the claimant's disability.

144. For the s.15 claim, there is also insufficient evidence that this comment arose from anything arising from the claimant's disabilities: the email itself shows the claimant being angry and disappointed, but there was no clear evidence that these emotions arose from her disability. Many people without the consequences of the claimant's disability would be angry and disappointed in not being given a work opportunity, and would send an email in those terms as a result. It was also not unfavourable treatment for the same reasons as it was not less favourable treatment.

145. For the harassment claim, we accept that this email had a humiliating effect on the claimant given that she found it upsetting. However, we conclude that no such effect was reasonable in all the circumstances. This is in part because it was not sent to her directly, and was also justified wording because it was accurate. It was not labelling her disability or a manifestation of her disability.

146. We also do not conclude that in the circumstances as they were, it related to the claimant's disability.

Paragraph 18(2) – findings

147. It is right that in an email dated 8 June 2020 (p1750) Emma Highland refers to the claimant as being combative. However, the context is that in Ms Highland was seeking advice from Daphne Clark about how to work with the claimant on the issue of adjustments. On 8 June 2020 Ms Highland had asked the claimant about adjustments and recognised that they were important and that she had never said that reasonable adjustments cannot be met and she was trying to find a way through that was reasonable for the claimant. She refers to making some requests but reminds the claimant that the time of the managers was a resource and that if the amount of time requested was unavailable to them or impractical, that would be unreasonable. Ms Highland asked the claimant how far she had got with her Access to Work application. She also recognises that the claimant's working situation at home was less than ideal and had made it harder for the claimant, and told the claimant that there may be an opportunity to work

more in office in the near future. Ms Highland then states that she had struggled with the information laid out by the claimant, and requests a summary of the claimant's top five requests (2-3 lines in bullet points) for adjustments to feed into the plan for next steps. The claimant replied on 9 June 2020 with a lengthy email which is angry in tone and highly detailed, and implicitly threatens employment litigation. It does not respond to the express request of Ms Highland. The email from the claimant to Ms Highland objectively speaking does not represent the claimant effectively communicating to Ms Highland and was in a manner which was an extreme reaction to Ms Hyland's simple request. The tone of the email is imperious and condescending.

Paragraph 18(2) - conclusions

148. For the direct discrimination claim, in the circumstances as set out above, this being a private email seeking advice on how to deal with a clear breakdown in communication, this is not less favourable treatment. There is also not sufficient evidence that it was because of the claimant's disability.

149. For the s.15 claim, we conclude that there was no cogent evidence that the tone of this email was because of anything arising from the claimant's disabilities. It was also not unfavourable treatment for the same reasons as it was not less favourable treatment.

150. For the harassment claim, we make the same conclusions as for paragraph 18(1).

Paragraph 18(3) - findings

151. It is right that on 14 July 2022, in an email to Clarie Weeks and Daphne Clarke Nadine Anderson stated words to the effect that the claimant had decided to cut off communication with her, and was seeking advice how to work with the claimant in those circumstances. However, objectively speaking the claimant had cut off communication with Ms Anderson at the

time. We did not consider that there was sufficient specific evidence that this email in particular caused the claimant upset, as opposed to the other emails which used words such as combative.

Paragraph 18(3) - conclusions

152. In light of our factual findings, we consider that so this was a reasonable comment to make in context. It was not less favourable or unfavourable treatment for that reason, even in the context of the state of the claimant's mental health. It was objectively justified. It was also not because of the claimant's disabilities, for the direct discrimination claim.

153. For the s.15 claim, we do not find that there is sufficient evidence that this comment about the claimant arose from anything in consequence of her disabilities, particularly because this allegation is said to be effectively labelling the claimant as a synonym, for 'difficult' (see paragraph 18).

154. For the harassment claim, we find that this email neither had the statutory effect of harassment in light of our finding above, but in any event no such effect would be reasonable. This is because the context of the email is that it was not sent to the claimant and it was accurate.

Paragraph 18(4) – findings

155. It is right that on 31 January 2023 Claire Weeks in a Teams chat with an unknown member of staff stated '*Going to meet Liz next Tuesday now so no rush….Let me know if you are happy to pick up but equally happy to help try and move this forward. It's a tricky one.'*

156. We find that this was nothing more than an accurate description of the situation being described by Ms Weeks as tricky, as opposed to the claimant being described as tricky. This element of the allegation is therefore not proven given that the claim is that this comment was the claimant being labelled with words synonymous with 'difficult' etc. The claimant accepted

that the situation was in fact tricky. We do not consider that overall this email in fact appeared to have caused the claimant specific upset, as opposed to the more specific terms such as combative which featured elsewhere.

Paragraph 18(4) – conclusions

157. For the direct discrimination claim, we conclude that this was not because of the claimant's disability. Nor was it less favourable treatment because it was an accurate description of the situation as opposed to a derogatory label.

158. For the s.15 claim, we do not find that there is evidence that this was because of anything arising in consequence of the claimant's disability. It was also not unfavourable treatment for the same reasons as it was not less favourable treatment.

159. For the harassment claim, we do not conclude that this had the statutory effect on the claimant in light of our findings above. However, even if this is wrong, no such effect would have been reasonable. This is because the email was accurate and it was not sent directly to her.

Paragraph 18(5) – findings

160. In a Teams chat with an unknown member of staff, Claire Weeks on 8 February 2023 stated '*Difficult meeting with Liz D last night. I was with her until 6. I know she has been difficult but is desperate and on a human level needs our help'.*

161. We find that this was nothing more than an objective comment about the situation and was not about the claimant or her personality. We accept Ms Week's evidence about this as being credible and not meaningfully undermined by anything.

162. We accept that the claimant found discovery of this email upsetting given how she perceives it to read.

Paragraph 18(5) – conclusions

163. For the direct discrimination claim, we conclude that this was not less favourable treatment given that it was just an accurate statement and was not directed at the claimant's personality, just her situation (which plainly was a difficult situation. The tone of the email is also sympathetic. It was also not because of the claimant's disability.ffsimon

164. For the discrimination arising claim, we do not conclude that in those circumstances this was treatment because of anything arising in consequence of the claimant's disability. It was also not unfavourable treatment for the same reasons as it was not less favourable treatment.

165. For the harassment claim, we accept that that the claimant has found this to be upsetting which could amount to the creation of a humiliating environment. However, we find that no such effect would be reasonable in the circumstances. This is because the email is in fact sympathetic in tone and was not actually referring to the claimant's personality, when understood in context. It was also not sent directly to the claimant.

Paragraph 19 – findings

166. We find that the claimant approached Ms Simon on 16 Mrach 2020 and demanded to meet with her because she was her mentor, accepting Ms Simon's credible evidence of this which was also supported by her account sent by email on 13 March 2020 (p1602) in which Ms Simon says to the claimant she did not like the claimant's tone, hopefully it was a one-off and would not be repeated. She also seeks to arrange another time in that email. The claimant later accepted that she had been pushy (p1778, by email dated 16 June 2020), effectively apologising for her actions.

Paragraph 19 – conclusions

167. For the direct discrimination claim, we do not find that there was any evidence that this was less favourable treatment because any mentor would reasonably react to the claimant's request in this way, and this was later accepted by the claimant. Also, there is no evidence that this treatment was because of disability.

168. For the s.15 claim, we do not find that there was sufficient evidence that this treatment was because of anything arising from the claimant's disability. It was also not unfavourable treatment for the same reasons as it was not less favourable treatment.

169. For the harassment claim, we do not accept that this created the statutory effect on the claimant. This is because she accepted that she had been pushy and was understanding as to her reaction and the situation in her later email about it, and she effectively apologised. If we are wrong about this, given the context as we have found it to be, any such effect would not have been reasonable. The claimant's mentor was entitled to set some time boundaries in the circumstances.

Paragraph 20 - findings

170. This relates to the claimant having volunteered to act as additional capacity for the Public Health pandemic response or similar. It is right that the claimant's offer was not specifically accepted by the respondent. However, we agree that the evidence showed that Ms Flaherty did not personally respond to the claimants offer and Mr Styles put it on file. We therefore consider this allegation to be not proven: those individuals did not reject the claimant's offer. We also accept Ms Flaherty's evidence that the context of the offer was that many were being made at the time, creating difficulties. In any event, we accept that the fact that the offer was not ultimately accepted was simply because of the business needs.

171. We accept that the claimant (generally) found not being accepted into Public Health to be upsetting, and that this was one element of that, based on her evidence.

Paragraph 20 – conclusions

172. For the direct discrimination claim, this was not in the context as we have found it to be less favourable treatment. This is because not accepting an offer due to business needs is not inherently less favourable treatment. Also, there is nothing to suggest that the non-acceptance was because of disability.

173. For the s.15 claim, there was no evidence to suggest that the non-acceptance was because of anything arising in consequence of the claimant's disability. Also, it was not unfavourable treatment because it was not accepted for good reasons.

174. For the harassment claim, we accept that this non-acceptance was upsetting for the claimant. However, we do not find that this was reasonable in the circumstances: not being accepted for good business reasons, and the request simply being left on file, does not justify such a reaction.

Paragraph 21

175. This is effectively the same as paragraph 14. Our findings and conclusions are repeated.

Paragraph 22

176. We find paragraph 22 – that the claimant was reprimanded and criticised for not having emotional intelligence – not proven on the evidence. This is because taking the evidence as a whole, the claimant was in fact never reprimanded or criticised for not having emotional intelligence. There is no

cogent evidence that this was the case and it was denied by the relevant people who gave evidence about it.

177. Whilst we accept that there was a wider context of the respondent's efforts to support the claimant's communication style, these are quite different to this allegation, which is remains unproven. In the circumstances, no further conclusions are required on this paragraph.

Paragraph 23

178. This allegation was that the claimant was told by Bernie Flaherty that some senior managers thought that the claimant was not a good fit. We find this not proven as a matter of fact. We accept that the claimant genuinely believes that this happened because it is a phrase repeated by her throughout in correspondence. However, the allegation was denied by Ms Flaherty and we did not feel that the claimant's allegation was sufficiently supported by other evidence to find it proven, the initial burden being on the claimant to prove this as a primary fact. Whilst the claimant sought to rely on notes of the conversation, we consider these to be more reflective of the claimant's understanding and thoughts at the time as opposed to necessarily being an accurate record. We also have to take into account the lengthy passage of time. We also accept that it was an inherently unlikely thing for Ms Flaherty to say. Ms Flaherty was not on the relevant interview panels, she was one of the most senior figures at the respondent and was also preoccupied with addressing the pandemic, and we accept Ms Flaherty's point that this was not the sort of thing that she would say. Also, that it would not have been a helpful thing to say, and she did not have a basis for such a comment. The claimant's understanding of the conversation is also likely to have been tainted by the claimant's belief – maintained throughout – that in fact she did have sufficient Public Health experience for the roles she wanted, despite the failures in applications for such a role on that basis.

179. This allegation having been found not proven, we do not express further conclusions on it.

Paragraph 24

180. This allegation is about a meeting on 27 May 2020 with Emma Hyland and Richi Chakravarty. We find that that there was a meeting to discuss the claimant's work on that date, however, taking into account all the evidence, we find it unproven that it was to reprimand her for a number of perceived faults or amounted to the verbal onslaught that the claimant describes in her statement. This is because there is no independent corroborating evidence, it is highly likely to be affected by the claimant's perception rather than objective facts, and the claimant's email about the meeting dated 28 May 2020 (p1733) is more consistent with a disagreement about the work the claimant had done and what adjustments might have been reasonable than a response to active bullying as alleged. Also, Ms Highland disputes the claimant's account in that email in her email dated 5 June 2020, so even the more neutral tone used by the claimant in her account around the time was not accepted by Ms Highland. In the absence of an independent record of the meeting, we also do not find proven that specific adjustments were refused at that meeting. Also, various arrangements were in place at that time, accepting the evidence of Daphne Clark about this: there was clear evidence of Adam Sutherland providing the claimant with clear written work instructions; the claimant was excused from attending daily meetings; the claimant was offered flexible working times; and it was clear from the email correspondence that the claimant and Emma Highland were in regular discussion about supporting her. For example, on 8 June 2020 (p1753) Emma Hyland provides email evidence where she describes having requested adjustments to the claimant's 1-2-1s and changes to Adam Sutherland's communication with the claimant, and this email confirms that adjustments were not refused. The email correspondence is indicative of an ongoing dialogue about how much managerial time spent on adjustment was reasonable, but this is not the same as refusing specific adjustments.

181. In those circumstances, this allegation is unproven and we need not express further conclusions on it.

Paragraph 25

182. This allegation is that Emma Hyland refused to refer the claimant to occupational health. We find that it is correct that the claimant sent an email on 9 June 2020 to Ms Hyland. The claimant effectively reiterated her request for specific time on a weekly basis, the provision of information after meetings she hadn't been able to attend, clear instructions and task deadlines and brief meeting agendas as adjustments, (p1750, 1806). However, the email correspondence suggests that Ms Hyland sought advice from Daphne Clarke and Jackie Gibson on this particular email on the same day, and also by email dated 9 June 2020 Emma Highland is under the impression that an occupational health referral was not currently an option (p1806). Emma Highland left her role on 18 June 2020. In the circumstances, it was not the case that Ms Highland had refused the claimant a referral to occupational health, nor the specific adjustments. Rather, the reason those were not progressed was that Ms Highland had left: they were not refused, and the claimant's requests were later addressed her later managers. Although there was a delay whilst the occupational health referral was agreed by the claimant with Ms Gibson, accepting Ms Gibson's evidence on this point, the occupational health referral was completed. In the circumstances, we find this allegation unproven, and so no further conclusions are required.

Paragraph 26 - findings

183. This allegation was that various individuals decided to refuse the claimant's application to the respondent's Emerging Leaders programme. This is unproven. We repeat our findings above on this issue. The claimant was not refused by those named or others at the respondent: she was simply ineligible for it on the basis of funding requirements. This was also an external requirement and not the responsibility of the respondent.

Paragraph 26 - conclusions

184. We consider this allegation to be unproven. However, if we are wrong, then we make the following conclusions.

185. For the direct discrimination claim, we do not find that the claimant's ineligibility for the programme had anything to do with her disability. This is because of the reasons for her ineligibility as set out above. It was also not less favourable treatment because there was clearly a non-discriminatory reason for her ineligibility.

186. For the s.15 claim, there is no evidence that the claimant was ineligible because of anything arising from her disability. The claimant was ineligible for funding reasons. Also, it was not unfavourable treatment in those circumstances: no one would reasonably feel it was unfavourable treatment given that funding requirements were set externally and were not the responsibility of the respondent.

187. For the harassment claim, any such disappointment that the claimant may have felt would not have been reasonable in all the circumstances. This is because any upset was because of external factors outside of the respondent's control. Also, it was not related to her disability on the facts.

