EMPLOYMENT TRIBUNALS

Claimant: Ms S Mackenzie-Wintle

Respondent: The Sheffield College

Heard: in Sheffield and, on 23 July, as a hybrid hearing

On: 22, 23, 24 and, in chambers, on 25 July 2025

Before: Employment Judge Ayre
Ms G Fleming
Mr D Wilks

Representation

Claimant: Mr F Levay, counsel
Respondent: Mr N Wilson, solicitor

RESERVED JUDGMENT

1. The complaint of harassment related to disability is not well founded. It fails and is dismissed.

2. The complaint of victimisation is not well founded. It fails and is dismissed.

REASONS

Background

1. On 19 May 2024 the claimant presented a claim to the Employment Tribunal following a period of early conciliation that started on 10 March 2024 and ended on 19 April 2024. Her claim was presented jointly with that of a Mr Barnett. The two

claims were separated at a Preliminary Hearing on 15 November 2024.

2. A second Preliminary Hearing took place on 3 March 2025. At that hearing it was clarified that the claims the claimant is bringing are for harassment related to disability and victimisation.

3. The disability relied upon by the claimant is autism. The respondent admits that the claimant is disabled within the legal definition of disability in the Equality Act 2010.

4. A third Preliminary Hearing took place on 23 June 2025 to consider an application made by the claimant to amend her claim. The application was partially granted.

The hearing

5. The hearing took place in Sheffield. At the request of the respondent two of its witnesses gave their evidence by video link. The second day of the hearing was therefore a hybrid hearing.

6. On the day before the hearing was due to start the claimant applied to amend her claim to change the dates of one of the allegations. The respondent did not object to the application and it was unanimously agreed that the claimant should be allowed to amend her claim.

7. There was an agreed bundle of documents running to 502 pages. Following a request by the claimant's representative, the respondent was asked to provide an unredacted copy of one of the documents in the bundle, which was an email exchange between unidentified individuals. The document had been supplied to the claimant in response to a data subject access request. Mr Wilson made enquiries about the document with his client and informed the Tribunal that the document had been destroyed. Questions about the redacted document were put to some of the claimant's witnesses and Mrs Marshall-Preece told the Tribunal that the email exchange was between her and Sue Elliott.

8. We heard evidence from the claimant and, on her behalf, from her friend and former colleague Brett Barnett.

9. For the respondent we heard evidence from:

    1. Jane Parr, Curriculum Manager – Media and Games;

    2. John Taff, Lecturer in Film & Television;

    3. Katie Marshall-Preece, Academy Director for Creative and Arts Industries.

    4. Allan Colley, Technical Trainer; and

    5. Sue Elliott, People Business Partner;

10. Ms Parr and Mr Taff gave evidence by video link.

The issues

11. The issues that fell to be determined at the hearing were agreed, at the start of the hearing, as being the following:

Time limits

12. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 11 December 2023 may not have been brought in time.

13. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? In particular:

    1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

    2. If not, was there conduct extending over a period?

    3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

    4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? In particular:

        1. Why were the complaints not made to the Tribunal in time; and

        2. Is it just and equitable in all the circumstances to extend time?

Harassment related to disability

14. Did the respondent do the following things:

    1. During a meeting on 31 March 2023 did Ms Parr state that the claimant and Mr Taff needed to work on their communication and did Ms Parr make the comment "*at least you are both looking at each other now*"?

    2. Was the meeting on 31 March 2023 arranged to discuss the claimant's communication skills?

    3. The respondent accepts that on or around 20 October 2023 Ms Parr referred to the claimant being able to work from home during a conversation with Sally Johnson (former colleague). Did Ms Parr discuss the details of the claimant's RAP and/or her autism with Ms Johnson?

    4. On 6 December 2023 did Ms Parr have a discussion with Bethan Hyatt (a colleague) during which Ms Parr discussed the details of the claimant's RAP?

15. If the above incidents did take place, was that unwanted conduct?

16. Was it related to the claimant's disability?

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

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

Victimisation

19. The respondent accepts that the claimant's formal grievance dated 28 January 2024 and the commencement of these proceedings were protected acts.

20. The respondent also accepts that:

    1. On 7 February 2024 Ms Marshall Preece (Academy Directory) sent a WhatsApp message to the claimant referring to a job opportunity at another college;

    2. On 22 February 2024 Ms Marshall Preece said that if the claimant repeated anything, she would say that the claimant had sex with a student during a trip to Valencia (which would have been false); and

    3. On 17 March 2024 Ms Marshall Preece passed responsibility for student enrichment with Screen Yorkshire to Mr Taff.

21. Did the respondent do the following things:

    1. On 8 January 2025 did Ms Marshall Preece keep the claimant separated from Mr Taff to the claimant's detriment because it meant she was sole tutor for a cohort and without a fellow tutor with whom to share marking /schemes of work/ideas);

    2. On 8 January 2025 did Ms Marshall Preece dishonestly say that she did not know why Mr Taff would not work with the claimant?

    3. On 8 January 2025 did Ms Elliot fail to bring an end to the separate working of the claimant and Mr Taff despite saying the court case was not a reason for Mr Taff to be separated from the claimant?

       During the course of closing submissions Mr Levay withdrew this allegation. He told the Tribunal that, having heard the evidence of Sue Elliot, the claimant did not want to pursue it. It has, therefore, not been necessary for the Tribunal to determine this issue.

    4. Between 10 and 14 January 2025 did Ms Marshall Preece wrongfully (in the sense of a data breach) access the claimant's disclosure in this case and did

Ms Elliot meet her to discuss it / coach Ms Marshall Preece?

22. By doing so, did the respondent subject the claimant to detriment?

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

24. Was it because the respondent believed the claimant had done, or might do, a protected act?

Findings of fact

Introduction

25. The respondent is a further education college based in Sheffield. The claimant has been employed by the respondent as an Associate Lecturer since 6 January 2020 and her employment is ongoing. The claimant works in the Creative and Arts Academy and teaches film and TV studies. She also acts as a 'course lead'.

26. In January 2023 the claimant received a diagnosis of autism. At the time she reported to Jane Parr who is the respondent's Curriculum Manager for Media and Games. The claimant disclosed her diagnosis to Ms Parr on the 9 January 2023 and a meeting was arranged to discuss what adjustments should be put in place. The claimant also disclosed her autism to Katie Marshall-Preece, Academy Director for Creative and Arts Industries, in an email on 9 January 2023.

27. On 8 March 2023 a Reasonable Adjustments Passport ("RAP") was agreed and put in place. The claimant recorded in the RAP that:

"*I struggle when I don't have visual or audio stimulation or have to sit for extended periods of time without knowing I can get up and move around or nip out of the room…. Being in a social environment all day is mentally draining and struggle with having nowhere to go where I can be alone….. Meeting new people by myself makes me incredibly anxious so I can appear tense or cold…*"

28. It was agreed that as reasonable adjustments the claimant would not be required to undertake classroom invigilation where she was the sole invigilator, and that where possible it would be arranged for her to double up with another members of staff at open evenings.

29. On 20 October 2023 the claimant asked Ms Parr if an additional adjustment could be put in place to allow her to work from home during assessment weeks and admin time to complete marking. Ms Parr immediately agreed to this and suggested that it was added to the RAP.

30. The claimant was very open with colleagues and friends about her autism, and would regularly discuss it in the staff room and other communal areas. There was a conflict of evidence as to whether the claimant was also open about her reasonable adjustments and the RAP. In her evidence to the Tribunal the claimant said she did not discuss her adjustments with colleagues generally and that she considered her

adjustments and the RAP to be a separate and private matter. In cross examination she said she thought she had only mentioned the RAP once to colleagues and that was in response to someone looking for exam invigilators when she felt she needed to explain why she couldn't volunteer.

31. The claimant's evidence to the Tribunal was not consistent with what she had said earlier during an internal grievance process, or with the evidence of the respondent's witnesses. The transcript of her grievance interview records her saying that she was quite open with her colleagues about the RAP and that they would have known about it. She was specifically asked during the grievance meeting if she had told them the detail of the RAP and replied that she had done, and that she was 'pretty open about it'.