Paragraph 27 - findings

188. It is alleged that the claimant was not offered a work trial or placement in Public Health when one was made available to another member of staff. However, there is no suggestion that the claimant's comparator Ms Peattie obtained her placement through anything other than the same bidding process that was available to the claimant. It follows that respondent did not make available something specific to Ms Peattie that they did not make available to the claimant. Ms Peattie was a graduate from the following years intake who applied for a Public Health bid during her NGDP year when placements opened up. This was after the claimant's NGDP year had

ended: they are not in materially same circumstances (as an issue of fact). The fact that a Public Health placement because available to a different cohort on time had nothing to do with the claimant's disabilities, on the facts. Those named and others at the respondent also did not 'make available' the opportunity for the comparator. In those circumstances, this allegation fails as a question of fact. The claimant also didn't apply for any of the Public Health placements during her placement programme.

Paragraph 27 – conclusions

189. If we are wrong about paragraph 27 not being proven on the facts, we make the following conclusions in the alternative.

190. For the direct discrimination claim, the claimant's named comparator fails because, on the facts, they were not in the same circumstances. Ms Peattie applied during the normal placement bidding process whereas the claimant at that stage was after her NGDP programme.

191. For the s.15 claim, there was no reason to find that this was because of anything arising from the claimant's disability. The evidence did not suggest that the reason for this was because of negative perceptions of the claimant. Rather, it was because of the different stage that the claimant was in.

192. For the harassment claim, there is nothing to suggest that this was related to the claimant's disability.

Paragraph 28

193. This allegation is that in November 2020 the claimant was not facilitated to work on workstreams related to Public Health or health inequalities during her placement in Strategy and Intelligence, despite having expressed an interest in doing so, and it is alleged that there was pandemic related work that could have been done to that end. We find that this allegation is unproven. Firstly, we accept Ms Gibon's evidence that to direct this type of

work was outside her and Lee Witham's role: it was the responsibility of the operations of Strategy and Intelligence team to do this. Also, the claimant's work there related to pay disparities related to disabled workers, which was meaningful work-related to health inequalities. The claimant also described the work as meaningful to a perinatal nurse (p807). The claimant also referred to her line manager at the time as awesome (p2170). To the extent that the claimant might have liked have done pandemic-related work, that wasn't the role.

Paragraph 28 - conclusions

194. We have found this allegation unproven. However, if we are wrong about this, we do not find that it was less favourable treatment for the direct discrimination claim. This is because the claimant found the work to be meaningful and was related to health inequalities. It was also not because of the claimant's disability.

195. For the same reason, it was not unfavourable treatment for the purposes of a s.15 claim. There is also no good reason to find that it was because of anything arising from the claimant's disability.

196. For the harassment claim, we also find that it was not related to disability.

Paragraph 29 - findings

197. Paragraph 29 is that Jackie Gibson failed to organise the training recommended in the Access to Work report. We find this not proven and repeat our earlier (and later) findings on this issue. Ms Gibson did organise the training but its implementation delayed until back from maternity leave. After that, the claimant was off sick and so that was the reason for not implementing it. At the earlier time, the claimant's line manager was also described by the claimant as 'awesome' so there was further reason to delay until she was in a new role.

198. The Access to Work report although completed on 27 July 2020 was not finalised for release by the claimant until 5 November 2020 (claimant's email p2034) when it was received by Ms Gibson. There was also further delay because Mr Harding stated to the the claimant on 11 November 2020 that, because it was her award, it was important she was happy with any variations, and he said that once the claimant had been through the report and the claimant had confirmed what she was happy with, she should let him know. On 13 November 2020, by email Ms Gibson was clearly awaiting the claimant's confirmation as to which options she wanted to proceed with before she raised the purchase orders. Ms Gibson chased the claimant on 18 December 2020 for a copy of the Access to Work report and updates as to what was still to be completed. The claimant agreed the recommendations only on 18 December 2020 (p2234). This further explains the delay which was for evidenced reason: by this point the claimant was only to be working for a number weeks before she had her baby.

Paragraph 29 - conclusions

199. If we are wrong about this allegation being unproven, we express the following conclusions. For the direct discrimination claim, there was nothing to suggest that the delay in implementation was because of the claimants disability, in the sense that someone without a (or the) disability would have been treated any differently. We also consider it to be not less favourable treatment because it was objectively justified and entirely reasonable conduct in the circumstances.

200. For the s.15 claim, we conclude that the delay was not in consequence of anything arising from the claimant's disability (specifically on the pleaded case, namely the something arising was the claimant's mannerisms and the way her behaviour presents or was perceived by others). This is because there is no good reason to find that this was the case. Also, it was not unfavourable treatment in the circumstances: no one would reasonably consider it to be unfavourable given that it was entirely justified and reasonable on the facts.

201. We also conclude that any feelings the claimant had about this would not have been reasonable, given the objective justification for the delay in implementation.

Paragraph 30

202. This allegation is that the claimant's distress about workplace exclusion was not addressed by Ms Anderson or Ms Gibson. Although it's correct that the claimant did feel that there was workplace exclusion (namely her not being in a Public Health role), we do not feel that the evidence has shown that there was in fact workplace exclusion for either Ms Anderson or Ms Gibson to address. The claimant's applications for specific things were unsuccessful reasons unrelated to workplace exclusion eg. the claimant did not apply for Public Health placements when/if advertised as part of her NGDP and, at the time of the Covid response, the claimant was not BECC-trained and only those graduates were involved in that. Also, we find that the claimant's concerns were addressed to the extent they could have been by Ms Anderson and Ms Gibson: there were no suitable roles in Public Health at the time, and we accept Ms Gibson's evidence that she spoke to the claimant about her options such as getting experience in alternatives and considering roles outside of the council, and she did support the claimant in trying to identify and get potential roles. This is supported by messages at the time (p2073). We accept Ms Anderson's evidence that despite not managing the claimant at the relevant time, she did speak to the claimant, offered advice, including potentially looking for suitable roles outside of the respondent. Specifically, on 20 March 2020 Ms Anderson explained to the claimant that her not being in the Covid response was because she was not BECC-trained as opposed to exclusion, Ms Anderson gave personal advice on 31 March 2020 around communication style, and seeking feedback. On those findings, this allegation is unproven and no further conclusions are required.

Paragraph 31 - findings

203. This allegation is about the claimant's suggestion that the her answers in interview were recorded inaccurately for a Public Health role (16 February 2021). We find this allegation not proven. We find that the recording of the answers was not inaccurate. This is because there is cogent and reliable evidence that this was the case. Mr Lake disputed that the notes provided were inaccurate. Also, they are scoring notes as opposed to a comprehensive record of what was said. We find that the claimant did not get this role because her interview responses did not demonstrate the minimum requirements, accepting the evidence of Mr Lake of this. The notes also suggest that the claimant's answer in relation to the collaboration and influence did not demonstrate this (p2299). There was also evidence that Ms Crouch tried to give the claimant feedback (p2304) but this was unsuccessful because the claimant had her baby the following day. Whilst the claimant contends that Ms Crouch should have known that this was the case – the C-section having been mentioned by her during the interview – the emails from Ms Crouch are more consistent with Ms Crouch not realising that this was the case. In the circumstances, this allegation is not proven.

Paragraph 31 - conclusions

204. Even if we are wrong about the above, we express the following conclusions. For the direct disability claim there is nothing to suggest that this was because of the claimant's disability. For the s.15 claim there is nothing to suggest that this was because of anything arising in consequence of the claimant's disability. For the harassment claim, this did not relate to the claimant's disability. This is because there is no good reason to find that it was. Also, any feelings of the claimant from this would not have been reasonable in all the circumstances, given our findings above.

Paragraph 32

205. This allegation is that the respondent failed to offer support to the claimant to plan for her return to work by August 2021 after her maternity leave. We find this allegation not proven. The claimant's health deteriorated significantly during maternity leave. The email evidence (p2248) shows that the claimant's plans and contact were discussed and agreed between 15 and 27 January 2022. It was also confirmed that the claimant's keeping in touch ('KIT') days were voluntary and that the claimant would contact Ms Gibson when ready for that. A welfare visit was arranged during her leave and Jackie Gibson sought to visit the claimant after the claimant's trade union representative had expressed concern. We prefer Jackie Gibson's evidence of his welfare visit because Ms Gibson says that she spoke to the claimant via the intercom where she wanted to know she was ok and she was here to help, and the claimant replied that her father was there. Although Ms Dixon disputes this – saying that her father answered the intercom – we prefer Ms Gibson's evidence because there was no likely way that she would have known about the father's presence on the claimant's primary account given that statements were exchanged at the same time in these proceedings. Although the claimant sought to explain this by saying in cross-examination that she had told Ms Gibson about her father's presence during a later meeting, we consider that this lacks credibility because there was no good reason for that topic to have come up, and Ms Gibson's account was detailed and credible. We also find that when the claimant was well enough to maintain contact in January 2022, Ms Gibson immediately arranged meaningful work for the claimant in the Policy team with Aremis Kassi to develop relationships with a view to a permanent position. However, the claimant after that stage was either off sick or had refused the roles offered to her.

206. On 12 January 2022, the claimant contacted Ms Gibson about meeting; that happened on2 6 January 2022 and the KIT days were arranged for work on metabolic diseases and obesity for the Public Health policy and scrutiny committee, and the claimant then used 10 days between 9 and 22 February 2022 working that project. The claimant did not contact Ms Gibson about

any kind of early return to work, which she would have needed to have done if she had sought that based on the prior arrangements.

207. We are also satisfied that the claimant's mental health declined over her maternity leave, which is clear from some of the claimant's communications and her own evidence, which included the claimant feeling alone, having lost her purpose (in terms of work), and the claimant herself describes being unable to function on anything other than a basic level.

208. In those circumstances, this allegation is not proven and no further conclusions are required.

Paragraph 33

209. This allegation is that from February 2021 to the present day, the respondent had failed to contact the claimant to notify her of suitable vacancies that had arisen. We find this not proven. Whilst there may have been some roles not specifically drawn to the claimant's attention, we consider that the respondent was under no obligation to do so. The claimant's career was for her own initiative and whilst it was plainly positive when the respondent did identify potential roles for the claimant, by February 2021 the claimant was on maternity leave and she was a floating resource.

210. Also, we find that the respondent did positively identify roles for the claimant. For example, accepting Ms Anderon's evidence, in February 2022 when the claimant indicated that she thought she may be fit to return to work, Ms Anderson undertook searches for placements in the claimant's preferred areas of work, and contacted her about the roles, but the claimant did not seek those roles: the claimant (at p2444) rejected a 6-month long role as not sufficient to address the underlying inequalities involved, and the claimant rejects that role also as only being at band 2 whereas the claimant was seeking band 4 roles. The claimant refers to another role as being insufficient financially. Also, in April 2022 Ms Anderson contacted the

claimant about a Public Health officer placement opportunity at band 2 and the bid information (pp2431, 2447), and the claimant did not contact Ms Anderson. There were also vacancies of which Ms Anderson was not aware (in August or October 2022). Also, Ms Anderson alerted to an alternative with Ms Simon in Communities (p2440).

211. For a potential band 3 role in Policy and Strategy, we find that this was rejected by the claimant because it was not at band 4, something she would need to qualify for the Faculty of Public Health Speciality Training scheme the claimant intended to complete in the future. We are satisfied that the claimant rejected suitable roles because of the banding and for financial reasons, not because of a lack of effort on the respondent's part. This was also in circumstances where the claimant plainly required Public Health experience to be able to progress through her career, but we consider that she chose not to take those opportunities for her own reasons, given the evidence as a whole about each potential role. In those circumstances, this allegation is unproven on the facts.

Paragraph 33 - conclusions

212. If we are wrong about this allegation being unproven on the facts, we alternatively conclude that for the direct discrimination claim there is nothing to suggest that any omission of alerting the claimant to a vacancy was not because of her disability. This is because in part of our finding that vacancies were drawn to her attention, and where Ms Anderson was unaware of a vacancy this plainly had nothing to do with the claimant's disability. There is also insufficient evidence of the respondent treating anyone else differently who was in the same material circumstances as the claimant.

213. For the s.15 claim, on the facts as we have found them to be, there is nothing to suggest that any omitted alert to a vacancy was because of the claimant's disability. In fact, suitable vacancies were communicated to the claimant.

214. For the harassment claim, any upset felt by the claimant in the circumstances above would not have been reasonable, given our factual findings of what happened and why.

Paragraph 34

215. This allegation is that the claimant was not informed about or supported into Public Health roles or roles in communities which involved Public Health work. We find this unproven on the facts for the same reasons as above: the roles were advertised and open to the claimant to apply; various roles were drawn to her attention as set out above. Also, the claimant wasn't excluded from Public Health roles. She had simply not chosen them as part of her NGDP and had failed in competitive recruitment exercises. She also had relevant roles drawn to her attention. Also, there was a significant period of time during her sickness during which she was not in contact with her managers. The reality was that the claimant rejected those offers which were not at the level she wanted, in terms of banding or pay. This was not, on the facts, caused by the respondent. This allegation fails as a matter of fact, and we repeat our conclusions above in the alternative.

Paragraph 35 - findings

216. We find that the claimant applied for the post of Policy and Scrutiny Coordinator in February 2022. It is right that she was never contacted about the application. It is clear from the claimant's discussions with Nadine Anderson about this role that it was not was that was suitable for her because it would not leave her sufficiently well-off financially and would not meet the entry criteria for the Faculty of Public Health scheme. There are no records about this role. As matter of logic, it follows that the role was either withdrawn (consistent with the hiring manager changing), the claimant withdrew her application (because the role was not suitable for her), or the claimant's application was rejected. In any event, this was a role that on the claimant's own discussions at the time with Nadine Anderson was not one that was suitable for her. We also find that, in those circumstances, the claimant did not really want the role.

Paragraph 35 - conclusions

217. For the direct discrimination claim, on those facts we do not find that what happened was because of the claimant's disability. There is nothing to suggest that her treatment was different to anyone else who was in materially the same circumstances as her.

218. For the s.15 claim, we conclude that there is nothing to suggest that the above treatment was because of anything arising in consequence of the claimant's disability. Also, we do not find it to be unfavourable treatment because the claimant did not, in fact, really want the role. There was no disadvantage to her, objectively speaking.

219. For the harassment claim, given that the claimant did not really want the role, we do not consider that it had the statutory effect on her. If we are wrong about that, any such effect would not have been reasonable because on the claimant's own account it was not what she wanted.

Paragraph 36 - findings

220. We do find that the only posts actively suggested by the respondent during February and March 2022 were ones which did not meet the minimum eligibility criteria for the Faculty of Public Health. But there was no obligation, on the facts, for the respondent to provide her with roles with that level of criteria.

221. We accept that the claimant was upset by this to a significant degree, given her clear evidence and in correspondence about how her not progressing into Public Health made her feel.

Paragraph 36 - conclusions

222. For the direct discrimination claim, on those facts we do not find that what happened was because of the claimant's disability. There is nothing to

suggest that her treatment was different to anyone else who was in materially the same circumstances as her.

223. For the s.15 claim, we conclude that there is nothing to suggest that the above treatment was because of anything arising in consequence of the claimant's disability. Also, we do not find it to be unfavourable treatment because the respondent was not, on the facts, under a duty to provide the claimant with her preferred level of work.