32. Alan Colley's evidence to the Tribunal was that the claimant was very open about her health issues in the staff room and often discussed her autism. He recalled a conversation with another colleague Nicola Gabbitas during which the claimant had mentioned that she has a RAP and made a comment, whilst laughing, to the effect that she wondered if she could use the RAP to get out of meetings.

33. Jane Parr's evidence was that Nicola Gabbitas had reported that conversation to her and that several of the claimant's colleagues, in particular Allan Colley, Nicola Gabbitas, Bethan Hyatt, John Taff and Sally Johnson, had relayed to her conversations during which the claimant had talked about her autism and the RAP. John Taff said that the claimant was very open about her autism and would discuss both personal and professional matters quite loudly in communal areas. He overheard her talking about her autism and the RAP.

34. We find, on balance, that the claimant was open with colleagues, not just about her autism, but also about the fact that adjustments were put in place and that there was a RAP, and that she talked regularly about both her autism and her adjustments in the workplace from January 2023 onwards.

<u>31 March incident</u>

35. During the academic year 2022-2023 the claimant and John Taff shared teaching responsibilities for a Level 2 Film and TV course. The claimant was the course lead for the course. It was a requirement that when students took assessments those assessments needed to be marked within a certain time frame and before the students began their final projects. Marking needed to be completed in March 2023. At that time John Taff was not employed full time by the respondent, but worked on a zero hours contract through an agency. He also carried out other work external to the college.

36. On 8 March 2023 John Taff sent an email to the claimant asking about the timeframe for marking the assessments and explaining that he was not sure when he would have time to assess some of the work. Mr Taff had previously informed Jane Parr in January 2023 that he would be unavailable to do the assessments because he had been booked by a client to work abroad for a period of time.

37. The claimant was aware for some time that Mr Taff would not be able to complete the marking within the usual time frame. On 30 March she contacted Jane Parr to inform her that the marking had not been completed. Jane Parr contacted John Taff who completed the work later that day. Ms Parr was concerned that the claimant and John Taff had not been communicating effectively with each other about the assessments and the marking. She decided to arrange a meeting to address these concerns.

38. On 30 March she sent an email to both of them inviting them to a "*chat about how you are communicating with each other as it seems that there is a lack of constructive / helpful conversation happening and this concerns me somewhat for future working relationships.*" The claimant replied by email that she thought the meeting was a good idea. She did not object to the meeting taking place.

39. A meeting took place on 31 March between the claimant, John Taff and Jane Parr. At the start of the meeting the atmosphere between the claimant and Mr Taff was very tense. The claimant said in evidence to the Tribunal that she didn't want to be at the meeting but thought that she had no choice. There was no contemporaneous evidence however to support this, and to the contrary she had told Ms Parr at the time that she thought the meeting was a good idea, and suggested that the meeting take place over a lunchtime.

40. During the meeting Jane Parr said that the claimant and Mr Taff needed to work on their communication. She also told the claimant that as she was the course leader she needed to take responsibility for the situation and there was a discussion about dividing up assessments so that they could help each other out. Another colleague, Sally Johnson, had offered to help out with the marking.

41. All those present at that meeting agreed that by the end of the meeting the atmosphere had improved significantly. The claimant and Mr Taff began communicating with each other positively and both seemed much happier. Ms Parr said to them "*at least you are both looking at each other now*". The claimant did not appear upset by that comment at the time, and as she and Mr Taff left the meeting they had a friendly discussion about the upcoming holidays.

42. On 5 May 2023 the claimant sent a text message to Sally Johnson, a colleague and friend, in which she referred to having a "*very autistic meltdown kinda week*" and commented that "*John's like a new person compared to before Easter which is nice*".

43. The claimant told the Tribunal that she finds communication easier to manage over email and that she avoids conversations which could be confrontational. There is no mention of this in her RAP and Ms Parr's evidence was that she had not noticed any difficulties or issues with the claimant's verbal communication. She found the claimant to be very chatty and open but recognised that could be 'masking'.

<u>20 October conversation with Sally Johnson</u>

44. In or around September 2023 Sally Johnson left the respondent's employment. After she left she remained in contact with some of her colleagues, including Jane

Parr and the claimant.

45. On 20 October 2023 Jane Parr spoke to Sally Johnson by telephone. Ms Parr described the conversation as a friendly catch up. During the conversation Ms Johnson asked how the claimant was getting on, and Ms Parr said that she was doing great. She also said that the claimant had asked to work from home to do her marking, as Ms Parr had just received an email from the claimant on that subject the very same day.

46. Ms Parr's evidence, which we accept, was that she could not recall mentioning the claimant's autism during the meeting, but that she knew Sally Johnson was aware of it because Ms Johnson had worked closely with the claimant and they shared an office. Sally Johnson had also, on other occasions, told her she had heard the claimant talking about her autism and RAP.

47. We find that during this conversation Ms Parr did tell Sally Johnson that it had been agreed that the claimant could do marking from home, but that there was no mention of this being a reasonable adjustment and no mention of the claimant's autism.

48. On 11 November 2023 Sally Johnson told the claimant that she had had a conversation with Ms Parr during which Ms Parr had told her that the claimant would be allowed to do marking from home.

6 December conversation with Bethan Hyatt

49. At some point between the end of September and the start of November 2023 a colleague of the claimant's, Bethan Hyatt, asked Jane Parr if she could work from home. Generally speaking the respondent expects its employees to come into the college to work, and tries to avoid homeworking.

50. Jane Parr had recently refused a request from another colleague to work from home and told Bethan Hyatt this. She asked Ms Hyatt if she could stay and do her work on site, and commented that she knew that may be difficult because the claimant was allowed to work from home. She accepted in her evidence that she may have said that the reason the claimant was allowed to work from home was because she had a RAP in place, and that the reason for this comment was to try and explain to Ms Hyatt why she was being treated differently to the claimant. Ms Parr believed at the time that Ms Hyatt was aware of the claimant's autism and that she had a RAP because Ms Hyatt had previously told her that the claimant had been openly discussing these at work.

Grievance

51. On 5 January 2024 the claimant raised an informal grievance. Ms Marshall-Preece met with the claimant and her union representative to discuss it on 9 January 2024. The claimant's grievance was about Ms Parr's behaviour. It was agreed that there would be a change in line manager and that Mrs Marshall-Preece would take over line management responsibilities for the claimant.

52. On 28 January 2024 the claimant sent a formal grievance to the Director of People Experience and Operations, copying in the Assistant Principal. In the grievance she complained about what she perceived to be bullying and discrimination by Jane Parr. She wrote that:

"*Katie has declined to classify the issues I raised as bullying or discrimination and I feel that, because of this and for the sake of closure on the situation, I need an impartial opinion on whether what has happened is, by college definition and policy, bullying and/or discrimination."*

53. In the grievance the claimant complained of a number of incidents between December 2022 and December 2023 and included complaints about the meeting on 31 March and Ms Parr's conversations with Sally Johnson and Bethan Hyatt. She also referred to a conversation she had with Katie Marshall-Preece in December 2023 about a job application made by the claimant's flat mate and good friend Brett Barnett. Mr Barnett worked at the college on a temporary basis between February 2023 and June 2024. He applied for a permanent position with the college, but his application was unsuccessful.

54. Attempts were made to resolve the issues raised in the grievance through mediation, but unfortunately the mediation was not successful.

55. The grievance was investigated by Rachel Topliss, Director of Student Employability Services. The claimant was interviewed by Ms Topliss on 2 May 2024. During that meeting the claimant added a further 8 complaints to the grievance.

56. In June 2024 Ms Topliss produced a detailed investigation report into the claimant's grievance. None of the claimant's complaints were upheld. Ms Topliss did however make a number of recommendations to management.