224. Whilst we accept that this had the effect of creating a humiliating environment for the claimant, we do not find that this was reasonable. This is because the respondent was not responsible for providing roles to the claimant at her preferred level of banding, and the claimant's disappointment in her career progression was not reasonable given her rejection of other roles which would likely have provided her with the experience she demonstrably needed to progress as she wanted. This treatment was also unrelated to the claimant's disability.

Paragraph 37 - findings

225. We find that Ms Anderson did not take any specific steps to find the claimant additional work between 19 April and 27 April 2022. However, this was in the context of Ms Anderson's previous attempts having been rejected by the claimant, and on 23 March 2022 Ms Anderson had advised the claimant that she didn't want to proceed with a placement if the claimant was not ready for work. The claimant responded with confirmation of an occupational health report. The claimant failed to engage further until February 2023, and Ms Anderson's efforts were more directed towards the claimant's health. We accept that the claimant was upset by the ongoing work situation.

Paragraph 37 - conclusions

226. For the direct discrimination claim, on those facts we do not find that what happened was because of the claimant's disability. There is nothing to suggest that her treatment was different to anyone else who was in materially the same circumstances as her.

227. For the s.15 claim, we conclude that there is nothing to suggest that the above treatment was because of anything arising in consequence of the claimant's disability. Also, we do not find it to be unfavourable treatment because Ms Anderson's actions were entirely reasonable in the circumstances given the claimant's previous rejection of suitable roles and the claimant's health at that time.

228. For the harassment claim, we do not conclude that any upset felt by the claimant because of this was reasonable. This is because of the claimant's previous rejections of suitable roles and also that the actions of Ms Anderson were reasonable in all the circumstances.

Paragraph 38 - findings

229. We find that that Public Health recruited to Public Health roles during the claimant's long term sickness absence between August and December 2022. However, the claimant did not apply for them. We do not find in the circumstances that, as a matter of fact, there was a specific duty on the respondent to make the claimant aware of these roles.

Paragraph 38 – conclusions

230. For the direct discrimination claim, on those facts we do not find that what happened was because of the claimant's disability. There is nothing to suggest that her treatment was different to anyone else who was in materially the same circumstances as her. Also, the claimant not having applied for the roles, this was not less favourable treatment.

231. For the s.15 claim, we conclude that there is nothing to suggest that the above treatment was because of anything arising in consequence of the claimant's disability. Also, we do not find it to be unfavourable treatment because the claimant did not apply for them.

232. For the harassment claim, we do not consider any upset felt by the claimant was reasonable in the circumstances. This is because the respondent was not under a duty to alert her to those roles and the claimant did not apply for them. Also, it was not related to her disability.

Paragraphs 39 and 40 - withdrawn

Paragraph 41 - findings

233. This allegation is that Ms Anderson informed the claimant that the respondent was not going to implement any reasonable adjustments on the ground that the occupational health report was not agreed. We find that by email sent from Nadine Anderson to the claimant on 27 October 2022 (2696) the claimant was informed that Ms Anderson '*was not in a position to implement any practical and reasonable adjustment at present due to the OH report not being agreed and your unwillingness to engage with me or OH in relation to how we can best support you'.* We find that the allegation as made is not proven in those circumstances. This is because it was not the case that Ms Anderson was 'not going to implement' any reasonable adjustments, more that it was not yet in position to implement reasonable adjustments at that stage. Also, the email was sent in the context of the claimant not having agreed to release the occupational health report (drafted in April 2022, revised in June 2022) and not having attended two in person meetings on the grounds of having had panic attacks, and the claimant not wanting an online referral. The claimant also expressed by email on 31 October 2022 (p2528) that she lacked trust in the occupational health administrator.

234. It was also the case that at that time there was no role for the claimant, which would have been necessary to tailor any adjustments to. Also, the occupational health position was not up to date and the claimant had been off sick for a lengthy period. Also, the claimant's mental health was in a poor condition.

235. Also, we find that it clear from the email that if the claimant was well enough to return to work on 31 October 2022 through the return to work meeting the respondent would discuss reasonable adjustments identified by either a GP or any original occupational health report that the claimant was willing to share. Also, if the claimant was not fit to return to work, then there would be a stage 1 sickness review which would look at all options including reasonable adjustments. As a matter of fact, the claimant then provided a further backdated fit note confirming not fit to work in any capacity and not recommending adjusted duties.

236. In those circumstances, the allegation is not proven. We also did not agree that there was, as a matter of fact, ample material on which to decide the issue of reasonable adjustments given the context as set out above.

237. We accept that the claimant was significantly upset by these events around adjustments.

Paragraph 41 - conclusions

238. If we are wrong about the above, we express the following conclusions.

239. For the direct discrimination claim, on those facts we do not find that what happened was because of the claimant's disability. There is nothing to suggest that her treatment was different to anyone else who was in materially the same circumstances as her.

240. For the s.15 claim, we conclude that there is nothing to suggest that the above treatment was because of anything arising in consequence of the claimant's disability. Also, we do not find it to be unfavourable treatment because the respondent was not in a position to agree reasonable adjustments given our factual findings above.

241. Whilst we accept that the level of upset the claimant felt about the adjustments was significant, and this was sufficient to amount to the statutory effect in terms of a humiliating environment, we do not consider this effect to be reasonable in al the circumstances. This is because the respondent did not in fact have sufficient material to make an informed and up to date decision about adjustments. Also without a proposed role there could be no tailoring which was likely to be necessary given the claimant's varied experiences of different roles in the past. Also, given that the respondent was not in fact refusing to engage in a discussion about adjustments, and was clearly identifying other means of putting adjustments in place (eg. through a GP or shared occupational health report, or through a state 1 sickness meeting), the claimant's feelings about this email were not reasonable.

Paragraph 42 - findings

242. This is an allegation that Nadine Anderson responded to the claimant's email dated 31 October 2022 declining to engage with the points raised. We find that this allegation is unproven on the facts. Ms Anderson did engage on the documentary evidence: she talks about the frustrations that the claimant has with her career progression; she talks about the opportunity that there was previously for the claimant in Artemis' team; and it addresses the issue of sickness absence and repeats a request to arrange a stage 1 sickness absence meeting, which (in context of previous email) would have included the issue of reasonable adjustments to return to work. It is correct that the email is not a detailed response to a specific allegation the claimant made in her 31 October 2022 email, such as the claimant's concerns about whether she was 'not a good fit' and the claimant's belief that she had been defined by her autism and disability. However, given that email was not

going to be a suitable mechanism to address such general allegations about exclusion, this was entirely proper in the circumstances and did not, on the facts, amount to declining to engage. This is also because Ms Anderson did address the claimant's frustrations and the issue of exclusion by referencing the opportunity in Artemis' team. We agree with the respondent that this email also engages with the issues raised – including the claimant's general allegations – by referencing the possibility that the claimant may need to consider a sideways move and seek similar opportunities in other teams or organisations. Whilst the claimant may not have agreed with the response, this is not the same as failing to engage.

243. This allegation being unproven on the facts, no further conclusions are required.

Paragraph 43

244. We accept that the respondent in December 2022 recruited a public health officer. The respondent was under no duty to approach the claimant for a particular role. Also, as a matter of fact by February 2023 the claimant had applied for a role she wanted, showing that she was capable of applying for jobs herself

245. We repeat our earlier findings and conclusions on other roles similarly for this particular role.

Paragraph 44 - findings

246. This allegation is that Ms Gibson, Ms Weeks and Ms Bisht-Rawat took a decision not to advise the claimant about a potential public health officer role. We do find that Ms Weeks identified a potential role for the claimant on 3 February 2023 as a Senior Public Health Strategist. She then asked Swati Bisht-Rawat and Jackie Gibson whether this was similar to what the claimant had applied for before. Ms Weeks didn't receive a reply. Ms Gibson's evidence is that she did not recall the email, but believes she didn't

respond as she didn't have anything helpful to add. Ms Bisht-Rawat's evidence was that she didn't have anything to contribute, not knowing the history of the claimant's applications and so wasn't able to assist. In those circumstances, and accepting that evidence as there was no good reason not to, we find that there was no conscious decision not to inform the claimant about the role. It was advertised and so open the claimant. The possibility of alerting the claimant was simply and inadvertently overlooked and nothing more. We also accept Ms Weeks' evidence that he focus at that time was getting occupational health advice for the claimant. For those reasons, this allegation is unproven.

247. We do not find that this had any particular effect on the claimant because she was not aware of it happening, although we accept that after the event and the claimant having had sight of the various email correspondence she did find this upsetting.

248. Also, the claimant applied for this role in any event.

Paragraph 44 - conclusions

249. If we are wrong about this allegation not being proven, we make the following conclusions in the alternative.

250. If we are wrong about the above, we express the following conclusions.

251. For the direct discrimination claim, on those facts we do not find that what happened was because of the claimant's disability. There is nothing to suggest that her treatment was different to anyone else who was in materially the same circumstances as her.

252. For the s.15 claim, we conclude that there is nothing to suggest that the above treatment was because of anything arising in consequence of the claimant's disability. Given that we have found it was inadvertent, we do not find that this was unfavourable treatment. No reasonable person in the

circumstances would find it to be so, particular given that the claimant applied for the role anyway.

253. For the harassment claim, any upset felt by the claimant after the event was not reasonable in all the circumstances. It was proper for Ms Weeks to be focussing on the claimant's health and the claimant applied for the role anyway. Given that the actions were inadvertent, we also consider that it was not, as a matter of fact, related to the claimant's disability.

Paragraph 45 - findings

254. We find that on 24 February 2023 the claimant was not shortlisted for interview for a role in Public Health. The shortlisting was conducted using factors not listed in the advertisement or job description. The claimant was affected by this because she was guaranteed an interview under the respondent's Disability Confident scheme but only if she met the criteria. However, given that the shortlisting was assessed using factors not expressly advertised, this as a matter of fact would have affected the claimant. We accept that if the essential criteria had been advertised then, as a matter of fact, the claimant could have tailored her application more to those criteria and therefore an interview under the disability confident scheme was more likely.

255. Following an internal complaint by the claimant, the respondent investigated this and found that the above error amounted to indirect discrimination (p2859). It is right that there was no formal apology to the claimant. However, there was a formal instruction to those involved to ensure that it would not be repeated, the respondent also sought to raise awareness of the Disability Confident scheme, and recommended that the shortlisting criteria be improved.

256. We accept that on the evidence the claimant found the outcome of this to be particularly upsetting, particularly taking into account that it (in part) resulted in her initial grievance to the respondent. This is evidential support

of the effect on her (eg. p2709, where the claimant describes herself as being extremely distressed, albeit about her situation generally).

257. However, we do find as a matter of fact that the reason why the claimant was not ultimately successful in this application was because it was a position that required at least 3 years' experience working in a public health role in the NHS or a local authority (p2540). We agree with the respondent that in the claimant's covering letter and her CV the fact that the claimant lacked this experience was clear and that her efforts to find equivalent experience were insufficient. The scoring evidence made it clear that they accepted that the claimant had a masters in public health, had done the NGDP, and was a Westminster resident, but was also inexperienced in local authority public health work. It assessed her as more at a band 3 level. This was also a particularly important role because it related to the Grenfell Tower recovery. The evidence strongly suggests that the claimant lacked the relevant experience for the role. This suggests that, as a matter of fact, the claimant was not being excluded from Public Health for extraneous reasons.

258. It is also important to find that the claimant was offered additional support in so far she was offered a mentor within Public Health in March 2023 to support development areas identified as part of any application or interview feedback, but the claimant's response to this was by email dated 16 March 2023: '*I'm highly skilled, extremely knowledgeable, and very experienced in a variety of challenging work context and environments … so why on earth would I need to be "supported" in a "placement" to learn to do the work I'm perfectly capable of doing'?* (p2629-2632), accepting Ms Weeks' evidence of this. This finding is relevant to some of the other allegations in these Reasons.

Paragraph 45 - conclusions

259. We do not find that this amounts to direct disability discrimination. This is because the claimant's treatment was not because of her disability. The

evidence demonstrated that all candidates were treated in exactly the same way.

260. We do not find that this amounts to a s.15 claim. This is because there was nothing to suggest that this treatment arose in consequence of the claimant's disabilities.

261. We accept that the claimant's reaction to this was that it created a humiliating environment. It was plain that, particularly in the context of the claimant's ongoing inability to get a public health role she clearly wanted, this was upsetting to her and we are satisfied that, in the context as a whole, this was sufficiently strong to amount to a humiliating environment.

262. We also conclude that it was reasonable for it to have that effect. This may have not been the case for a single application in isolation. However, in the context of the claimant's job application history and career desires we consider that for this particular proven fact, the effect that it had on the claimant was reasonable in all the circumstances.

263. We accept, however, that it was entirely unintended by the respondent and it was not conduct with the statutory effect in mind. It was not done with the purpose of creating the statutory effect. However, this is an example of inadvertent conduct creating the statutory effect.

264. In the circumstances, it was also plainly unwanted conduct. We also consider it was related to her disability because it related to the Disability Confident scheme. It was only because of the claimant's disability that the shortlisting criteria were particularly relevant to the claimant.

265. Whilst we do consider the lack of direct apology to be relevant, we do not consider that the claimant's suggestion of a lack of support to address this event was relevant. This is because in reality the respondent was actively continuing to support her in finding other relevant roles, and the respondent did take other steps in response.

266. We note that this allegation is in time regardless of our decision on jurisdiction.

Paragraph 46

267. This allegation was that whilst the claimant was engaging with Clare Weeks about returning to work in Public Health, and she was told that Public Health was not recruiting because of a review, and there would be no more recruitment until September 2024, however this was untrue.

268. We find this allegation not proven. We do not find that Ms Weeks told the claimant there would be no work in Public Health until September 2024. This is because claimant admitted in cross-examination that she had been assured that it was for work in September 2023 and not 2024, and we find that a single reference by Ms Weeks in an email to the year 2024 was a typographical error, and we accept that the claimant knew this to be the case (that was an error) given the cross-examination of the claimant and taking the email chain as a whole. Also, the case conference note at p2659 suggested that what Ms Weeks had arranged was a 6-month placement in policy followed by a 6-month secondment in Public Health, so it was clear to the claimant that work in 2023 had been arranged. In terms of the other elements of this paragraph, the claimant now accepts that there was no recruitment in April 2023, and that when recruitment took place in December 2022, the claimant was too unwell to discuss a return to work, and the person who took that role in 2023 had applied in December 2022 and was simply serving notice.

269. The fact that through Ms Weeks respondent arranged the 6-month policy placement and 6-month secondment for the claimant – which were never ultimately taken up by the claimant – is relevant to other issues in the claim. Ms Weeks did this once the claimant was confirmed as fit to work. The background to those placements being set up, accepting Ms Weeks' evidence of this, was that as of 2 March 2023 she contacted the director of Public Health to enquire about potential work for the claimant. There were no permanent vacancies at the time, and the team had defined budgeted

positions without the flexibility to simply create new roles (generally). Public Health did agree to the six-month placement starting in September 2023 and that in the meantime the department would support the claimant with any required professional development. The opportunity was first relayed to the claimant by email on 24 February 2023 (p2574).

270. We also accept Ms Weeks' evidence of the following. The Policy placement arranged was very flexible and was going to concentrate on public health/health related strategy. The claimant would have been able to determine the number and pattern of hours and a gradual return would be possible. It was also agreed that the identified work was at band 4 level and would be paid at that rate, for that placement. Ms Weeks also made an offer of 2-3 sessions of 1:1 returning to work support for parents. Following a meeting on 19 April 2023 to discuss reasonable adjustments for the claimant a draft tailored adjustment plan was made (p2673-2686). However, on 21 April 2023 the claimant called Ms Weeks and was distressed having seen on Linked in someone else at the respondent in her dream role, a band 3 public health officer, and accused Ms Weeks of lying about the availability of roles in Public Health. In reality, this was someone who had applied for a role in December 2022, before the claimant had return to work conversations with Ms Weeks in February 2023, and the only reason their start date was delayed was their notice period. This was also a role advertised internally and externally. The claimant was then signed off work with stress. The claimant remained unwell on 5 June 2023, but the Policy team role was still available to her. Ms Weeks followed up with the claimant in August 2023 confirming that both the Policy role and Public Health placement were available (by email dated 2 August 2023, p2806).

271. In those circumstances, no further conclusions are required.

<u>Paragraph 47 - withdrawn</u>

Paragraph 48

272. This allegation is that during 2023 the respondent recruited staff to other roles, including internal secondments, for which the claimant was suited, but the claimant was not offered any such work or informed of it. We find this allegation not proven on the facts. This is because the claimant was offered the two secondments/placements in our findings above by Claire Weeks. We also accept that there was a restructure at the time which limited the opportunities available (eg. at band 4). Also, it is right to find that around this time the respondent had available to the claimant the return to work coaching above, and also neurodiversity coaching, and Ms Weeks was to act as a continual point of contact for the claimant. There was also trade union support for this.

273. This allegation being unproven, no further conclusions are required.

Paragraph 49

274. This allegation is that the claimant was never given an annual appraisal in contravention of the written terms of her employment contract. This allegation is not proven. This is because, having considered the document, the claimant had no contractual right to annual appraisal. We also find as a matter of fact that there was was continuous feedback in the NGDP, accepting the respondent witness' evidence of this. There were numerous attempts by those working with the claimant to give her feedback, on the evidence, and we accept Ms Anderson's evidence that so called 'seasonal conversations' did take place. Also, other than for a period of four months at the end of the NGDP, the claimant had been on lengthy periods of maternity leave and sick leave. There is also no cogent evidence suggesting any factual link between the level of appraisal the claimant received and her disability, or anything arising in consequence of her disability (as pleaded). Any lack of later performance review reflected the claimant's absence.

Paragraph 50 - findings

275. We do find that the claimant was not given a risk assessment or stress risk assessment. However, the claimant did have a full case management conference with occupational health (Dr Kennedy) and HR on 12 April 2023 which was documented in part at p2658. We accept as a matter of fact this was a more involved process than a simple risk assessment tool given that it addressed every work-related factor with the potential to affect the claimant's health.

276. We do not find that the lack of a specific risk assessment or stress risk assessment had any particular effect on the claimant, in terms of how she felt. This is because of a lack of evidence of this.

277. We also consider that any risk assessment was likely to have been superseded by occupational health reports, in any event.

Paragraph 50 – conclusions

278. For the direct discrimination claim, on those facts we do not find that what happened was because of the claimant's disability. There is nothing to suggest that her treatment was different to anyone else who was in materially the same circumstances as her.

279. For the s.15 claim, we conclude that there is nothing to suggest that the above treatment was because of anything arising in consequence of the claimant's disability.

280. For the harassment claim, we do not find that this had the statutory effect on the claimant. If we are wrong about this, then any such effect would not have been reasonable given our findings about the context of the omission.

Paragraph 70(1) - findings

281. The following facts are alleged on the basis of harassment only.

282. We do not find that allegation (1) was proven on the facts. We repeat our other relevant factual findings elsewhere in these Reasons and do not find that the respondent refused to engage meaningfully with the issue of reasonable adjustments. There is plenty of evidence that they did engage in the witness evidence and bundle. Although there were delays in the process, we do not find that those delays were the fault of the respondent, particularly where there were delays in consent to release occupational health information and also taking into account the claimant's maternity and sick leave.

283. We reject the claimant's evidence that she did not think she needed to give consent. Our reasons for this include that in an email dated 17 March 2023 (p2635) the claimant clearly demonstrates knowledge that she would need to give consent for reports to be more widely shared. Consent to release was also discussed with the claimant's occupational health physician, Dr Kennedy (p822). We also accept Ms Anderson's evidence that she had encouraged the claimant at one stage to make things 'formal' indicating that the claimant understood a distinction between disclosing things privately to individuals and consent for general release to the respondent. The respondent's cross-examination of the claimant also demonstrated her knowledge of the need to consent to release of occupational health reports to her employer. For example, when it was put to the claimant that she didn't consent to release a particular report in 2020 or 2021, the claimant replied that she was unable to - there was no finalised report. Also, there were demonstrable delays, not the fault of the respondent on the facts, with the Access to Work report.

284. We do not consider that the piecemeal reports the claimant provided to some individuals was sufficient to place them in a context, as a matter of fact, which demanded that they more than they did. This is because we accept that the respondent genuinely sought to act appropriately, and was

doing so in a context of the claimant having conditions that were wide ranging and complex in nature. Also, the claimant was off sick and on maternity leave for a significant period of time.

285. We also do not find that, generally speaking, what did happen had the statutory effect on the claimant. There is insufficient cogent evidence that the issue of reasonable adjustments in fact had such an effect on the claimant.

Paragraph 70(1) - conclusions

286. If we are wrong about any of the above, we find that it would unreasonable for what did happen to have such an effect on the claimant. To the extent that any adjustments were delayed or not in place, it would not reasonable to find that this created the statutory environment, taking into account the significance of those words. In particular, we also conclude that the respondent acted entirely reasonably in all the circumstances, given that the reports were provided piecemeal, there was demonstrable engagement on the issue of reasonable adjustments at various times by different people by the respondent, and it was reasonable to take into account the claimant's sick leave and maternity leave to ensure that any adjustments provided were tailed to particular roles and people.

287. The reasons why the reasonable adjustments claim is unsuccessful are also relevant.

Paragraph 70(2) - findings

288. This allegation is that Ms Gibson and Ms Anderson in July 2020, March 2022, and at other times, suggested that the claimant leave the respondent's employment. This is not proven as a matter of fact. It was denied by them in evidence. We accept their evidence as credible and it was not meaningfully undermined by anything. Although there were documented instances of talking about the possibilities of working

elsewhere in the context of someone who's career is not going plan, this not the same as indicating that the claimant should leave the respondent (directly or implicitly). To the extent that they did raise the possibility of working elsewhere, we accept that this did trigger an intense emotional reaction from the claimant such that it amounted to an humiliating environment. This was clear from the claimant's evidence on this issue, particularly in cross-examination. However, we find as a matter of fact that those comments were nothing more than trying to support the claimant in her career ambitions, and we accept that they were made in a supportive manner and with that intent.

Paragraph 70(2) - conclusions

289. We do not find, however, that the reaction the claimant had to the conduct which was proven was reasonable in all the circumstances. This is because the comments were nothing more than trying to support the claimant in her career ambitions, and we accept that they were made in a supportive manner and with that intent.

290. Also, the proven conduct did not relate to the claimant's disability.

Paragraph 70(3) - findings

291. We do find that the claimant was locked out of her work IT account during her maternity leave without express prior warning. However, we accept the respondent's evidence that this was automatic whenever a staff email account was not used for more than 30 days at a time, and also the evidence clearly showed that each time the claimant advised either Ms Gibson or Ms Anderson of this it was normally unlocked on the same day, save for one instance where the claimant failed to clarify the situation with Ms Gibson for a number of months.

292. We accept that the claimant found this upsetting, however, because of how she perceived it to be consistent with exclusion from the respondent.

Paragraph 70(3) – conclusions

293. We find that the claimant's reaction to this was not reasonable, however, given the circumstances and that it was something which happened automatically and was quickly amended by the respondent. Also, it did not relate to her disability. It happened to all staff and was not related to her disability.

Paragraph 70(4) - findings

294. This allegation is that the respondent provided no management planning to enable the claimant to use her keeping in touch days during maternity leave. We find this allegation not proven. We accept the evidence of Ms Gibson that the claimant did give her the management planning letter on this point. Also, we are satisfied that, overall, any difficulty the claimant had in arranging these days was more affected by her anxiety and depression, and inability to do things whilst unwell, than anything that was the respondent's responsibility. Also, the financial implications of taking these days at particular times were not within the respondent's remit, nor necessarily were they within the respondent's knowledge.

295. We also do not find, on the evidence that what did happen had the statutory effect on the claimant. This is because there is no good evidence that this was the case.

Paragraph 70(4) – conclusions

296. In the alternative, any effect that the timing of the claimant's keeping in touch days had on her would not be reasonable, even if it did amount to the statutory effect. This is because it was not the respondent's responsibility to ensure that they were taken at a time that would prove most financially advantageous to the claimant, and there was also the impact of her health to take into account.

Paragraph 70(5) – findings

297. This allegation is that between February 2021 and December 2022 the respondent did not contact the claimant about suitable vacancies. We find this not proven for the reasons provided elsewhere in this document. We consider that the evidence did in fact demonstrate some placement planning by the respondent. Also, there were some times that the claimant was so unwell she would not be in touch with the respondent.

298. We accept however, that to the extent that there were any vacancies which existed, when the claimant later found out that this was the case (and she had not been expressly alerted to them by the respondent), she found this distressing. This is clear from her evidence.

Paragraph 70(5) – conclusions

299. In the alternative, we do not find that any such effect was, however, reasonable. This is because the respondent was not under a strict duty to alert the claimant to every suitable vacancy, and we consider that, overall, the respondent did act reasonably in doing what it did to alert the claimant to suitable roles and be sufficiently supportive. Also, to the extent that vacancies were advertised in a way accessible to the claimant, being distressed in those circumstances is not objectively reasonable: the claimant could have found them herself.

Paragraph 70(6) – findings

300. This allegation was that the respondent failed to follow its sickness absence management procedure in managing the claimant's long-term sickness absence. We find this not proven on the basis of a lack of clear and cogent evidence that this was the case. There is very little evidence on this point.

Paragraph 70(7), (8), (11)

301. We understand that these paragraphs were withdrawn because they were the same as earlier paragraphs which were withdrawn. Paragraph 3 of the claimant counsel's written closing submissions indicates that the claims relating to these areas are not pursued (eg. a referral, sickness/annual leave taking), and counsel orally indicated that the the allegation relating to DSARs was withdrawn as harassment. Paragraphs 47 and 70(11) APOC cover the same material allegations.

Paragraph 70(9)

302. These allegations are already covered by our earlier findings on the same issues.

Paragraph 70(10)

303. This allegation repeats an earlier allegation involving Ms Weeks' typo about whether there was Public Health work in 2023/2024 and the arranging of a secondment in Policy. We find this not proven for the same reasons as before: we accept Ms Weeks' evidence that the other discussions with he claimant did not indicate that there would be a delay until 2024. Nothing that was said was untrue. Also, plainly on the evidence this was not, as alleged, an attempt to block the claimant's career, but it was the opposite. This is because Ms Weeks was trying to put in place exactly what the claimant said she needed and wanted: work in Public Health or related areas.

Specific findings in respect of alleged comparators

304. We do not find the broader allegations made by the claimant about her named comparators, such as them being provided greater access to training and developmental opportunities, and favourable opportunities for career progression, are proven on the facts. This is because of a lack of specific and cogent evidence that this was the case. Rather, we feel that

these very broad allegations reflect more the claimant's perceptions of others as opposed to facts supported by evidence.

305. Masuda Begum did a placement in Public Health as part of the NGDP. This was equally open to the claimant, in terms of opportunities. This gave her specific experience in the department that the claimant did not have. Also Ms Begum was not, as alleged by the claimant, put straight into a band 4 role on completing the NGDP. She graduated into a band 3 role and was later promoted, accepting Ms Anderson's evidence in cross-examination on this.

306. Genevieve Peattie, unlike the claimant, did a placement in Public Health as part of the NGDP.

307. We find that Stephanie Murphy was not given work in Public Health as the claimant alleged, accepting the evidence in cross-examination of Nadine Anderson that in fact her role from March 2022 was in the Communities department. Whilst there were other departments that may have done public health-related work, there was no material evidence that the claimant had been specifically excluded from working in other departments.

308. For Alicia Williams, the claimant alleged that she was given work in Public Health, but we accept the evidence of Mr Lake that in fact although Ms Williams did get a band 4 role in Public Health, she previously did have some experience of the department which was from a secondment. We find that in terms of the facts, there was nothing to suggest that Ms Williams had a secondment in circumstances where the claimant was denied one.

309. We accept that Catherine Handley and Muskaan Khuana appear to have done some work in Public Health.

310. We find that Katrina McLarty did a public health placement during the NGDP, which the claimant did not.

311. For Sisley Hamer, we find that although she was appointed to a band 4 post, this was after completion of her NGDP (and so factually different when compared to any application the claimant made before completion of the NGDP).

312. For the other named comparators, there was a paucity of cogent evidence from which we could make relevant findings.

Additional factual findings relevant to the alleged PCPS

313. The findings below are relevant to the question of whether the respondent applied the alleged PCPS. However, we also took into account our other factual findings when making our decisions about this in our conclusions below.

(1) A requirement for employees to perform and behave in a 'neurotypical' manner, adhering to unwritten rules regarding social factors and expectations including:

314. Various examples of this were alleged as follows.

(a) Being expected to adhere to specific rules of social etiquette in the workplace despite not being informed what those are.

315. Claire Weeks' evidence disputed that there was a requirement for employees to perform and behave in a neurotypical manner, referencing this allegation. She says that the respondent has many neurodiverse employees and has training in that area, and support. We accept this evidence because it was generally credible and not meaningfully undermined by the other evidence or in cross-examination. The claimant's evidence did include a reference to another employee's article (Caseley, p3557) which referred to unwritten politics. The respondent also had a written Code of Conduct.

(b) Being expected not to question things, including workplace practices and processes relating to decision-making

316. We did not find, as a matter of fact, that there was a practice at the respondent of being expected not to question things, including workplace practices and processes relating to decision making. This is because we find that the evidence overall demonstrated that the claimant was in fact permitted and at times even encouraged to question things, including workplace practices and processes related to decision making. For example, in a large meeting of staff with the respondent's CEO the claimant was permitted to express a different view to the CEO and in fact was supported by others in doing so. Also, Adam Summerfield, in an email to various individuals including the claimant, told the Place Shaping team (that the claimant was going into) to expect her to phone up and ask questions to get up to speed when introducing the claimant to the team (p1667). Similarly, in Strategy and Intelligence Patrick Ryan emailed the claimant on 3 December 2019 to advise her he was always happy to answer any questions and happy to brainstorm with the claimant (p.2149). Also, on the claimant's own evidence she approached the respondent's chief executive directly to complain about the adjustments policy during lockdown, and she was then supported to have a significant input in rewriting the policy with the assistance of the respondent's HR team and Unison, the union. The evidence in support of this included the cross-examination of the claimant and p110 of the claimant's witness statement, such as the claimant raising an issue about people coming to the ABLE network for help in getting reasonable adjustments, particularly women, and the claimant said in oral evidence under cross-examination words to effect that the issue she had raised by email, resulted in a brief to work on the policy, and the chief executive had said in a meeting that the brief was not just to do the bare minimum.