<u>7 February 2024 WhatsApp</u>

57. In the summer of 2023 the claimant and Mrs Marshall-Preece attended a three week college trip to Valencia, supporting students who were undertaking work experience as part of a funded programme.

58. Whilst they were in Valencia the claimant and Mrs Marshall-Preece exchanged WhatsApp messages about what they were doing outside of work, and spent some time socialising together. After they returned from Valencia the claimant would often go and have coffee with Mrs Marshall-Preece in her office and discuss work, as friends. As a result, Mrs Marshall-Preece formed the view that she and the claimant were friends. The claimant's evidence to the Tribunal was that she did not consider herself and Mrs Marshall-Preece to be friends.

59. In January 2024 the claimant applied for a role within the college which involved additional responsibilities. She was interviewed for the role but was ultimately unsuccessful. She told Mrs Marshall-Preece about the application and there was a discussion about the claimant's career aspirations Mrs Marshall-Preece believed that the claimant wanted to teach A levels, and said that if she saw any jobs coming up

she would let the claimant know. She was generally supportive of the claimant and wanted her to succeed.

60. A levels are not taught within the Creative and Arts Academy at the respondent, so Mrs Marshall-Preece knew that, if the claimant wanted to teach A levels, she would have to work in another department of the college or at another organisation. In February 2024 Mrs Marshall-Preece saw an advert for a job in another college teaching A levels. On 7 February 2024 she sent a WhatsApp message to the claimant from her personal phone saying "*Barnsley college a level job! Take a look"*. She followed it up with a further message a few minutes later in which she wrote "*Not trying to get rid of you!!!*". The claimant replied to the second message by adding a heart emoji. She also wrote "*Ooh! Thanks for the heads up, will have a look*" followed by a smiling face emoji.

61. The claimant suggested that by sending these messages Mrs Marshall-Preece was trying to get rid of her because she had raised a grievance. We find that was not the case. Rather Mrs Marshall-Preece was trying to be supportive of the claimant and help her find a job that she thought was in line with the claimant's career aspirations. The message came shortly after their discussion about the claimant's recent application for additional responsibilities, and her wish to teach A levels. At the time she sent the message Mrs Marshall-Preece considered the claimant to be a friend, and she wanted to help her out.

Conversation on 22 February 2024

62. In December 2023 the claimant's friend and flat mate Brett Barnett applied for a permanent job with the respondent. The quality of his written application was not good. In December 2023 Mrs Marshall-Preece told the claimant that the application was "shit". Mr Barnett was however subsequently interviewed for the position, as he was already working at the college, but his application was unsuccessful.

63. In February 2024 Mrs Marshall-Preece had a further conversation with the claimant during which she referred to Mr Barnett's application. Mrs Marshall-Preece realised that she should not have been discussing Mr Barnett's application with the claimant and told her words to the effect of 'I shouldn't really be discussing it with you as it's confidential, and if you repeat anything, I will say that you slept with a student during the Valencia trip'.

64. Mrs Marshall-Preece's evidence to the tribunal was that this comment was a joke and that the claimant laughed about it at the time. She also said that the comment was nothing to do with the ongoing grievance.

65. The claimant's evidence to the Tribunal was that, during the conversation on 22 February, Mrs Marshall-Preece had said that she wanted to speak 'off the record' about the grievance and asked her whether she thought Jane Parr had intended any of the actions detailed in the formal complaint. She also said that Mrs Marshall-Preece asked her if she thought her feelings towards John Taff were because Jane Parr saw him as the 'golden boy'. She accepted that she had laughed in response to the 'sleeping with a student' comment but said that she did so out of nerves.

66. In her witness statement to the Tribunal the claimant said that she was completely shocked at the time by the comment. In her grievance interview with Rachel Topliss she was asked about the comment. She told Ms Topliss that at the time the comment was made she thought Mrs Marshall-Preece was joking because of the tone in which it was made, but that sometime later, when she reflected and discussed the comment with others, she had felt shocked by it.

67. During cross examination the claimant said Mrs Marshall-Preece had made the comment jokingly, but that it was a thinly veiled threat, that she was stunned by the comment and it took her some time to process it and tell anyone about it.

68. We find that Mrs Marshall-Preece did intend the comment to be a joke, and did not intend to upset the claimant. We also find that the claimant did not give any indication at the time the comment was made that she was upset by it.

69. Approximately a month after the conversation took place the claimant created a note of the conversation on 22 February. She did not share that note with Mrs Marshall-Preece at the time.

Screen Yorkshire

70. The respondent has a relationship with an external organisation called Screen Yorkshire. Screen Yorkshire is paid by the college and comes onto site to deliver workshops and events for students as part of a student enrichment programme.

71. The claimant was, for a period, the lead contact at the college for Screen Yorkshire. At the start of the 2023-2024 academic year however, she passed the responsibility for Screen Yorkshire to Nick Beale, who is a personal tutor at the college. Normally the lead contact for Screen Yorkshire is a lecturer, rather than a personal tutor who is not involved in curriculum delivery. Nick Beale was not known to Screen Yorkshire and he did not take any steps to develop the relationship or to arrange workshops and events for students.

72. In March 2024 during a meeting with Mrs Marshall-Preece the claimant told Mrs Marshall-Preece that students had been complaining about the amount of content that had been delivered in curriculum meetings. The claimant told Mrs Marshall-Preece that responsibility for Screen Yorkshire had been handed over to Nick Beale. Mrs Marshall-Preece commented that this was not his role as Screen Yorkshire's involvement was in media curriculum industry enrichment, and that the team would need to decide how to use Screen Yorkshire going forward.

73. At an open evening later that month Mrs Marshall-Preece met Richard Knight, who was the college's main contact at Screen Yorkshire. He was with John Taff at the time. Mr Knight approached Mrs Marshall-Preece and asked her who Nick Beale was, as he had heard that Screen Yorkshire had been passed to Mr Beale. As John Taff is a lecturer, has good industry experience and a relationship with Mr Knight, Mrs Marshall-Preece asked Mr Taff to take on responsibility for organising events with Screen Yorkshire. Mr Taff became the lead contact at the college for Screen Yorkshire.

74. On 17 April 2024 the claimant sent an email to Shani Clifford, Head of Student Employability at the college asking if the link with Screen Yorkshire had been passed to John Taff, or was it still with her. Ms Clifford replied to the claimant that the curriculum contact was now John and that she had been informed of this some time ago.

75. The claimant then sent an email to Mrs Marshall-Preece stating that "*I've just been informed by Shani that the Screen Yorkshire link has been passed on to John without my knowledge or consent, just wanted to confirm when and why this decision was made?"* Mrs Marshall-Reece replied that "*The link was given to John after I told you it could not be delivered through Nick Beal. Since you had previously relinquished responsibility and passed it to Nick Beal who is a personal tutor, I passed it to a more appropriate member of the team. I was under the impression that you did not want to facilitate it*."

76. The claimant replied "*I would not characterise it as relinquishing the responsibility when this was all a misunderstanding, as I have explained I wish you had run this by me as I would have liked to continue to handle this responsibility and I don't think it reflects well to be removing responsibilities from a member of staff with an open grievance without their permission. Can you elaborate on why you believe John is a more appropriate member of the team for this?"*

77. Mrs Marshall-Preece replied to the claimant that "*John is a lecturer and course lead, whereas Nick Beal is a personal tutor. Therefore John is a more appropriate member of the team as he knows and delivers the curriculum and industry more than Nick."*

<u>Separation of the claimant and John Taff</u>

78. Although the relationship between the claimant and Mr Taff appeared to improve initially at and following the meeting on 31 March 2023, things subsequently deteriorated again. Concerns about their relationship were raised by other members of staff.

79. On 11 March 2024 the Vice Principal of the college, Matthew Goodlad, called a meeting between the claimant, Mr Taff, Mrs Marshall-Preece and himself. The purpose of the meeting was to discuss ongoing communication issues and the lack of planning between the claimant and Mr Taff.

80. The claimant arrived at the meeting with two pages of notes containing a list of criticisms of Mr Taff, including that he had made "*passive aggressive comments'* and behaved unprofessionally. During the meeting the claimant said that Mr Taff was 'unapproachable and resistant to change'.

81. Katie Marshall-Preece and Matthew Goodlad emphasised to the claimant and Mr Taff the importance of team work and pulling together, and it was agreed that going forward there would be fortnightly team meetings.

82. Mr Taff came away from the meeting feeling that the claimant had 'completely

slated him' in front of senior managers. The next day he spoke to Jane Parr and told her that he could no longer work with the claimant and was considering handing in his notice due to the stress and the amount of responsibility he had to take on.

83. Ms Parr reported the conversation to Mrs Marshall-Preece who decided that the claimant and Mr Taff should not share teaching responsibilities on a course for the remainder of the academic year. Both she and Ms Parr were concerned about Mr Taff's mental health, and did not want to lose him as he is a highly respected member of staff who has valuable industry experience.

84. On 13 March 2024 Katie Marshall-Preece sent an email to the claimant, Mr Taff, Brett Barnett and a new member of the team, Matthew Rowan-Maw. In the email she explained that "*In light of issues made apparent in the meeting on Monday 11th March at 4pm it has been decided that it is no longer tenable for Stacey MacKenzie-Wintle and John Taff to share teaching responsibilities on any course for the remainder of the academic year*". She went on to explain that one course would be taught solely by John Taff and another would be taught by the claimant, Brett Barnett and Matthew Rowan-Maw.

85. The claimant initially raised some questions about the change, which Mrs Marshall-Preece replied to. The following day the claimant sent an email to Mrs Marshall-Preece in which she wrote: "*Thank you for explaining further: having processed the change, I think the decision will have a really positive impact on the team and our students.*"

86. During the summer of 2024 new timetables were drawn up for the 2024-2025 academic year. The separation of the claimant and Mr Taff remained in place in the new timetables.

87. The claimant alleges that as a result of being separated from Mr Taff she had to work alone. The evidence before us suggested that was not the case. The timetable for courses the claimant taught in the 2024-2025 academic year showed that whilst she taught some sessions alone, other sessions were taught with other lecturers, a student mentor and a personal tutor. Moreover, it is not unusual within the respondent for course teaching to be done mainly or entirely by one lecturer.

<u>8 January 2025 comments about why Mr Taff would not work with the claimant</u>

88. In January 2025 the claimant and Mrs Marshall-Preece met to discuss the claimant's appraisal. During the meeting there was a discussion about how to plan for interviews for prospective students in light of the fact that Mr Taff did not want to work with the claimant. Mrs Marshall-Preece indicated that no changes would be made to the timetable at this point as it was part way through the academic year.

89. During the meeting Mrs Marshall-Preece told the claimant that she would not be working with Mr Taff until the 'court case' had finished, as she thought that this was the best outcome for the students and the team. She did not want to change the timetables part way through the academic year. She was concerned about the potential impact of the claimant and Mr Taff working together again, and wanted to

keep things calm, for the team and the students. By 'court case' Mrs Marshall-Preece was referring to this Employment Tribunal claim.

90. The claimant alleges that during this meeting Mrs Marshall-Preece dishonestly said that she did not know why Mr Taff would not work with the claimant. In her evidence to the Tribunal Mrs Marshall-Preece did not deny telling the claimant that she did not know why Mr Taff would not work with her. She also told the Tribunal that she did not know what it was specifically about working with the claimant that made him not want to work with her. She was aware that working with the claimant had had an impact on Mr Taff and that on 2 occasions he had discussed with Jane Parr resigning.

91. We find that Mrs Marshall-Preece did tell the claimant that she did not know why Mr Taff would not work with the claimant, and that in doing so she was not being dishonest, as she did not know the details.

Access to data on the bank laptop

92. The respondent has a number of 'bank' laptops which members of staff and students are able to use. The claimant borrowed a bank laptop and, at some point prior to December 2024, created a folder called 'SMW' which are her initials. The folder contained evidence relating to her grievance and to these Tribunal proceedings. She downloaded the folder on to the bank laptop, and then returned the laptop to the college store. Once in the store, the laptop could be accessed and used by students and other members of staff.

93. Within the SMW folder were 241 documents and 15 sub-folders, including a copy of the grievance investigation report, post investigation notes with opinions on staff, a document with notes from a mediation, and documents relating to grievances raised by the claimant and Brett Barnett.

94. On or around 18 or 19 December 2024 Nicola Gabbitas reported to Jane Parr that she had borrowed a laptop from the store and that on the laptop was a folder that anyone could access, with the initials SMW. Jane Parr telephoned Sue Elliot in HR for advice. She was told to lock the laptop away in a secure place until it could be passed to Mrs Marshall-Preece who was, at the time off work. Ms Parr did not open the laptop or access the folder. She placed it in a secure location and locked it away.

95. Sue Elliot reported the issue to the respondent's Data Protection Officer ("**DPO**") on 20 December 2024, which was the last working day before the college closed for the Christmas period. The DPO told Ms Elliott to report the matter formally using an online form on the first day that she was back at work after the Christmas break.

96. Ms Elliott returned to work on 7th January 2025 and completed the required form reporting the potential data breach. After Ms Elliott had completed the form, the DPO contacted her and asked her to meet with Mrs Marshall-Preece to have a look at what was in the folder. Ms Elliott was due to meet with Mrs Marshall-Preece on Friday 10th January and the DPO said it was a good idea for the two of them to look

at the folder together. The laptop was passed to Mrs Marshall-Preece.

97. During the meeting on 10th January Mrs Marshall-Preece and Ms Elliott opened the laptop together and looked briefly at the contents of the folder. They spent no more than a few minutes looking at the contents of the folder. Ms Elliot saw her initials in some documents in the folder, and instructed Mrs Marshall-Preece to close the folder, which she did.

98. On Monday 13 January 2025 Mrs Marshall-Preece wrote to the DPO informing him that she and Ms Elliott had looked at the folder and the documents, and asking when she could bring the laptop to the DPO. The DPO replied commenting that the folder itself was not a breach of GDPR, but the fact that it was saved on a loan laptop posed a risk of a data breach. He asked Mrs Marshall-Preece some questions about the folder, including how many documents there were.

99. Mrs Marshall-Preece replied stating that she had not accessed the folder until 10 January 2025 and that the folder contained 241 documents and 15 folders.

100. Mrs Marshall-Preece arranged to deliver the laptop to the DPO. He then checked the folder and the documents in it, and was able to ascertain when they had been accessed. The DPO formed the view that there had been no data breach, and informed Ms Elliott of that.

101. On 24 January 2025 Mrs Marshall-Preece wrote to the claimant stating that:

"*It has been brought to my attention that a MacBook pro from the MAG store contains a folder called Work Evidence on it, and it contains numerous files with private and confidential information in, compiled by yourself. This was found by a member of staff however my concern is that this could have been found and accessed by a student. I will need to arrange a meeting with you regarding this matter….*"

102. The claimant replied that she considered her handling of the data was covered by the legal proceedings exemption of the Data Protection Act and that she was confident that no wrongdoing had occurred. She indicated that she would not attend a meeting with Mrs Marshall-Preece about the issue and also commented that the data "*contains significant amounts of evidence against you personally which is of a legal and/or criminal nature*".

103. Mrs Marshall-Preece replied to the claimant that the matter had been passed to the DPO and that she did not need to meet with her.

The Law

Time limits in discrimination claims

104. Time limits for bringing discrimination claims are set out in section 123 of the Equality Act 2010, with the relevant provisions being the following:

"*(1) ….proceedings on a complaint within section 120 may not be brought after the end of –*

(a) the period of 3 months starting with the date of the act to which the complaint relates, or…

(b) such other period as the employment tribunal thinks just and equitable.

….

(3) For the purposes of this section -

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(c) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –

(a) When P does an act inconsistent with doing it, or

(b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

105. Tribunals have a wide discretion as to whether to extend time in discrimination claims. There is however no principle or assumption that a Tribunal should exercise that discretion (***Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434***). The burden of proving that it would be just and equitable to extend time rests with the claimant.