317. Also, the claimant accepted in cross-examination that when in Strategy and Intelligence, November 2020, in relation to an email sent on 3 December 2020, they were happy to answer questions (relation to Patrick Ryan, a Strategy and Performance Officer who assigned some tasks to the claimant

in that email) and the claimant agreed he was available to ask questions of and bounce ideas with. There was no meaningful evidence from the cross-examination of the respondent's witness showing this element the alleged practice, in terms of the facts.

(c) Being expected to automatically recognise where rules of hierarchy were present and considered by others to be important.

318. We do not find that there is any cogent evidence to support this as an issue of fact. To the extent that there was a hierarchy at the respondent, this was evident from the organisational structure, the use of banding for jobs, and job titles. There is no clear and cogent evidence of rules of hierarchy, specifically, and this allegations is not properly evidenced. The claimant's evidence about this issue included that, during her induction, some of the graduates met with people at the top of the respondent's hierarchy. This suggests that the claimant did gain an understanding of the fact of and nature of the respondent's hierarchy.

319. We also do not find that the reference to 'unwritten layers of internal politics' in the Casely article is sufficient to demonstrate a more general state of affairs (as a question of fact) in which people were expected to recognise rules of hierarchy (etc.). This was an observation by a single individual and refers more to the fact of internal politics rather than the respondent having rules of hierarchy which employees were expected to automatically recognise. It is not sufficient to demonstrate a state of affairs in those circumstances, as an issue of fact. Also, graduates like the claimant were not in fact expected by the respondent to intuitively understand the politics of the respondent. We make this finding because the programme included the ILM which included courses on leadership development, project and people management, and (specifically) working in a political environment (p903).

320. The claimant relies in part on feedback given during her probation review, ie. a 3 month probation first assessment document it was not appropriate for her to raise the Lord Mayor's mobility issues in public, and a reference

to challenging experienced directors on their use of terminology was not appropriate and that the claimant's questions to the Lord Mayor were poorly communicated and perceived as rude. However, we had no clear evidence about what the reference to challenging directors' terminology was about such that this would indicate the facts alleged. Also, we consider that the criticism was (as a matter of fact) more about confidentiality of medical information rather than the claimant being expected to recognise rules of hierarchy or unwritten social etiquette.

321. Also there was cogent evidence that the claimant did in fact understand any workplace hierarchy. This is from her email to Ms Flaherty, the Deputy Chief Executive of the respondent, dated 19 May 2020 in which the claimant expressly recognises of the importance of her time, the hierarchical nature of the workplace, and a desire on the claimant's part to not overstep any boundaries (p1897). Also, the claimant's written reflections during her time at the respondent included on the capability area of managing in a political environment, demonstrating points she had learnt from Ted talks.

(d) Being expected to remain quiet regarding issues where one had relevant knowledge and where one was able to identify points that appeared not to have been considered or addressed by some in positions more senior in the hierarchy.

322. Factual findings relevant to this issue include that the claimant had an ability through the ABLE network to challenge things within the respondent, in particular to senior individuals. We do equally find that the claimant perceived that the respondent's response to these efforts was not always in the manner she wanted them to. However, it was not in dispute that through the claimant's efforts she was able to successfully and significantly improve the respondent's policy and procedures around disabilities. We did not consider there to be cogent evidence, as an issue of fact, of the claimant being expected to remain quiet by the respondent.

323. The claimant relies on an email that was sent from Alison Davies to Sam Reilly dated 14 November 2018. This includes references to the claimant having slightly odd behaviour, with the hand being half raised under the

table, always trying to speak, and funny facial expressions, and the claimant chipping in with inappropriate comments which weren't relevant, and her appearing to want to contribute to everything. Also, the email refers to getting too bogged down in the papers and background issues outside of her assigned tasks. Our analysis of this email is in our conclusions below.

324. On the claimant's own evidence, she wrote to Sarah Newman, Executive Director of Children's Services, about an issue of concern to the ABLE network which clearly shows points the claimant feels she is knowledgeable about. Ms Newman replied to thank the claimant for raising the point with her (p2215). The claimant's evidence was that there was no subsequent action as she had hoped. It is not necessary for us to determine whether that perception was accurate, but we accept and find that this was the claimant's perception.

(e) Being expected not to query senior management regarding matters of equality and inclusion for disabled staff and members of the public

325. Facts relevant to this issue include that the claimant was encouraged to raise issues of equality and inclusion through the ABLE network. The claimant also significantly worked on and largely drafted the respondent's new disability policy.

(f) Being expected to, in effect, be capable of reading others' minds and working out how they wished to be addressed in a given moment

326. Facts relevant to this issue include that claimant's 3 month probation review included '*Liz's questions to the Lord Mayor were poorly communicated and perceived as rude. The Lord Mayor was visibly embarrassed and the rest of the room uncomfortable with her comments of 'Cllr Adams was incredible as Lord Mayor so obviously you have very big shoes to fill'. Liz was unable to 'read the room' and understand how that comment had made the Lord Mayor feel*'. Also, on Nadine Anderson's own evidence, which we accept as a matter of fact, ([59] of her witness statement), in conversations with the claimant she '*I encouraged the Claimant to consider why her responses at times could be perceived negatively by others and trying to put herself into other people's shoes, which she often found challenging. I continually*

encouraged the Claimant to develop her self-awareness and we discussed how she could do this.'

327. Facts relevant to whether this, as a matter of fact, put the claimant at a substantial disadvantage, include the following.

328. In terms of ADHD, Dr Reed (p795) assessed the difficulties arising from that disability as impacting on the claimant's attendance, focus, and ability to engage in education. Also, it can impact on attendance, focus and ability to engage in the workplace. This report also included that the claimant may have some very well masked residual ASD symptoms around auditory processing issues and sensitivities.

329. The reports about the claimant's ASD do indicate that that the condition includes difficulties with social communication and social interaction, including misunderstandings on the part of the claimant and miscommunications by her. For example, in a letter from consultant clinical psychologist Sharon Allison dated 6 July 2020 (p797). The occupational health report dated 28 October 2020 (p799) refers only to dyslexia, and ADHD, and does not identify communication or social understanding difficulties. The occupational health report dated 27 November 2020 (p803) does include the diagnosis of ASD but does not include social communication or understanding difficulties. The report of Dr Miele (consultant psychiatrist) (p806) does not clearly address ASD or social communication/empathy difficulties. The clinical psychology assessment report dated 25 September 2021 (p813) includes a diagnosis of ASD which includes persistent deficits in social communication and social interaction which have been present since childhood and impact and impair the claimant's everyday functioning. Also, it includes as part of her ASD, the difficulties the claimant has making sense of the subtle nuances of communication including non-verbal communication in others. Also '*Her direct approach might at times be seen as intimidating and offhand but it is not intended to be malicious, instead it is based around her straightforward and honest approach*'. This report includes the idea of a communication

passport to help the claimant explain to other some of the ways that might helpful in managing their interaction with her.

330. Dr Hakeem, Consultant Occupational Health Physician, (p844) advised in a letter dated 3 February 2023 that the claimant's reasonable adjustments should be highly individualised based on her particular circumstances because not all commonly-suggested adjustments will be appropriate for her.

331. The occupational health report dated 22 March 2023 (p851) indicated that '*Her autism means she does experiences sensory and social issues but these have not been unmanageable for her at work before, and she reports they have never caused notable problems in a workplace. The most valuable adjustment I (the GP) can suggest is that she is given work to do which is appropriate for her level of experience and qualifications – and would anticipate that she will perform to a high level*.'

(g) Being expected to understand, without it having been explained, a workplace culture in which there existed many unspoken expectations, including an expectation not to directly approach senior decision-makers even though they appeared best placed to address a particular issue

332. Facts relevant to this issue included that there were many instances of the claimant interacting with senior members of staff to address particular issues, in which the claimant was not dismissed and it was not suggested that she had broken an unwritten rule by going to someone more senior. During the claimant's employment it was not in dispute, for example, that she had interacted directly with the Deputy Chief Executive.

333. We do accept as a matter of fact that on 21 October 2019, the staff networks had previously sent a joint letter to the Director of People Services about the options given in a questionnaire about gender identity. The networks were told that this should have been done through a meeting as opposed to a joint letter to a member of the Executive Committee. To the extent this was a criticism, it was made across a variety of staff network types to all staff involved.

(2) An expectation that staff would exhibit 'emotional intelligence'

334. This section addresses whether this expectation was in place at the respondent as an issue of fact. It was accepted that the LGA framework and its graduate self-assessment tool included emotional intelligence and self-awareness as skills as necessary to enable graduates to plan and manage their own career.

335. Claire Week's evidence was that there was no expectation for staff to exhibit emotional intelligence. There were expectations in the Code of Conduct that interactions and work should be appropriate, courteous and professional but this is not the same thing.

336. Nadine Anderson accepted in her evidence that she and the claimant had conversations around emotional intelligence as part of the NGDP Capability framework under the section '*developing yourself and career in local government'*. This was, as a matter of fact, part of that framework (919). The framework was a self-assessment tool for trainees (p915) and to support development and progress whilst on the programme. It is a 'self-development tool'. It was a document produced by the LGA and referred to, in part, during the claimant's programme reviews. Specifically, it was under the heading 'Knowledge and skills' which also included career development and planning, learning styles, MBTI, and understanding diversity and respect for self and others. People using the framework self-assess on a score and there is a space for comments and evidence. Ms Anderson's evidence included that she did not at any time criticise the claimant for not having emotional intelligence. We accept that because there is no clear evidence of this happening.

337. Serena' Simon's evidence included that she had never reprimanded or criticised the claimant for not having emotional intelligence. We accept this because there was no clear evidence that she did.

338. The claimant's own evidence was that Sam Rilley referred to the claimant having improved her emotional intelligence. However, we do not find that

this is the same as a practice of expecting emotional intelligence. Although the claimant's evidence included mentions of emotional intelligence being mentioned by the Chief Executive, this is not sufficient to clearly demonstrate the PCP alleged. Specifically, the words were used in the context of a discussion about the respondent's work during the pandemic, and an inclusive recruitment drive. Although during this live chat there were words of support from others attending, about emotional intelligence, the claimant also joined in the text-based chat, suggesting that an emphasis on emotional intelligence risked excluding those who do not have an innate ability to communicate in neurotypical way, and she subsequently received praise for this. This is indicative of a workplace culture that did not have the PCP alleged: the claimant's point was not criticised or suggested to be wrong (as shown by the meeting chat at p1702).

339. The claimant's 3 month probation review in December 2018 did include:

NGDP person spec: Working with others The ability to operate effectively with others and demonstrate an understanding of diversity, political sensitivity, and emotional intelligence. To be able to bring people together in order to achieve the benefits of change meeting customer/stakeholder expectations on time and within cost constraints.

340. It then continued to say to give an example about the Lord Mayor's mobility issues with the claimant. However, this does not demonstrate the PCP alleged, as a question of fact. Firstly, the NGDP person specification included the ability to […] demonstrate an understanding of […] emotional intelligence. This is not the same as exhibiting it. Also, the issue raised about the Lord Mayor is less about emotional intelligence, more that challenging a director on terminology was not appropriate. This is more about demonstrating political sensitivity than emotional intelligence. Also, to raise the concept of emotional intelligence during the difficulties of the pandemic is unsurprising, and not in of itself demonstrate of the PCP. Simply saying that a thing may be important is the same as a general expectation, such as those in the respondent's Code of Conduct about interpersonal behaviour expectations.

341. The subsequent three month review plan (p995) includes a mention of emotional intelligence and self-awareness as part of an NGDP capability area, but all that follows is a reference to a mindtools article.

342. The claimant's 5 month probation assessment included that the claimant has '*really developed her emotional intelligence and interpersonal skills. She is now able to get the best out of others by tailoring her approach and understanding why and how people respond in different ways*.' This was signed by Sam Reilly.

343. Emotional intelligence is mentioned by Nadine Anderson in an email (p1642) dated 1 April 2020 in the context of the NGDP capability framework.

(3) The requirement for all job applications to participate in a standard competitive interview process irrespective of matters affecting their ability to successfully do so.

344. Facts relevant to this issue include the following.

345. The claimant had an interview for the role of Band 4 Public Health Business Partner on 4 February 2020. The job application form did include the claimant's declaration that she had a disability (p1484). An interview was guaranteed if the claimant met the minimum requirements for the role. On the claimant's evidence, the interview included a presentation and the claimant was asked questions which were 'quite formulaic' and, on the claimant's evidence, she was able to answer them well. The claimant's on this evidence was that as the interview continued, she did not feel it was 'what I had thought it would be' based on the demeanour of SC.

346. The claimant's evidence includes a suggestion that Doreen Ryan, who was on the interview panel (in part) to ensure gender and race diversity, was not included in the deliberation about the claimant's interview. However, we prefer the evidence of Mr Lakes which actively disputed this account. His evidence was not meaningfully undermined in cross-examination and was credible. Also, he had direct knowledge of the relevant matters, and the

claimant's account was hearsay. In those circumstances, this alleged fact is not proven.

347. The claimant emailed Emma Highland about improving the recruitment process (generally) for neurodivergent candidates in the context of her recent interview (p1511).

348. In July 2020 the claimant interviewed for the role of Strategy and Performance Officer. We were not taken to any clear evidence about adjustments for that interview. However, the claimant's own evidence, which we accept, was that for this (unsuccessful) interview, the claimant was '*content that the process had been a fair one….I thought the assessment process had been fair, and the panel were quite correct that I did not have much in the way of experience of performance reporting*.'

349. The claimant had an interview for the position of Senior Public Health Strategist (Band 4) on 16 February 2021. The claimant discussed the interview with Sarah Crouch beforehand on 11 February 2021. Sarah Crouch had asked the claimant by email if she had any questions, the claimant responded requesting a chat to discuss, and Sarah Crouch provided time for this in reply. On 12 February 2021 Sarah Crouch emailed the claimant thanking her for confirming availability for the interview, and said '*Please do let me know if you have any queries or concerns about accessing the interview in this way [online*]' and on 15 February 2021 the claimant advised Sarah Crouch on some of the effects of her condition. Specifically, the claimant said that she had taken time to reflect on what might be appropriate adjustments to the interview, and had sought advice. She referred to having autism spectrum condition, referred to her strengths, but she '*can also come across as being different or unusual somehow. This is mainly due to the difference in the way I process non-verbal or non-factual information*.' She says that she is usually able to mask her characteristics but less so when stressed or nervous, such as in an interview. She warned that she may not necessarily make eye contact, or look at her screen, may need a few moments to write town a question whilst she processes it, interpret a word literally, or ask for clarity on something that others may think

are already clear, provide a lot of detail or information compared to what might be expected (inviting her to be moved on if that is the case), and may not always pick up on signs that someone she wishes to speak (she would not offended if this is indicated). The claimant also says that none of the above difficulties may arise, but just in case they did, she wanted the interviewers to know about the potential for her to perform not quite in the same way as a non-autistic candidate. Sarah Crouch thanked the claimant for those points.