106. In ***Jones v Secretary of State for Health and Social Care [2024] EWCA Civ 1568*** the Court of Appeal found that an Employment Tribunal had acted perversely when it decided it would not be just and equitable to extend time in a race discrimination complaint. The Court of Appeal held that the Tribunal should have set out in its decision the extent of the claimant's delay in issuing proceedings and the reasons for the delay. The Court also found that the Tribunal should have made findings about whether the delay had prejudiced the respondent.

107. When ***Jones v Secretary of State for Health and Social Care [2024] EAT 2*** was before the EAT, His Honour Judge Tayler commented that:

"*30. It remains a common practice for those who assert that the primary time limit should not be extended to rely on the comments of Auld LJ at paragraph 25 of* ***Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576, [2003] IRLR 434,*** *that time limits in the Employment Tribunal are "exercised strictly" in employment cases and that a decision to extend time is the "exception rather than the rule" as if they were principles of law. Where these comments are referred to out of context, this practice should cease. Paragraph 25 must be seen in the context of paragraphs 23 and 24".*

108. That finding was not overturned on appeal.

109. Factors that are relevant when considering whether to extend time can include:

1. The length of and reasons for the delay in presenting the claim;
2. The extent to which the cogency of the evidence is likely to be affected by the delay;
3. The extent to which the respondent cooperated with any requests for information;
4. How quickly the claimant acted when she knew of the facts giving rise to the claim; and
5. The steps taken by the claimant to obtain professional advice once she knew of the possibility of taking action.

Continuing course of conduct

110. In ***Commissioner of Police of the Metropolis v Hendricks [2003] IRLR 530***, the Court of Appeal held that, when considering whether there has been a continuing act of discrimination, the Tribunal should focus on the substance of the complaints in question and whether the respondent was responsible for an ongoing state of affairs. The Tribunal should not focus too heavily on policy, but rather whether there was an act over an extended period of time, as opposed to specific, isolated incidents.

111. The Tribunal has to consider whether there was an ongoing situation or a continuing state of affairs that is discriminatory. In ***Aziz v GDA [2010] EWCA Civ 304***, the Court of Appeal commented that, when considering whether separate incidents are part of a continuing act of discrimination, a relevant (but not conclusive) factor is whether the same people were involved in the incidents.

112. There is a distinction between a continuing act of discrimination and an act that has continuing consequences (***Barclays Bank plc v Kapur and ors [1991] ICR 208, HL***).

Burden of proof

113. Section 136(2) of the Equality Act 2010 sets out the burden of proof in discrimination claims, with the key provisions being the following:

> "*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision…"*

114. There is, in discrimination cases, a two-stage burden of proof (see ***Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205***) which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to. In ***Igen v Wong*** the Court of Appeal endorsed guidelines set down by the EAT in ***Barton v Investec***, and which we have considered when reaching our decision.

115. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment.

116. The Supreme Court has more recently confirmed, in ***Royal Mail Group Ltd v Efobi [2021] ICR 1263,*** that a claimant is required to establish a prima facie case of discrimination in order to satisfy stage one of the burden of proof provisions in section 136 of the Equality Act. So, a claimant must prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

117. In ***Glasgow City Council v Zafar [1998] ICR 120***, Lorde Browne-Wilkinson recognised that discriminators 'do not in general advertise their prejudices: indeed they may not even be aware of them'.

118. The Tribunal has the power to draw inferences of discrimination where appropriate. Inferences must be based on clear findings of fact and can be drawn not just from the details of the claimant's evidence but also from the full factual background to the case.

119. Unreasonable behaviour is not, in itself, evidence of discrimination (***Bahl v The Law Society [2004] IRLR 799***) although, in the absence of an alternative explanation, could support an inference of discrimination (***Anya v University of Oxford & anor [2001] ICR 847***).

120. In harassment cases the shifting burden of proof rules will apply in particular where the conduct complained of is not obviously discriminatory, and the Tribunal has to consider whether the reason for the conduct is related to the protected characteristic relied upon by the claimant – in this case her disability.

<u>Harassment</u>

121. Harassment is defined in section 26 of the Equality Act as follows:

> "*(1) A person (A) harasses another (B) if –*
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b) The conduct has the purpose or effect of –*

(i) Violating B's dignity, or
(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b),each of the following must be taken into account –
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect…"

122. In deciding whether the claimant has been harassed contrary to section 26 of the Equality Act, the Tribunal must consider three questions:

b. Was the conduct complained of unwanted:
c. Was it related to disability; and
d. Did it have the purpose or effect set out in section 26(1)(b).

Richmond Pharmacology v Dhaliwal [2009] ICR 724.

123. The two-stage burden of proof set out in section 136 Equality Act applies equally to claims of harassment. It is for the claimant to establish facts from which the Tribunal could conclude that harassment has taken place.

124. In ***Hartley v Foreign and Commonwealth Office Services [2016] ICR D17*** the EAT held that the words 'related to' have a wide meaning, and that conduct which cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it. The Tribunal should evaluate the evidence in the round, recognising that witnesses will not readily accept that behaviour was related to a protected characteristic. The context in which unwanted conduct takes place is an important factor in deciding whether it is related to a protected characteristic (***Warby v Wunda Group plc EAT 0434/11***).

125. The conduct in question must be unwanted by the employee (***Thomas Sanderson Blinds Ltd v English EAT 0316/10)*** but does not have to be specifically directed at the employee. The employee does not even have to be present when the offensive action or words take place.

126. Conduct which is self-evidently or inherently offensive will automatically be regarded as unwanted (***Reed and anor v Stedman [1999] IRLR 299***). If however an employee has made it clear, either through her conduct or her words, that she does not object to the behaviour in question, the conduct will not be unwanted. In ***Land Registry v Grant (Equality and Human Rights Commission intervening) [2011] ICR 1390*** the fact that an employee had revealed his homosexuality to colleagues undermined his claim to have been harassed when a manager in a different office 'outed' him. The fact that an employee chooses to discuss private issues at work is a relevant factor when considering whether conduct is unwanted, in the context of a harassment complaint.

<u>Victimisation</u>

127. Section 27 of the Equality Act states as follows:

> "*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
> *(d) B does a protected act, or*
> *(e) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act –*
> *(a) bringing proceedings under this Act;*
> *(b) giving evidence or information in connection with proceedings under this Act;*
> *(c) doing any other thing for the purposes of or in connection with this Act;*
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*
>
> *(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith…*"

128. Although Tribunals must not make too much of the burden of proof provisions (***Martin v Devonshires Solicitors [2011] ICR 352***), in a victimisation claim it is for the claimant to establish that she has done a protected act and has suffered a detriment. There needs to be some evidence from which the Tribunal could infer a causal link between the protected act and the detriment, for example, the detriment occurs soon after the protected act, or others were not treated in the same way.

129. It has been suggested by commentators that the three-stage test for establishing victimisation under the pre-Equality Act legislation, endorsed by Baroness Hale in ***Derbyshire and ors v St Helens Metropolitan Borough Council and ors [2007] ICR 841*** can be adapted for the Equality Act so that it involves the following questions:

e. Did the alleged victimisation arise in any of the prohibited circumstances set out in section 27?
f. If so, did the respondent subject the claimant to the alleged detriment(s)?
g. If so, was the reason the claimant was subjected to the detriments that the claimant had done, or might do, a protected act?

130. Following the decision of the House of Lords in ***Nagarajan v London Regional Transport [1999] ICR 877*** it is not necessary in a victimisation case for the Tribunal to find that the employer's actions were consciously motivated by the claimant's protected act. Victimisation may occur if the discriminator was subconsciously affected by the protected act, and it had a 'significant influence' on her treatment of the claimant. The protected act does not need to be the only

reason for the detrimental treatment (***Pathan v South London Islamic Centre EAT 0312/13***).