350. The claimant's application form for that role indicated that she had a disability.

351. The claimant's own evidence was that the respondent's practice was for disabled candidates to know in advance what reasonable adjustments they needed for an interview, and to ask the hiring manager directly for these adjustments to be made, without assistance to help work out what those would be. We accept this, on the evidence.

352. The claimant's evidence about the 16 February interview was that she answered the questions in detail and she linked the answers back when possible to the job description. She also thought the interview had gone well.

353. The claimant also relied on evidence about the way in which the respondent conducts interviews in the form of an article by an autistic NGDP graduate who described positively the interview process she had which was non-standard to take into account her autism (p3557). Specifically, following discussions with that individual, the panel reconvened in a less formal setting, and talked without formal questions, which was written up afterwards.

354. Claire Weeks gave evidence that there was not a requirement for all job applicant to participate in a standard interview process (as alleged by the claimant). She said that the policy and practice of the respondent provides

for the discussion and identification of particular adjustments that would enable disabled candidates to participate at interview on an equal footing. This evidence is consistent with the claimant's experience, particular for the 16 February 2021 interview. In that interview the claimant did request changes, and there is no cogent evidence that those changes were put in place. Also, the evidence in the article is consistent with this. We gave Ms Weeks' evidence considerable weight, and accepted it, because she is currently Director of People and Culture in the Corporate Services Directorate and she was previously a HR Business Partner and Head of Operational People Services at relevant times and so could be expected to have good knowledge of the respondent's practices on recruitment.

355. Claire Weeks also said under cross-examination that although the respondent did not routinely use a different type of interview which was more like a fireside chat. Also, the respondent had a practice of sometimes providing the interview questions in advance if requested, although this was not requested by the claimant. They also provided extra time.

356. The respondent also (generally) guaranteed an interview to disabled applicants who met the relevant criteria. The claimant's own evidence also did not establish that the interview process generated any particular disadvantage to her in terms of facts. This is because the claimant's evidence on this point was about how autistic people (generally) may face difficulties with interviews (generally). We accept, however, that the claimant had a perception that she had sufficient experience for the roles she applied for, and therefore there was a discrepancy between the claimant's perception of her experience and the respondent's evaluation of it. Generally, we accept as a question of fact the clear and credible, and at times documented, evidence from the respondent that (as a matter of fact) the reason for the claimant being unsuccessful for those roles was her lack of relevant experience as opposed to difficulties arising from her conditions. As a question of fact, there was no clear evidence that the claimant or panel had communication difficulties, or perception difficulties, which resulted in her rejections.

Knowledge of substantial disadvantage

357. Facts relevant to this issue include the following.

358. We accept that there were points at which some of the respondent witnesses knew that the claimant was awaiting various diagnoses. However, this is not evidence of actual knowledge (as a matter of fact). Plainly if a diagnosis is outstanding neither the claimant nor anyone else actually knew if a condition was present and therefore whether any practice (etc.) of the respondent would place the claimant at a substantial disadvantage.

359. We also find as a matter of fact that the documentary evidence established that claimant did not also provide her medical reports to the respondent promptly, and some of them were rewritten at the claimant's request, and consent to release them to the respondent was not always provided (at least, at first). The claimant did not really know herself about the autism diagnosis until November 2020. We are satisfied that neither she nor the respondent knew, as a matter of fact, that any proven practice of the respondent would put her at any disadvantage until at that date.

360. The respondent accepts knowledge of ASD as a disability from after May 2020. This appears to be on the basis of the report by Dr Reed which was sent to Emma Highland on 29 May 2020. The report refers to likely ASD traits. However, we are also satisfied that this report only refers to likely ASD traits in respect of sensory issue. Also, the Dr Reed report was shared with Nadine Anderson on 24 June 2020. The claimant sent the Dr Reed report to Emma Highland by email on 29 May 2020. However, was nothing in this email that expressly stated that the report was confidential. Emma Highland took the report to be confidential because (at p1733), in an email dated 5 June from Emma Highland to Jackie Gibson and Daphne Clarke she stated '*Liz also shared a private doctor report with me but I won't share that without her consent, however it is insightful'.* We find from this, and the claimant's evidence, that the report was sent to Emma Highland on an unspecified basis: it was neither expressly confidential nor not confidential. Emma

Highland plainly took it to be confidential but did not explain this clearly to the claimant, on the evidence available. However, whether it was confidential or not did not probit Emma Highland from using it to discuss reasonable adjustments at a meeting with her. This is clear from Emma Highland's own email.

361. The claimant's Access to Work report followed an assessment on 27 July 2020 and was provided to the claimant on 5 November 2020 . The claimant referred to having received it in an email to Jackie Gibson, cc'ing Lynn Newport and Russell Harding on the same day. The report expressly identifies the potential Asperger's syndrome and need for neurodiversity training. On 11 November 2020 Russell Harding emailed the claimant, copying in Lynn Newport and Jackie Gibson, discussing the practicalities of putting the recommended adjustments in place, including setting up suppliers, but he stressed that it was the claimant's Access to Work award so it was important that she was happy with any variations made. The claimant was to told that she needed to confirm she was happy with the recommendations and let the respondent know this by email. Following that, purchased orders would be raised.

Additional findings relating to the claim of failure to make reasonable adjustments for disability

362. The second national lockdown started on 5 November 2020. On 7 November 2020 the claimant had a mental health crisis, and she was signed off sick on 9 November 2020. The claimant was also off sick on 17 November 2020. As of 18 December 2020 the claimant was still working things through with Lynn Newport and Russell Harding because this is clearly evidenced by an email from Jackie Gibson on that date. Jackie Gibson asks the claimant for a copy of her recent occupational health report and a copy of the Access to Work report with updates about what has been completed and is still to be completed. The claimant replied to Russell Harding's email of 11 November 2020, asking for the adjustments to be agreed on 18 December 2020, '*having finally been prompted to go through these recommendations, I'm happy with them'*.

363. The respondent did put in place the adjustment of neurodiversity training in so far as it accepted that it should be provided to the claimant, and also it was purchased in March 2021. In light of the claimant not returning to work, it was not ultimately implemented, however. During the claimant's maternity leave it was not known what role she would return to or who her future colleagues would be.

364. An email from Claire Weeks dated 26 September 2024 indicated that she was happy to offer coaching support during a transition back to work.

Additional findings relating to unfavourable treatment arising in consequence of disability

365. Having considered all of the evidence, we do not find as a matter of fact that there was any treatment because of anything arising in consequence of the claimant's disabilities.

366. Referring to the APOC [54], the 'something arising on consequence of the claimant's disabilities was said to be her disabilities' '*impact upon her mannerisms and the way in which her behaviour presents or is perceived by others. The manifestation of [her] disabilities led to her being labelled from at least early 2020 and continuing to at least early 2023, by the Respondent's [staff] as 'combative, challenging, 'difficult' or other synonyms for these. It was the perception of the way in which Claimant [sic] can present arising from her disabilities that resulted in her unfavourable treatment by the Respondent…'*

367. We do not find that the claimant was in fact labelled for the reasons outlined above in respect of other claims.

368. We accept that there were instances of the claimant's behaviour at the respondent which could as a theoretical possibility have been a manifestation of her ADHD and or autism. However, there was no (or insufficient) clear evidence of which instances of behaviour were a

manifestation and those which were not. This is particularly in instances where the presentation of someone with ADHD, and or who is autistic, varies significantly. The claimant's own counsel cross-examined the respondent witnesses on the basis that '*if you have met one autistic person, you've met one autistic person'*. We also did not consider that the evidence established that any particular behavioural event was in fact a manifestation of the claimant's disabilities. We accept that there was, for example, evidence of the claimant either being or being perceived as condescending. However, there was no real evidence that those instances were manifestations of her autism. This is because someone can be condescending without autism, and equally someone who is autistic may well not be condescending.

Conclusions

Direct discrimination on the grounds of disability (Section 13 of the Equality Act 2010)

9. Did all or any of the matters alleged in paragraphs ~~11~~ 13 – 52 (save for 39, 40 and 47 which were withdrawn) of the Amended Particulars of Claim amount to less favourable treatment of the Claimant by the Respondent when compared to a hypothetical comparator or one or more of the named comparators in paragraph 51 of the Amended Particulars of Claim?

10. Are the comparators identified in paragraph 51 of the Amended Particulars of Claim appropriate comparators?

369. We repeat our conclusions above. In light of the facts, many of the allegations in the APOC were not proven. Also, where relevant facts were proven, some of them did not amount to less favourable treatment.

370. We repeat our factual findings about the claimant's comparators above.

371. We conclude that the claimant's comparators are not materially the same as the claimant. This is particularly the case for when the claimant was unsuccessful in competitive recruitment rounds for the particular Public Health roles she sought, or those roles were not available. We consider that the claimant has simply pointed to others who happened to either have a placement or secondment or be successful in a competitive round, but this

is insufficient. The claimant is not comparing like with like. The fact that some people got band 4 roles after the NGDP and the claimant did not does not mean that they are the appropriate comparators. The appropriate comparator would have materially the same skills and experience as the claimant which was not the case here.

372. Also, the claimant had a significant period of maternity and sick leave, and there is no cogent evidence that employees in those positions who were equally similar to the claimant in terms of experience and career stage were treated differently to the claimant.

373. In particular, there are named comparators that the claimant relies on, but they were not in the same material circumstances as her on the facts. This is because, generally, they had greater Public Health experience than the claimant, typically by having completed that placement during the NGDP, or by way of a secondment.

374. Although the claimant has named a large number of people, we do not conclude that there was sufficient objective evidence from which the claimant could establish that they were materially in the same position as her in terms of experience such that they would be appropriate comparators.

375. We also do not consider that the evidence demonstrated that a hypothetical comparator would have been treated any differently than the claimant in the specific allegations that she has made.

11. Was any less-favourable treatment accorded to the Claimant because of one or more of the Claimant's disabilities.

12. Are there facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant? (EqA 2010, s 136(2))

13. If so, has the Respondent shown that it did not discriminate against the Claimant? (EqA 2010, s 136(3))

376. In general, we do not find that any of the respondent's treatment was because of her disabilities. There was no real evidence that the respondent treated anyone else differently, or that the claimant was treated differently because of her disabilities. Also, as set above on the specific allegations, there were good, proper and reasonable explanations for the respondent's treatment of the claimant.

377. For completeness, although we address the claim on a paragraph by paragraph basis above, we also considered whether a different conclusion should be reached if the proven facts were taken cumulatively. However, there was no good reason for us to reach a different conclusion even if the entirety of the respondent's treatment was considered on that basis.

378. We did not find that there were sufficient primary facts proven by the claimant for the burden of proof to shift to the respondent in all the circumstances.

379. For those reasons, the claim of direct discrimination is unsuccessful.

Discrimination because of something arising from disability (Section 15 of the Equality Act 2010)

380. We did not consider that, overall, the burden of proof shifted to the respondent for this claim, in light of the facts established.

381. We find that the claimant has not established primary facts from which we could infer the alleged 'something arising' in consequence of her disabilities.

382. We refer to our factual findings on this issue above. The claimant has also not evidenced anything other than the theoretical possibility that some of her behaviours could have been manifestations of her disabilities (in particular, autism). However, there is no clear evidence which of her behaviours and particulars were, or were likely, in fact to have been manifestations of her disabilities. We did not consider that this was something that in all the circumstances could be inferred as a matter of

common sense given the well-established variety of ways in which autism may present in an individual (something the presentation of the claimant's case expressly accepted). We did not consider that any of the particular behavioural instances evidenced were manifestations of the claimant's disabilities in terms of the evidence available.

383. Although we accept that there may be other cases where the pattern of behaviour is sufficiently well-evidenced that this inference could be made in the absence of expert or professional analysis, as a matter of common sense, we did not consider that the proven behaviour in this case was enough for us to be able to reach that conclusion. The instances were not sufficiently frequent or similar in nature. Also there was good evidence of the claimant's behaviour changing, such as in the improvement between December 2018 and March 2019.

384. In particular, the report of 1 May 2020 (Dr Reed) which identifies ADHD and ASD traits only suggests auditory processing and sensory sensitivities as general terms. This is insufficient to establish that particular instances of behaviour perceived as combative or rude to be manifestations of the claimant's disabilities. In terms of ADHD, the main manifestation evidenced from this report is that ADHD can impact on focus in the workplace. Although the report dated 6 July 2020 identifies that individuals with ASD experience social communication and social interaction difficulties, and likely misunderstandings and miscommunications due to the potential for the claimant to take things literally or miss subtle clues, this is expressed only in very general terms, and is not sufficient to suggest that the particular behavioural instances relied on by the claimant were in fact manifestations of her disability. It is right that the claimant's diagnosis report for ADHD dated 25 September 2021 identifies social communication difficulties and it being difficult for the claimant to make sense of nuances of communication, including non-verbal communication. That report also identifies that the claimant's manner of communication is very direct but this is not expressly identified as a manifestation of ASD. The Tribunal notes that an individual may well have a direct manner of communication and not be autistic.

385. We did not consider that the generic materials relied on by the claimant, particularly about autism, were sufficient to establish what was in fact the case for her.

386. Also, many of alleged incidents of unfavourable treatment in paragraphs 11-54 of the APOC fail as a matter of fact for the reasons set out above, both in relation to the factual findings and (where appropriate) because it was not unfavourable treatment. Those allegations would also fail in any event.

387. It is not necessary for us to address the global knowledge defence in all the circumstances, generally, save for our specific conclusions above.

Harassment (Section 26 Equality Act 2010)

Did the Respondent's behaviour set out in paragraphs 11-50[1] and paragraph 70 of the Amended Particulars of Claim amount to:

a. unwanted conduct;

b. related to the Claimant's disability;

c. which had the purpose or effect of violating the Claimant's dignity and/or creating an environment that was intimidating, hostile, degrading, humiliating or offensive to the Claimant? (EqA 2010, s 26(1))

388. To the extent that the allegations in paragraphs 11-50 (save for 39, 40 and 47, which were withdrawn) were not proven as set out in the factual findings above, those elements of the claim of harassment cannot succeed.

389. As set out in terms of individual allegations of behaviour, much of it did not, on the facts, relate to the claimant's disability. Although some of it did have the statutory effect, when it did we found that the effect was not reasonable in all the circumstances (save as expressly found in relation to the single act identified by the respondent as indirect discrimination).

390. In addition to our findings on the individual allegations, we do not find that any of the conduct had the purpose of violating the claimant's dignity, and/or

[1] Allegations 39, 40 and 47 withdrawn.

creating an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant. This is because there was no cogent evidence that any of the conduct was done with that purpose or was otherwise intentional. We are satisfied that when any of the respondent's conduct did have an upsetting effect on the claimant this was entirely unintentional and it was not done with the statutory purpose. On the contrary, it is clear from our factual findings that the respondent was seeking to engage constructively with the claimant around the issue of job applications, reasonable adjustments, and other issues, and a significant amounts of its efforts were supportive in nature. This was particularly the case with the later work when placements suited to the claimant's interests were available, but not ultimately taken up by the claimant.

391. We also considered whether any of our conclusions on the individual allegations should change once the overall course of conduct (as proven) was taken into account. However, we did not conclude that there was anything about the overall course of conduct which changed our conclusions above.

392. We did, however, find a single instance of harassment proven for the reasons outlined above, in relation to that one job application.

393. To that extent, at that extent only, the claim of harassment succeeds.

<u>Failure to comply with duty to make reasonable adjustments (Sections 20–21 of the Equality Act 2010)</u>

17. Did the Respondent apply one or more of the alleged PCPs to the Claimant as set out in paragraph 56 of the Amended Particulars of Claim? (EqA 2010, s 20(3)).

18. In respect of each alleged PCP, did that PCP put the Claimant at a substantial disadvantage in comparison with persons who are not disabled? (EqA 2010, s 20(3))

The alleged PCPS are as follows:

(1) A requirement for employees to perform and behave in a 'neurotypical' manner, adhering to unwritten rules regarding social factors and expectations include

(a) Being expected to adhere to specific rules of social etiquette in the workplace despite not being informed what those are

394. We repeat our factual findings above on this issue, including that we accepted Ms Weeks' evidence that there was no such requirement. Although the claimant's evidence referred to the Caseley article (p3557), we find that the reference to '*unwritten layers of internal politics'* this is not the same, on a proper analysis as this specific part of the PCP alleged. Internal politics is not the same, or sufficiently the same, as specific rules of social etiquette.

395. Overall, we do not find that there claimant has demonstrated clear evidence of this element of the alleged PCPs. There is a lack of cogent evidence of there in fact being any particular social etiquette at the respondent, or unwritten rules. The claimant has not identified exactly what these alleged unwritten rules or demonstrated their existence from the evidence of others. Also, we do not consider that the brief reference to internal politics in the Caseley article is sufficient to show the PCP alleged. There is a substantive difference between internal politics and unwritten rules of social etiquette. Where the respondent did have clear expectations of behaviours, these were in the written Code of Conduct.

(b) Being expected not to question things, including workplace practices and processes relating to decision-making

396. We do not find this proven as a question of fact for the reasons outlined above. Those facts do not amount, on our analysis, to a state of affairs or otherwise a PCP.

(c) Being expected to automatically recognise where rules of hierarchy were present and considered by others to be important.

397. We do not find this proven as a question of fact for the reasons outlined above. Those facts do not amount, on our analysis, to a state of affairs or otherwise a PCP.

398. Even if we are wrong about the feedback given to her during her 3 month probation review, and this is supportive of this or any other element of the PCP alleged, it was a single incident and insufficient on its own to establish a state of affairs or practice applied by the respondent.

(d) Being expected to remain quiet regarding issues where one had relevant knowledge and where one was able to identify points that appeared not to have been considered or addressed by some in positions more senior in the hierarchy.

399. We do not find that this element of the alleged PCP is supported by the evidence. In fact, elements of the evidence contradict this suggestion, such as the claimant's ability through the ABLE network to challenge things within the respondent, in particular to senior individuals. Although the claimant's perception that these efforts were not always responded in the manner she wanted them to be, it remains the case that the claimant was able to successfully and significantly improve the policy and procedures around disabilities. This is contradictory to the environment alleged by this PCP. There is no clear evidence of the claimant being expected to remain quiet, either.

400. Although the claimant relies on an email from Alison Davies to Sam Reilley dated 14 November 2018 as evidence about perceptions of her doing the wrong thing, we find that all this email demonstrates is a query being raised about some comments that the claimant made in November 2018. It does not demonstrate the PCP alleged.

401. Also, the claimant's 19 January 2021 email to Sarah Newman, Executive Director of Children's Services, about an issue of concern to the ABLE network which clearly shows points the claimant feels she is knowledgeable about. Ms Newman replied to thank the claimant for raising the point with her (p2215). This evidence undermines the alleged PCP.

(e) Being expected not to query senior management regarding matters of equality and inclusion for disabled staff and members of the public

402. We do not consider that this element is proven for the reasons above, including where it overlaps with other elements. There is no clear and cogent evidence that the respondent expected the claimant not to query senior management regarding matters of equality and inclusion for disabled staff and members of the public. On the contrary, the claimant was encouraged to raise issues of quality and inclusion through the ABLE

network. The fact that the claimant was not always happy with the response does not demonstrate the element of the PCP alleged. Equally, the fact that the claimant significantly worked on, and largely drafted the respondent's new disability policy during the relevant period directly contradicts the alleged element of the PCP being applied by the respondent.

(f) Being expected to, in effect, be capable of reading others' minds and working out how they wished to be addressed in a given moment

403. We consider the claimant did establish this element of the PCP alleged but only to the extent that the respondent had a practice of expecting a certain degree of empathy from its staff, namely an ability (to a degree) to be able to put yourself in another's shoes. We were careful here to not take an overly narrow or literal interpretation of the PCP. We reach our conclusion because of our factual findings earlier about the feedback given to the claimant in her 3 month probation review and Nadine Anderson's evidence about feedback.

404. We therefore find this PCP proven, but only to this extent and with regards to this element. We accept that this element of the PCP is an expectation of individuals acting in a neurotypical manner, to a degree.

405. We also conclude that this proven element of PCP(1) did put the claimant at a substantial disadvantage. However, we consider this to only put the claimant at a disadvantage because of her autism spectrum disorder as opposed to her other conditions.

406. There is no cogent evidence that the claimant's hEDS or dyslexia has any impact on her ability to emphasise with others or 'read the room'.

407. In terms of ADHD, as set out above, Dr Reed (p795) assessed the difficulties arising from the disability as impacting on the claimant's attendance, focus, and ability to engage in education. Also, it can impact on attendance, focus and ability to engage in the workplace. None of the suggested adjustments for ADHD related to being able to empathise with

others or understand how they may feel. This report also included that the claimant '*may have some very well masked residual ASD symptoms around auditory processing issues and sensitivities*.' These symptoms do not relate to empathy.

408. We consider that the medical evidence referred to above in our factual findings supports our conclusion above on substantial disadvantage.

409. Although one of the claimant's occupational reports collates the two diagnoses, we considered this to be insufficient to suggest that the claimant's difficulties arose from her ADHD diagnosis in all the circumstances.

410. There was also no cogent evidence to suggest the anxiety and depression caused this difficulty.

411. We also considered all of the other reports and medical evidence I detail, and find that they do not support this difficulty being the claimant's ADHD as opposed to her ASD. The occupational health report dated 22 March 2023 also attributed social issues to the claimant's autism.

(g) Being expected to understand, without it having been explained, a workplace culture in which there existed many unspoken expectations, including an expectation not to directly approach senior decision-makers even though they appeared best placed to address a particular issue

412. We do not consider this element of the PCP proven for the same reasons explained above. There is no cogent evidence that this element of the PCP was applied by the respondent. On the contrary, there were instances interacting with senior members of staff to address particular issues and the claimant was not dismissed and nor was it suggested that she had broken an unwritten rule by going to someone more senior. Her interactions included, for example, those with the Deputy Chief Executive.

413. The claimant sought to rely in part on an allegation that on 21 October 2019 issue around staff networks and a question about gender identity. However, we do not consider this to be evidence of the PCP alleged. All staff were criticised, jointly, across a variety of staff network types. The criticism was not about anything that can be properly considered 'neurotypical'; rather it was just how the management wanted to approach that type of issue. The conduct was entirely unrelated to issues about neurodiversity and if it had been a mistake then it was one made by all of the participants whether neurodiverse or not. Also, it was a one off event not proven to be part of a wider state of affairs.

(2) An expectation that staff would exhibit 'emotional intelligence'

414. We do not find that the evidence, overall, is that the respondent applied the PCP alleged. The mentions of the word emotional intelligence are insufficient to demonstrate this as a state of affairs.

415. We accept that the NGDP person specification included the ability to […] demonstrate an understanding of […] emotional intelligence. This is not the same as exhibiting it. Also, the issue raised about the Lord Mayor is less about emotional intelligence, more that challenging a director on terminology was not appropriate. This is more about demonstrating political sensitivity than emotional intelligence. Also, to raise the concept of emotional intelligence during the difficulties of the pandemic is unsurprising, and not in of itself demonstrate of the PCP. Simply saying that a thing may be important is the same as a general expectation, such as those in the respondent's Code of Conduct about interpersonal behaviour expectations.

416. The fact that the three month review plan (p995) includes a mention of emotional intelligence and self-awareness as part of an NGDP capability area, but all that follows is a reference to a mindtools article. This is insufficient to demonstrate the alleged PCP.

417. We also did not feel that the claimant's 5-month probation assessment including the extract above was sufficient to demonstrate the alleged PCP.

Rather, it was simply describing one of the skills that the claimant had developed, amongst other things. The mention of emotional intelligence by Nadine Anderson on 1 April 2022 is not evidence of the PCP given that it is in the context of the NGDP capability framework.

(3) The requirement for all job applications to participate in a standard competitive interview process irrespective of matters affecting their ability to successfully do so.

418. We do not find that the evidence, taken as a whole, demonstrates that the alleged PCP was in place, particularly given our specific factual findings on this issue. The practices of the respondent were demonstrably to adopt a flexible recruitment approach, to at least a degree. The respondent did not require all candidates to perform in the manner alleged.

419. If we are wrong about this PCP, we do not find that the evidence, overall, showed that the practices of the respondent more generally on interviewing put the claimant at a substantial disadvantage in comparison with persons who are not disabled. In particular, the respondent (generally) guaranteed an interview to disabled applicants who met the essential criteria. This is an advantage to disabled applicants. Also, the claimant's own evidence did not demonstrate any particular disadvantage arising from the practices of the interview process. Although the claimant relies on disadvantages that some autistic people may face with some interview practices in the employment world more generally, this was not particularly cogent evidence about her own experiences. The main argument that the claimant had for her suffering a disadvantage was her perception that she had sufficient experience for the roles, and (generally) was rejected for that reason. She disagreed with the conclusions of the interview panels about the sufficiency of her experience. However, this does not demonstrate on its own that the interview process caused her disadvantage. There was no clear evidence that the process overall – which included her written application and CV – obscured relevant experience that the claimant did in fact have. We prefer the explanation that the rejections were because of the objective facts about the claimant's level of experience as opposed to her having the experience it not coming out in interview as a result of any of her disabilities.

Specifically, there was no clear evidence of any communication difficulties on the part of the panel or the claimant, or perception difficulties on the part of the claimant or panel, which led to her rejections.

19. Did the Respondent know or ought it to have known that the Claimant was likely to be put at a substantial disadvantage by that PCP? (EqA 2010, Schedule 8, Part 3, para 20)

420. We focus on the knowledge of autism because it is only that condition, in light of our findings above, which put the claimant at a substantial disadvantage.

421. We do not find that the points at which the claimant was awaiting a diagnosis were sufficient (even to the extent that some of the respondent witnesses were aware of the pending assessment and results) to say that the respondent knew or ought to have known that the claimant was likely to be put at a substantial disadvantage from the proven PCP. This is because it was too speculative at that stage. Also, the claimant had a history of not promptly disclosing reports to the respondent, or providing express consent for wider distribution or for the respondent to be able to act on those reports. The claimant often wanted reports to be rewritten. Also, the claimant's autism diagnosis was demonstrably slow to be obtained.

422. In those circumstances we do not find that, even if the respondent had made further enquiries, this was likely to give them sufficient information about the claimant to know what difficulties she was having and what steps should have been in place to address them. The claimant herself did not know about the autism diagnosis until November 2020. It was not reasonable to have ought to have known anything before that point. Given the claimant's history of reluctance to promptly share material with the respondent, we do also not find that the respondent was necessarily likely to have gained the relevant knowledge from any enquiries made. Also, given the well-established delays many people (including the claimant) have in receiving an autism diagnosis, we do not find that any reasonable enquiries (such as if the respondent had suggested that the claimant be assessed for autism) would have been likely to have revealed any difficulties at an earlier stage.

423. We refer to our factual findings above on knowledge of substantial disadvantage. We do not consider that the reference to likely ASD traits in the Dr Reed report to be sufficient to put the respondent on notice, or constructive notice, of any substantial disadvantage from the proven PCP in all the circumstances. This is particularly so given that even on the claimant's case there is a wide degree of variation in difficulties and strengths in autistic people: her counsel repeatedly cross-examined the respondent witnesses on the basis of '*If you have met one autistic person, that means you have met one autistic person'*. The difficulty in inferring substantial disadvantage is increased given that the Dr Reed report refers only to likely ASD traits. It did not follow from this that the respondent did or ought to have known that the PCP we have found proven would have put the claimant at any kind of disadvantage. Also, by that stage the respondent had already put in train the Access to Work assessment (27 July 2020 onwards) and we consider this reasonable in terms of further enquiry.

424. We consider the point at which the respondent knew that its practices were likely to put the claimant at a substantial disadvantage in terms of empathy were when it received the access to report on 5 November 2020. This is because the report expressly identifies (albeit at that stage potential) Asperger's syndrome and the need for neurodiversity training. It follows from this report that the claimant was someone for whom neurodiversity training was warranted. It can be properly inferred from this that as someone who was neurodiverse she would benefit from training. The need for training indicates that the claimant was disadvantaged without it, and it can reasonably be inferred that this disadvantage flowed from the state of affairs at the respondent.

20. Did the Respondent take such steps as were reasonable to avoid that disadvantage? (EqA 2010, s 20(3)). In particular, would it have been a reasonable adjustment for the Respondent to have taken all or any of the steps alleged in paragraphs 58-64 of the Amended Particulars of Claim?

425. Save as below, it would not have been a reasonable adjustment for the respondent to have taken the steps suggested by the claimant. We do not consider that the evidence established that the steps in paragraph 58(1) APOC were related to the PCP proven or would have been likely to avoid

or otherwise mitigate, in whole or in part, the claimant's disadvantage. The claimant's skills and interests, trials and secondments, and support with recruitment would not, in our judgment, have mitigated the very specific disadvantage caused by the (narrow) proven PCP. We also do not consider that the adjustments suggested by Dr Reed would have addressed empathy, neither those suggested by Sharon Allison, Dr Hakeen or Dr Lewis.

426. We also do not find that the disadvantage found proven called for any adjustments to the respondent's recruitment practices. This is because we have not found that they in fact caused the claimant any particular difficulty as set out above.

427. We accept that the adjustment of training was likely to mitigate the difficulty, including training and guidance to help other staff be more aware of the claimant's disability, and coaching. This also covers the suggested Access to Work adjustment of neurodiversity disability awareness training, to correct any pre-conceptions and misunderstanding, and disability impact training, and coping strategy training.