131. An employer can be liable for an act of victimisation even where the motives for the treatment of the claimant are benign.

Detriment

132. There is no definition of detriment in the Equality Act 2010. The Equality and Human Rights Commission Code of Practice on Employment (2011) states that:

> "*9.8 'Detriment' in the context of victimisation is not defined by the Act and could take many forms. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards….*
>
> *9.9 A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment….*
>
> *9.10 Detrimental treatment amounts to victimisation if a 'protected act' is one of the reasons for the treatment, but it need not be the only reason.*"

133. In ***Derbyshire and ors v St Helens Metropolitan Borough Council and ors [2007] ICR 841*** Lord Hope commented that "*fear of public odium or the reproaches of colleagues is just as likely to deter an employee from enforcing her claim as a direct threat.*"

134. In cases where it is not obvious that the claimant has suffered a detriment, the Tribunal must consider the situation from the claimant's perspective (***Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065***). In ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337*** the House of Lords held that there will be a detriment if a reasonable worker would or might take the view that the treatment was in all the circumstances to her disadvantage and that the question of detriment must be viewed subjectively. That being said, an unjustified sense of grievance will not amount to a detriment and the claimant's reaction must be objectively reasonable in the circumstances (***Derbyshire and ors***). It is a matter for the Tribunal to decide whether the claimant's sense of grievance is justified, taking account of all relevant circumstances.

Submissions

135. The principal submissions made by each party are summarised briefly below.

The fact that a point raised in submissions does not appear in this summary does not mean that it has not been considered.

136. We were referred by the parties to the following authorities:

Commissioner of Police of the Metropolis v Hendricks [2002] EWCA Civ 1686
Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548
Worcestershire Health and Care NHS Trust v Allen [2024] EAT 4
Aziz v FDA [2010] EWCA Civ 304
Concentric GVC Intelligent Contact Ltd v Obi [2022] EAT 149
Miller & others v Ministry of Justice & others UKEAT/0004/15
Hartley v Foreign and Commonwealth Office Services UKEAT/0033/15
Driskel v Peninsula Business Services Ltd and ors EAT/1120/98
Warburton v Chief Constable of Northamptonshire [2022] EAT 42
Nagarajan v London Regional Transport [2000] 1 AC 501
Reed and another v Stedman [199] IRLR 299
Thomas Sanderson Blinds Ltd v English UKEAT/0316/10
Richmond Pharmacology v Dhaliwal [2009] IRLR 336
Weeks v Newham College of Further Education UKEAT/0630/11
Pemberton v Inwood [2018] EWCA Civ 564
Peninsula Business Service Ltd v Baker UKEAT/0241/16
Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337
Warburton v Chief Constable of Northamptonshire Police EA-2020-00376-AT

Claimant's submissions

137. Mr Levay submitted, on behalf of the claimant, that:

1. When considering whether there was a course of discriminatory conduct the question is whether, taken together, the different acts can be characterised as an act extending over a period as distinct from a succession of unconnected or isolated specific acts;

2. There is no requirement that a continuing course of conduct involve the same type of discrimination;

3. One relevant, but not conclusive factor, is whether the same individuals were involved in the different incidents;

4. The discretion to extend time is relatively wide. The Tribunal must consider the balance of prejudice;

5. Where many acts of harassment are alleged, the Tribunal should consider their cumulative effect;

6. It is not necessary for a claimant to object at the time of the alleged

harassment in order for the conduct to be unwanted;

7. A reference to behaviour associated with autism, including not being able to meet someone's eyes and difficulties in communicating, could be related to the claimant's disability;

8. The claimant has made out a prima facie case of discrimination, and the respondent's evidence is not sufficient for it to satisfy the Tribunal that it did not victimise the claimant;

9. It is not necessary for the Tribunal to find that Mrs Marshall-Preece formed an explicit plan to victimise the claimant, it is sufficient that the protected acts were a significant influence on her;

10. A respondent can't escape liability for victimisation on the ground that it is genuinely upset by a protected act, as the emotions are not separable from the protected act.

11. The respondent's evidence was inconsistent and not credible, and the claimant's evidence should be preferred;

12. Ms Parr believed that the claimant, not Mr Taff, was the root cause of the conflict between the two;

13. Ms Parr made an assumption about what the claimant would or would not have objected to her discussing with others, without discussing this with the claimant. She volunteered information that had not been specifically asked for and, in context, it was reasonable for the conduct to have the prohibited effect;

138. Mr Wilson submitted, on behalf of the respondent, that:

1. When determining whether alleged harassment constitutes discrimination, the Tribunal must take into account both the claimant's subjective perception of the conduct and whether the effect on her was reasonable in the circumstances of the case;

2. Whilst Tribunals should be sensitive to the hurt that can be caused by offensive comments or conduct, it is also important not to encourage a culture of hypersensitivity. Context is important and the Tribunal must be sensitive to all the circumstances;

3. The comment made by Jane Parr during the meeting on 31 March 2023 was plainly about the working relationship between the claimant and Mr Taff. The meeting had been organised to resolve a breakdown in communication between the two of them;

4. The comments made by Jane Parr to Sally Johnson and Bethan Hyatt were not unwanted conduct because there is ample evidence that the claimant was

openly discussing her autism and her RAP, and did not have the proscribed effect;

5. The WhatsApp message sent on 7 February 2024 did not amount to a detriment, but was a thoughtful gesture, supportive of the claimant's career and which was not motived by the claimant's grievance;

6. The Valencia comment was a joke between friends, did not amount to a detriment and was not because of the grievance;

7. Assigning Screen Yorkshire to Mr Taff was not a detriment and was not motivated by the claimant's grievance;

8. Keeping the claimant separated from Mr Taff in January 2025 was not a detriment as the claimant reacted positively to the change when it was originally made, and there was no credible evidence that it was because of a protected act;

9. The claimant was not subjected to a detriment by colleagues accessing information that she had left on a bank laptop, and there was no credible evidence that the reason for the respondent's actions were the protected acts;

Conclusions

139. The following conclusions are reached on a unanimous basis, having considered carefully the evidence before us and the submissions of both parties.

140. We deal first with the three allegations of harassment, and then the six allegations of victimisation.

141. In light of our conclusions that there was no harassment or victimisation, it has not been necessary for us to consider any questions of time limits.

Harassment allegations

31 March 2023

142. The complaint about 31 March comprises two elements:

1. Comments made by Ms Parr during the meeting; and

2. The reason why Ms Parr arranged the meeting.

143. We find, on the evidence before us, that during the meeting on 31 March 2023 Ms Parr did say to the claimant and Mr Taff that they needed to work on their communication. We also find that during the meeting Ms Parr made a comment to the effect that 'at least you are both looking at each other now'.

144. The comments that the claimant complains about were made by Ms Parr. The

next question we have to consider is whether that conduct was unwanted.

145. The claimant made no complaint at the time of the meeting or until some months later, in January 2024. Whilst we recognise that it is not necessary for a claimant to complain at the time in order for conduct to be unwanted, we have to consider whether, looking at the context, it was unwanted. The evidence before the Tribunal is that the claimant left the meeting smiling and chatting with Mr Taff. There was no evidence before the Tribunal to suggest that the claimant displayed any distress or upset during the meeting, in fact the opposite appears to have been true. The atmosphere and the relationship between them did improve, at least temporarily. This is evidenced by the message that the claimant sent to Sally Johnson in May, a few weeks after the meeting had taken place.

146. We find on balance, and taking account of the context in which it was made, that the comment that the claimant and Mr Taff needed to work on their communication was not unwanted by the claimant. She was the one who had raised concerns about Mr Taff, and Ms Parr was taking steps to address those concerns. Ms Parr's comment was reasonable in the circumstances and meant as a way of encouraging both the claimant and Mr Taff to resolve the current situation. The claimant was the course lead and it was not unreasonable of Ms Parr to encourage both the claimant and Mr Taff to improve their communication going forward.