428. We also accept that reviews and catchups were likely to mitigate the difficulty. We accept that sensitive, clear and direct feedback with constructive criticism would be likely to mitigate the difficulty. We accept that providing reassurance in stressful situations would be likely to mitigate the difficulty. These are clearly matters, as a matter of common sense, which would likely to have assisted the claimant in all the circumstances of this case.

429. As to whether the respondent took such steps as were reasonable to avoid the proven disadvantage arising from the proven PCP, we repeat our facts above about when the claimant was off sick and her approval of the Access to Work recommendations. We also took into account the chronology of events overall, including the claimant's maternity leave. We consider it to have been reasonable for the respondent to await the claimant's approval of the Access to Work recommendations. This is because to force the

adjustments that were likely to assist the claimant without approval would have been plainly inappropriate should they have in fact been unwanted.

430. We find that it was reasonable for the respondent to delay the adjustment of training until the claimant's return from maternity leave. This is because although the claimant was in a role at that stage, it was not anticipated to be a long-term role. It would unlikely to be effective to provide the claimant with her training at that stage because her next role was unknown. It was premature to train those working with her because her colleagues were highly likely to change. The role she would be undertaking was unknown and it was likely that this should be taken into account in the relevant training. The respondent purchased the relevant training in March 2021. We accept that the only barrier to using it was the fact that the claimant was still away from work, and it was not reasonable to put the training in place whilst the claimant was on maternity leave and later off sick. The claimant also could not reasonably have been expected to undertake work training whilst on maternity leave or whilst she was off sick. Therefore we are satisfied that the respondent did all that was reasonable in the circumstances with respect to training: at the point at which the respondent knew about the substantial disadvantage, it acted reasonably in obtaining the training but delaying the implementation training until the appropriate point where it would be effective. Training before the claimant's colleges and longer-term role were established was also not likely to reduce her difficulties. We bear in mind Dr Hakeem's report confirming the need for her adjustments to be highly individualised to the circumstances, above.

431. We also find that the same applies for the adjustments of coaching and 1-2-1s. We find that respondent did not have a sufficient opportunity to put those in place before the claimant was off sick and on maternity leave given the overall chronology. The respondent was reasonable in not providing specific 1-2-1s and coaching to help the claimant reduce the disadvantage from difficulties she had with empathy during that period. Also, we consider that any line manager providing the 1-2-1s and or individual who would have been providing the coaching would have needed to be doing this in the context of the neurodiversity training having been delivered.

432. We refer also to the email from Claire Weeks dated 26 September 2024 indicating that she was happy to offer coaching support to the claimant during a transition back to work. We are satisfied that had the claimant returned to work, the respondent would have put place the required coaching and training her line managers (such that regular 1-2-1-s could take place, to include addressing issues around empathy which arise). Unless and until the claimant returns to work, it is not reasonable for the respondent to put those adjustments in place. Also, it was reasonable for the respondent to not put these adjustments in place during the period when the claimant was suffering from a serious mental health condition. Such adjustments could easily have been counterproductive, or ineffective, during that time.

433. In all the circumstances, therefore we find that the respondent did in fact take all such steps as were reasonable to avoid the disadvantage proven.

434. For those reasons the claim of failure to make reasonable adjustments for disability is unsuccessful.

435. For completeness, we decided in terms of jurisdiction that time ran from 18 December 2020 for this claim. This was the point at which the claimant agreed the Access to Work report and therefore it was from that point (subject to reasonableness, above), that the respondent was under a duty to act. We accept that this claim is therefore substantially out of time. However, we accept that the claimant relies on the evidenced difficulties with her mental health as the reason for the delay in her bringing her claim. We agree that during at least some of that period the claimant was undergoing considerable mental distress. There is supporting evidence on this point from her doctor. There were also ongoing discussions with her employer about reasonable adjustments during the relevant period. We also do not consider that the respondent has been particularly prejudiced by any delay in bringing this claim. In terms of this particular allegation, there has been no real forensic prejudice to the respondent in terms of evidence, and the relevant documentations and witnesses were available. In all the

circumstances, we found it was just and equitable to extend time on this claim.

436. We did not consider that, overall, the burden of proof shifted to the respondent for this claim, in light of the facts established.

Jurisdiction

437. We note that the claims, in general, have failed on the merits (with the one exception above). That particular allegation is in time.

438. However, for completeness, we did consider whether or not it would be just and equitable for us to extend time on any of the complaints which were potentially out of time. We decided that it would be just and equitable for us to do so. Whilst it is correct that for a significant amount of the allegations the respondent did suffer a degree of prejudice because of the passage of time, both in terms of witness memory and witness availability, we did not consider that to be sufficiently great to find that it would not be just and equitable to extend time. In general, the respondent did have live witnesses who could speak to the majority of the allegations, and also there was a wealth of documentary evidence (such as for the oldest allegations, like the claimant's December 2018 probation review).

439. We also considered that we as a tribunal were able to fairly determine those allegations on the evidence available. We also consider that the medical evidence relied on by the claimant as to why the claims were not brought sooner was sufficient. It was not in dispute that for a significant amount of the relevant period the claimant was off work sick and that her mental health had deteriorated significantly. In particular, the letter of Dr Hakeem dated 8 January 2024 stated that *'I do not consider that she would have been able to commence a formal challenge to her employer's actions any earlier than she did. I write now to reiterate that opinion.'* Dr Hakeem's reasons are more fully set out in that letter.

440. Overall, we considered it just and equitable to extend time for any allegation that was out of time.

Approved by
Employment Judge B Smith
6 June 2025

SENT TO THE PARTIES ON

17 June 2025
.....

.....
FOR THE TRIBUNAL OFFICE

Appendix A – Reasonable adjustments

a) *As much notice as possible should be given of any hearing or application in order to enable the claimant to prepare.*

b) *In respect of any hearing the claimant needs to have a full and clear explanation of the nature and purpose of the hearing as well as an agenda for what items will be dealt with and in what order.*

c) *So far as is practicable, any agenda should be adhered to as closely as possible.*

d) *If it becomes necessary to deviate from a planned agenda, as much notice as possible should be given to the claimant with a clear explanation for the reasons for the change.*

e) *Where possible, hearings should be in person, rather than by CVP*

f) *The claimant would prefer not to be expected to wait outside the Tribunal room in a corridor with the respondent's witnesses and representatives, but would rather be allowed to enter either before or after them.*

g) *Prior to being cross-examined, the claimant should be provided with a broad outline of the order in which topics are to be discussed and during cross-examination she should be informed when a topic has been completed and the next topic to be discussed. Having a clear understanding of the structure of the process will enable her to follow the process better and should reduce her anxiety and the risk of becoming anxious, confused and/or disoriented.*

h) *The claimant is likely to need additional short breaks and would prefer these to be regular and predictable, but she is conscious that it is possible she may need to have a break at short or no notice if she becomes overwhelmed.*

Appendix B – Agreed List of Issues[2]

Claims

1. The Claimant brings the following claims:

   (1) Direct discrimination on the grounds of disability

   (2) Discrimination arising from disability

   (3) Failure to make reasonable adjustments

   (4) Harassment related to disability

   ~~(5) Victimisation~~

Jurisdiction

2. Have the Claimant's claims been brought within three months of the acts complained of, taking into account the effect of the 'stop the clock' provisions in respect of early conciliation? (EqA 2010, ss 123(1)(a) and 140B)). Any act prior to 21 February 2023 is potentially out of time

3. In respect of the Claimant's complaints which are based on the Respondent's failure to do something, when is the Respondent to be treated as having decided those things? (EqA 2010, s 123(4))

4. In respect of any complaints which are potentially out of time, do they form part of a continuing act when taken together with acts which are in time? (EqA 2010, s 123(3)(a))

5. If the complaints were not submitted in time, would it be just and equitable to extend time? (EqA 2010, s 123(1)(b))

Disability

6. The Claimant has the following disabilities:

   (1) hypermobility Ehlers-Danlos Syndrome (hEDS);

   (2) attention deficit hyperactivity disorder (ADHD);

   (3) Autistic Spectrum Disorder (ASD);

   (4) Dyslexia;

   (5) depression and anxiety.

[2] Withdrawn claims and allegations are struck through.

7. The Claimant asserts that these lifelong conditions are comorbid with one another, and there is symptom overlap between them; therefore, she is unable to divide her experiences of her conditions.

8. The Respondent admits that the Claimant is disabled under the Equality Act 2010. In terms of the dates of knowledge of the various disabilities:

   (1) hEDS: The parties agree that this disability was disclosed by the Claimant in her pre-employment questionnaire.

   (2) ADHD: The parties agree that the Claimant shared her diagnosis with Nadine Anderson on 11 June 2019. The Respondent asserts that (other than Nadine Anderson) the Claimant's supervisors did not have knowledge until May 2020.

   (3) ASD: The Claimant relies upon a conversation with Nadine Anderson on 11 June 2019 as the earliest date. The Respondent asserts that it did not have knowledge until May 2020.

   (4) Dyslexia: The Claimant relies upon a conversation with Nadine Anderson on 11 June 2019 as the earliest date. The Respondent asserts that it did not have knowledge until May 2020.

   (5) Depression and anxiety: In the absence of full access to her emails, the Claimant relies upon a Disability Network article in May 2020 as the earliest date and emails and conversations in May and June 2020 as set out in paragraph 6(4) of the Amended Particulars of Claim. The Respondent asserts that difficulties were first discussed with Jackie Gibson in August 2020 (and accepts that by August 2021 the Claimant's conditions of anxiety and depression had lasted 12 months).

Direct discrimination on the grounds of disability (Section 13 of the Equality Act 2010)

9. Did all or any of the matters alleged in paragraphs ~~11~~ 13 - 52[3] of the Amended Particulars of Claim amount to less favourable treatment of the Claimant by the Respondent when compared to a hypothetical comparator or one or more of the named comparators in paragraph 51 of the Amended Particulars of Claim?

10. Are the comparators identified in paragraph 51 of the Amended Particulars of Claim appropriate comparators?

11. Was any less-favourable treatment accorded to the Claimant because of one or more of the Claimant's *disabilities*.

12. Are there facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant? (EqA 2010, s 136(2))

13. If so, has the Respondent shown that it did not discriminate against the Claimant? (EqA 2010, s 136(3))

[3] Allegations 39, 40 and 47 withdrawn.

Discrimination because of something arising from disability (Section 15 of the Equality Act 2010)

14. Did the Respondent know or could it have been reasonably expected to know that the Claimant had a disability? (EqA 2010, s 15(2))

15. Did the Respondent treat the Claimant unfavourably as alleged in paragraphs 11-54[4] of the Amended Particulars of Claim because of something arising in consequence of her disability? (EqA 2010, s 15(1)(a))

16. Was the Respondent's treatment of the Claimant a proportionate means of achieving one or more of the alleged legitimate aims set out in paragraph 201 of the Amended Grounds of Resistance?

Failure to comply with duty to make reasonable adjustments (Sections 20–21 of the Equality Act 2010)

17. Did the Respondent apply one or more of the alleged PCPs to the Claimant as set out in paragraph 56 of the Amended Particulars of Claim? (EqA 2010, s 20(3))

18. In respect of each alleged PCP, did that PCP put the Claimant at a substantial disadvantage in comparison with persons who are not disabled? (EqA 2010, s 20(3))

19. Did the Respondent know or ought it to have known that the Claimant was likely to be put at a substantial disadvantage by that PCP? (EqA 2010, Schedule 8, Part 3, para 20)

20. Did the Respondent take such steps as were reasonable to avoid that disadvantage? (EqA 2010, s 20(3)). In particular, would it have been a reasonable adjustment for the Respondent to have taken all or any of the steps alleged in paragraphs 58-64 of the Amended Particulars of Claim?

~~**Victimisation (Section 27 of the Equality Act 2010)**~~

~~21. Did the Claimant do one or more of the protected acts set out in paragraph 67 of the Amended Particulars of Claim within the meaning of section 27(2) of the Equality Act 2010? In particular:~~

~~(1) The Respondent admits that the matters set out in paragraphs 67(1)(ii),(iii); 67(8), 67(12), 67(14) and 67(15)~~

~~(2) The Respondent denies that the matters set out in paragraphs 67(2)(a), 67(3)(a), 67(3)(f), and 67(4) of the Amended Particulars of Claim are protected acts.~~

~~(3) The Respondent makes no admissions as to the other alleged protected acts set out in paragraph 67 of the Amended Particulars of Claim.~~

[4] Allegations 39, 40 and 47 withdrawn.

~~22. Did the Respondent subject the Claimant to one or more of the alleged detriments set out in paragraph 69 of the Amended Particulars of Claim because the Claimant had done a protected act or the Respondent believed that the Claimant had done, or may do, a protected act? (EqA 2010, s 27(1))~~

Harassment (Section 26 Equality Act 2010)

23. Did the Respondent's behaviour set out in paragraphs 11-50[5] and paragraph 70 of the Amended Particulars of Claim amount to:

    (1) unwanted conduct;

    (2) related to the Claimant's disability;

    (3) which had the purpose or effect of violating the Claimant's dignity and/or creating an environment that was intimidating, hostile, degrading, humiliating or offensive to the Claimant? (EqA 2010, s 26(1))

24. The Respondent denies that the behaviour set out in the following paragraphs of the Amended Particulars of Claim involved conduct relating to the Claimant's disabilities: 12, 13, 14, 15, 16, 17, 18(2), 18(3), 18(4), 19, 20, 22, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 44, 46, 49, 51, 70(1), 70(2), 70(3), 70(4), 70(5), 70(6), 70(7), 70(8) and 70(10).

    [NOTE: In paragraph 219 of the Amended Grounds of Resistance these paragraphs of the Amended Particulars of Claim are denied by reference to what the Respondent has described as "allegations (2), (4), (5), (6), (7), (8), (9), (10), (12), (15),(16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (30), (31), (32), (33), (34), (36), (38), (39)")]

25. The Respondent does not admit that the behaviour set out in the following paragraphs of the Amended Particulars of Claim involved conduct relating to the Claimant's disabilities: 18(5), 33, 38, 43, 45, 50 and 70(9).

    [NOTE: In paragraph 220 of the Amended Grounds of Resistance these paragraphs of the Amended Particulars of Claim are denied by reference to what the Respondent has described as "allegations (29), (34), (35), (37)". However, some of the paragraphs included in those "allegations" are already denied in paragraph 219 of the Amended Grounds of Resistance and so have not been repeated here as non-admissions]

26. The Respondent disputes that any of the other behaviour in paragraphs 11-50 and paragraph 70 of the Amended Particulars of Claim happened at all – see paragraph 220 of the Amended Grounds of Resistance.

Remedy

27. What, if any, declaration should be made?

[5] Allegations 39, 40 and 47 withdrawn.

28. What, if any, compensation should be awarded?

29. Was it foreseeable that the Respondent's conduct and treatment of the Claimant could and did cause harm to her and to her mental health?

30. Should a Recommendation be made?