147. It cannot be said that the comment was obviously unwanted by the claimant and in the circumstances, we find that it was not unwanted. The meeting had the desired effect of improving communication between the claimant and Mr Taff, albeit on a temporary basis, something that was recognised by the claimant.

148. We also find that the comment about Mr Taff and the claimant looking at each other was not unwanted at the time. It was said as a positive comment to both the claimant and Mr Taff about the improvement in the way they were communicating in the meeting. It is consistent with the way the meeting closed.

149. We have also considered whether the comments were related to disability. Whilst we accept that comments about communication and eye contact could potentially relate to the claimant's disability of autism, we find that in this case they did not. Rather they related to the concerns raised by the claimant prior to the meeting, the atmosphere between the claimant and Mr Taff at the start of the meeting, and the improvement in both the atmosphere and communications as discussions progressed.

150. This complaint of harassment therefore fails and is dismissed.

151. The second complaint about the meeting on 31 March 2023 is that it was arranged to discuss the claimant's communication skills. There was no evidence before us to suggest that that was in fact the case. Rather, the evidence suggested that the meeting was arranged in response to concerns raised by the claimant that Mr Taff had not done the marking.

152. We find that the meeting on 31 March 2023 was not arranged to discuss the

claimant's communication skills, but was arranged to discuss the communication and working relationship between the claimant and Mr Taff.

153. We also find that the meeting was not unwanted by the claimant. It was arranged after she asked Jane Parr for help resolving the situation with the marking, and the claimant told Ms Parr before the meeting that she thought it was a good idea.

154. This allegation also fails and is dismissed.

Conversation on 20 October 2023

155. The respondent admits that in a conversation with Sally Johnson on or around 20 October 2023 Ms Parr referred to the claimant being able to undertake marking from home during a conversation with Sally Johnson. We accept the respondent's evidence that there was no reference during that conversation to the claimant's disability or to working from home being a reasonable adjustment for the claimant. Ms Parr was responding to a question from Ms Johnson about how the claimant was, and the question of home working was fresh in her mind as the claimant had recently emailed her about it.

156. We find that the comments Ms Parr made on 20 October were not unwanted conduct for the following reasons. They were made to a close former colleague of the claimant with whom the claimant had openly discussed her autism and reasonable adjustments. Ms Parr had no reason to believe that the comments would be unwanted by the claimant, as the claimant was open about her autism and her reasonable adjustments and Ms Johnson had previously told Ms Parr that she had heard the claimant discussing them openly at work. The comments made by Ms Parr were made in response to a question from Ms Johnson as to how the claimant was doing, that she was doing very well and working from home some of the time. At the time she made the comments Ms Parr had no reason to believe that the claimant did not want her working arrangements to be discussed as she had been open about them herself.

157. Although there was no mention of disability or reasonable adjustments during the conversation, the comment about the claimant working from home is in our view capable of being related to disability, because the working from home arrangement was put in place specifically for the disability.

158. The claimant accepts that the comment was not intended to have the proscribed effect set out in section 26(1)(b) of the Equality Act 2010, but submits that it did have that effect.

159. Taking account of the context in which the comment was made, the claimant's perception and the relevant circumstances, we find that it was not reasonable for the comment to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her. Ms Johnson was a close colleague of the claimant with whom the claimant had previously discussed her autism and adjustments. Ms Johnson was clearly interested in the claimant's welfare because she asked after her, and the comment was made in response to her question. The

claimant was very open generally about her autism, about the RAP and about her reasonable adjustments

160. This claim of harassment also fails and is dismissed.

Conversation on 6 December 2023

161. The final allegation of harassment relates to a conversation between Jane Parr and Bethan Hyatt which the claimant says took place on 6 December 2023. The respondent says it took place sometime between the end of September and the start of November 2023. We prefer the evidence of the respondent on the date of the conversation, as Ms Parr was present during the conversation but the claimant was not.

162. We find that, during a conversation with Ms Hyatt, and in response to a request from Ms Hyatt that she be allowed to work from home, Ms Parr did say that she knew it was difficult that Ms Hyatt was not allowed to work from home when the claimant worked from home, and that she explained that the reason the claimant was allowed to work from home was because she had a RAP in place.

163. The comments made by Ms Parr to Ms Hyatt were, however, not unwanted conduct. The claimant was open about her autism, her RAP and her adjustments. She told colleagues in the staffroom that she couldn't do invigilation because of her reasonable adjustments, and Ms Parr had no reason to believe that the claimant would object to her mentioning the working from home arrangement to Ms Hyatt.

164. It would have been apparent to colleagues that the claimant was not being permitted to work from home. The reason Ms Parr mentioned the claimant's working from home as an adjustment was because she wanted to explain why Ms Hyatt was being treated less favourably than the claimant. The claimant had never previously indicated that she wanted her adjustments to be kept private and on the contrary had openly discussed them with colleagues in public places. In the circumstances, it was not unreasonable for Ms Parr to mention the adjustment to Ms Hyatt. Moreover, Ms Hyatt was one of the colleagues who had previously told Ms Parr that the claimant had been talking about her autism and RAP, so Ms Parr had reason to believe that Ms Hyatt was already aware of them.

165. We accept that the comments were related to disability, but find that it was not reasonable for them to have the proscribed effect, given the context in which they were made, the person to whom they were made, and the claimant's general openness about her autism and adjustments.

166. This allegation also fails and is dismissed.

Victimisation allegations

167. The claimant relies upon two protected acts: her formal grievance of 28 January 2024 and the issuing of this claim. The respondent admits that both of these actions amount to protected acts within the meaning of section 27(2) of the Equality Act 2010.

7 February 2024 WhatsApp message

168. The first allegation of victimisation relates to a WhatsApp message that Katie Marshall-Preece sent. There is no dispute that the message was in fact sent by Mrs Marshall-Preece, and we find that it was sent.

169. We have considered carefully whether the sending of the message amounts to a detriment. We accept that a manager sending a message to a more junior member of staff about another job outside of the organisation could potentially amount to a detriment, if the manager were wanting to encourage the employee to leave, or if it was reasonable for the employee to conclude that that was the manager's intention.

170. Context and surrounding circumstances are however key. The context here is that Mrs Marshall-Preece was under the (mistaken as it turns out) impression that the claimant was a friend, and we accept that she wanted to try and help the claimant. We also accept Mrs Marshall-Preece's evidence that at the time she sent the message she genuinely believed that the claimant was interested in teaching A levels, and she knew that would not be possible in her existing role with the respondent.

171. She did not want the claimant to leave, as demonstrated by the second message she sent explicitly saying as much, but was trying to help the claimant. The claimant's response at the time is consistent with the evidence of Mrs Marshall-Preece, that she thought the message would be well received. The claimant replied with a heart emoji and a thank you. She gave no indication until sometime later that she was unhappy about the message.

172. We therefore find that the sending of the WhatsApp message did not amount to a detriment. We also find that the sending of the message was not influenced at all by the fact that the claimant had recently raised a grievance. Rather it was sent because Mrs Marshall-Preece knew the claimant had recently applied for an additional role, and believed that she was interested in teaching A levels. Mrs Marshall-Preece was very clear in her evidence to the Tribunal that she respects the right of the claimant to raise a grievance. There was no evidence before us from which we could draw an inference that the grievance was a significant influence on her decision to send the WhatsApp message.

173. This allegation of victimisation therefore fails and is dismissed.

Valencia comment

174. The second allegation of victimisation is that on 22 February 2024 Mrs Marshall-Preece said that if the claimant repeated anything, she would say that the claimant had sex with a student during a trip to Valencia (which would have been false). The respondent admits that this comment was made.

175. The context was that Mrs Marshall-Preece had earlier made observations about the job application of Brett Barnett. We accept that her comment, at the time it was made, was meant as a joke, and made to someone who Mrs Marshall-Preece

considered to be a friend. It was however a highly inappropriate comment for Mrs Marshall-Preece to make and demonstrates a lack of judgment on her part.

176. Telling anyone else that the claimant had slept with a student could have had extremely serious consequences for the claimant, and have been potentially career limiting. We have no hesitation in finding that the comment was a detriment. It is not necessary for the claimant to have objected at the time.

177. The conversation that Mrs Marshall-Preece had with the claimant on 22 February 2024 was inappropriate and ill-advised and amounted to a detriment.

178. We have asked ourselves carefully whether the comment made on 22 February was significantly influenced by the claimant's grievance. We find that it was not. We accept Mrs Preece-Marshall's evidence that she respected the claimant's right to raise a grievance. Although there was some discussion about the grievance during the conversation, it does not follow that the grievance was the reason why the comment was made, or even a significant influence on the comment.

179. Rather, we find that the comment was made out of ill judgment and poor management, as an attempt at a joke. Mrs Marshall-Preece realised that she should not have discussed Mr Barnett's application with the claimant, and was attempting to persuade the claimant not to disclose the fact that she had discussed it. During the grievance meeting the claimant herself said that she thought the comment had been intended as a joke.

180. This allegation of victimisation also fails and is dismissed.

Screen Yorkshire

181. The third victimisation complaint is that on 17 March 2024 Mrs Marshall-Preece passed responsibility for student enrichment with Screen Yorkshire to Mr Taff.

182. The respondent accepts that responsibility for Screen Yorkshire was passed to Mr Taff in March 2024. Whilst we accept that removing responsibility from one member of staff and giving it to another can amount to a detriment, we find that in this case it did not. The claimant had chosen to pass her responsibility for Screen Yorkshire to Nick Beale several months earlier. There was no evidence before us to suggest that either the claimant or Mr Beale had done anything with Screen Yorkshire in the months prior to March 2024.

183. We find that the decision of Mrs Marshall-Preece to pass responsibility for Screen Yorkshire from Nick Beale did not constitute a detriment to the claimant.

184. We also find that the decision to move responsibility for Screen Yorkshire to Mr Taff was nothing whatsoever to do with the claimant's grievance. Rather Mrs Marshall-Preece met Mr Knight of Screen Yorkshire at a college open day. He was with John Taff, who he clearly knew, and asked Mrs Marshall-Preece who Nick Beale was, as he clearly did not know.

185. In the circumstances it was entirely reasonable for Mrs Marshall-Preece to transfer responsibility for Screen Yorkshire to John Taff because:

1. It should never have been passed to Nick Beale;

2. Neither Nick Beale nor the claimant had done anything with the relationship in the months leading up to March 2024;

3. The cost of working with Screen Yorkshire came off Mrs Marshall-Preece's budget, and it appeared that nothing was being done with Screen Yorkshire;

4. The key contact at Screen Yorkshire did not even know who Mr Beale was; and

5. John Taff appeared to have a good relationship with Screen Yorkshire.

186. There was no evidence whatsoever to suggest that the decision was linked in any way to the grievance.

187. This allegation therefore fails and is dismissed.

<u>8 January 2025</u>

188. The claimant makes two allegations about the 8th January 2025, the third having been withdrawn during the course of submissions.

189. The first allegation is that Mrs Marshall-Preece kept the claimant separated from Mr Taff to the claimant's detriment because it meant she was sole tutor for a cohort and without a fellow tutor with whom to share marking /schemes of work/ideas.

190. We find, on the evidence before us, that Mrs Marshall-Preece did keep the claimant separated from Mr Taff. The respondent admitted as such. We do not find, however, that this was to the claimant's detriment.

191. The separation had been put in place during the course of the previous academic year due to concerns about the relationship between the claimant and Mr Taff, and that this may cause Mr Taff to resign.

192. The claimant had welcomed the separation when it was initially put in place, and the arrangement that was confirmed in January 2025 was a continuation of the arrangement which the claimant had previously indicated she thought was a good idea.

193. The separation did not result in the claimant being isolated as she suggests. On one of her courses she was teaching with other lecturers, and on the other she was supported by a student mentor and a personal tutor. Moreover it is not uncommon within the respondent to have one lecturer on a course.

194. We also find that the protected acts were not a significant influence on the

decision to keep the claimant and Mr Taff separated. The separation was initially put in place after the claimant made complaints about professional differences with John Taff at the meeting with the Vice Principal and Mrs Marshall-Preece in March 2024. It was also aimed at protecting John Taff who was considering resigning and who the College didn't wish to lose.

195. The second allegation about 8 January 2025 was that Mrs Marshall Preece dishonestly told the claimant that she did not know why Mr Taff would not work with the claimant.

196. We accept that Mrs Marshall-Preece did say that she did not know why Mr Taff would not work with the claimant. The main reason for this was that Mrs Marshall-Preece did not know the details of Mr Taff's situation (she was not his line manager) and was reliant on what Ms Parr had told her. She was however aware that the relationship between the claimant and Mr Taff had broken down, due in part to the claimant's attitude towards Mr Taff. Mrs Marshall-Preece was not being deliberately dishonest.

197. We find on balance that Mrs Marshall-Preece's comments to the claimant indicating that she did not know why Mr Taff did not want to work with her were not a detriment to the claimant. The claimant had previously told Mrs Marshall-Preece that she agreed with the decision to separate them. Taking steps to protect both members of staff whilst there is ongoing litigation does not make those steps a detriment.

198. Whilst we accept that Mrs Marshall-Preece's comments on 8 January were influenced to some degree by the claimant's Employment Tribunal claim, we find that they were not significantly influenced by the grievance or the Employment Tribunal claim. Rather, the primary motivation was Mrs Marshall-Preece's aim to try and manage what was a very difficult situation. The working relationship between the claimant and Mr Taff had clearly broken down, due largely to the claimant's criticisms of Mr Taff and her approach to that. Mrs Marshall-Preece was in a difficult situation as she did not want to lose either member of staff, and was trying to retain both of them. The comments made on 8 January were, in our view, primarily because of the deterioration in the working relationship between the claimant and Mr Taff.

199. For these reasons the claimant's complaints about the actions of Mrs Marshall-Preece on 8 January 2025 fail and are dismissed.

<u>Alleged data breach</u>

200. The final allegation of victimisation is that between 10 and 14 January 2025 Mrs Marshall-Preece wrongfully (in the sense of a data breach) accessed the claimant's disclosure in this case and that Ms Elliot met her to discuss it and/or coach Mrs Marshall-Preece

201. We find that Mrs Marshall-Preece accessed the data on the laptop on one occasion, on 10 January 2025, in the presence of Ms Elliot and on the advice of Ms Elliot and the respondent's Data Protection Officer. She did not access it on any

other occasion and on 10 January she looked at the data for a matter of minutes only.

202. In the circumstances, Mrs Marshall-Preece's access of the data was not wrongful. She was following advice from the Data Protection Officer and Ms Elliot in HR. She looked at the data briefly in the presence of Ms Elliot, reported her findings to the Data Protection Officer and then handed the laptop over to him. There was nothing whatsoever that was untoward in what she did.

203. There was no evidence before the Tribunal of any data breaches by Mrs Marshall-Preece, and the Tribunal notes that the Data Protection Officer concluded that there had been no data breach. It was necessary for someone to look at the folder headed 'SMW' to find out what was in it. It might have been empty or might have contained material that was irrelevant to these proceedings or to any other personal data. There was no deliberate attempt by Mrs Marshall-Preece to access the claimant's disclosure in these proceedings. At the time she accessed the data briefly she did not know that it may contain disclosure.

204. This whole issue came about solely because the claimant inadvertently left confidential information on a work laptop.

205. We find that the brief access of the folder by Mrs Marshall-Preece on 10 January was not a detriment to the claimant. Rather, it was part of an attempt to find out what was in the folder so that it could be dealt with appropriately.

206. We also find that neither the grievance nor the Tribunal proceedings had any influence on Mrs Marshall-Preece's decision to access the data. Rather she accessed the data to find out what it was on the advice of HR and the Data Protection Officer.

207. This allegation therefore also fails and is dismissed.

Approved by:
Employment Judge Ayre
Date: 11 August 2025

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