



EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: B

Heard at: Birmingham

On: 11, 12, 21, 22, 24, 25, 28, 29 October and 4, 5, 7 & 8 November 2024; 13 January 2025; 15 January 2025 (In chambers 16 & 17 January; 26, 27, 28 February 2025 and 11 and 12 March 2025) and 27 April 2025

Before: Employment Judge Wedderspoon

Members : Mrs. Keene
Mrs. Pelter

Appearances

For the claimant: In Person

For the respondent: Ms. B. Criddle KC, counsel

JUDGMENT

1. At all material times the claimant was not disabled by reason of PTSD.
2. All claims of discrimination arising from disability are not well founded and are dismissed.
3. All claims of a failure to make reasonable adjustments are not well founded and are dismissed.
4. The claimant's complaints are dismissed in their entirety.

REASONS

1. This case is subject to a Rule 50 anonymisation order; the parties and the witnesses are not to be identified. This Judgment is sent to the parties in this form but the parties are required within 21 days of the promulgation of the Judgment to make submissions about how the Judgment should be edited to preserve the Rule 50 anonymisation order.
2. The claimant has been employed by the respondent as a [REDACTED] since [REDACTED] but has been on sickness absence since January 2022. There is no dispute that the claimant is disabled by reason of depression

and anxiety. She brings complaints of discrimination arising from disability and failure to make reasonable adjustments.

3. The respondent disputes all claims and also contests the claimant's case that she is disabled by reason of PTSD.
4. The claimant presented the following claims against the respondent : claim 1 on 22 July 2021; claim 2 presented on 23 December 2021; claim 3 presented on 1 September 2022 and claim 4 presented on 4 March 2024.
5. In summary, the claimant complains that the respondent has failed to make reasonable adjustments including failing to provide written confirmation that she would have no contact with a colleague, X. Her case is in the absence of such a written confirmation, she fears re-traumatisation and cannot engage in any treatment for the PTSD. She also contends that she was subject to performance management because she was unable to adhere to performance standards by reason of her disabilities and subject to management attendance for her absence.
6. The respondent's case is that it made a number of reasonable adjustments including a phased return to work and reduction to the claimant's workload but could not reasonably guarantee that the claimant would have no contact with colleague X. Following sickness absence, the claimant was provided with a phased return to work but by 8 months from her returning she was not progressing sufficiently so that she was subject to performance management and by reason of her absence subject to attendance management.

List of issues

7. The agreed list of issues were contained in a document provided to the Tribunal at the commencement of the hearing :-

Jurisdiction

8. The claimant has presented three claims against the Respondent. These are :-
 - (a) Claim 1 – presented on 22 July 2021
 - (b) Claim 2 – presented on 23 December 2021
 - (c) Claim 3 – presented on 1 September 2022
 - (d) Claim 4 – presented on 4 March 2024.
9. On 6 February 2023 the claimant was given leave to amend the claims. The claimant pursues claims of :-
 - (a) Discrimination arising from disability contrary to sections 15 & 39 of the Equality Act 2010;
 - (b) Failure to make reasonable adjustments contrary to sections 20 & 39 of the Equality Act 2010.

10. The claimant contacted ACAS in relation to :
 - (a) Claim 1 on 3 June 2021 (certificate issued 22 June 2021)
 - (b) claim 2 on 20 October 2021 (certificate issued 30 November 2021)
 - (c) claim 3 on 22 June 2022 (certificate issued to August 2022).
 - (d) Claim 4 on 27 February 2024 (certificates issued on 4 March 2024).
11. In respect of time :
 - (a) any claim relating to an act/omission before forward March 2021 is out of time in respect of claim 1;
 - (b) any claim relating to an act/omission before 21 July 2021 is out of time in respect of claim 2;
 - (c) any claim relating to an act/omission before 23 March 2022 is out of time in respect of claim 3;
 - (d) any amended claim relating to an act/omission before 7 November 2022 is out of time in respect of the amendments on 6 February 2023
 - (e) any claim relating to an act/admission before 28 November 2023 is out of time in respect of claim 4.
12. To the extent that any of the complaints are out of time, do they amount to conduct extending over a period;
13. If not, would it be just and equitable for the Tribunal to extend time to consider the claims on their merits?

Disability

14. The respondent accepts the claimant was a disabled person by reason of depression and anxiety at all material times.
15. The claimant also contends that she was a disabled person by reason of post-traumatic stress disorder (PTSD) at all material times. The respondent disputes this.
16. Did the claimant have a mental impairment of PTSD at any material time?
17. If so, did that impairment have a substantial adverse effect on the claimants ability to carry out normal day-to-day activities?
18. Further was that effect a long term adverse effect?

Discrimination arising from disability

19. Did the respondent know or to the respondent to have known that the claimant was disabled at the relevant times by virtue of one or more of the impairments set out above

20. Did the respondents subject the claimant to the following treatment:
- (a) on 15 July 2021 the claimant by letter was invited to a meeting to discuss her appraisal outcome for the year 1 April 2020-31 March 2021 of improvement needed and told that performance for that was unacceptable and that she would be placed on the performance improvement procedure.
 - (b) on 12 August 2021 the claimant was given a first written improvement warning and placed on the performance improvement plan
 - (c) on 16 December 2021 the claimant was told she had felt to meet the requirements of the performance improvement plan
 - (d) the claimant was invited to a stage 1 managing attendance meeting which took place on 17 May 2022
 - (e) On 26 May 2022 (later amended on 1 June 2022) the claimant was informed of her sick pay would end on 9 June 2022 and her statutory sick pay would end on 26 July 2022. The respondent reduced the claimants sick pay from June to November 2022 and from 11 January 2023;
 - (f) the claimant was invited to a stage 2 managing attendance meeting which took place on 30 June 2022
 - (g) When the respondent booked the 30 June 2022 stage two meeting the meeting plan was unsecured with the result that anyone looking in the diaries of the claimant, the claimants line manager, or the HR advisor would be able to see the claimant was attending a stage 2 managing attendance meeting with her line manager, HR, and a union representative
 - (h) On 25 July 2022 the respondent issued the claimant with a written warning for non-attendance under stage 2 of its managing attendance policy;
 - (i) The claimant was not paid her full pay from June to November 2022 and from 11 January 2023
 - (j) The respondent failed [REDACTED] [REDACTED] paid to the claimant on 11 January 2023 or soon thereafter
 - (k) On 16 December 2022 the respondent told the claimant she would not be able to take more than 20 days annual leave into the next leave year
 - (l) On 16 January 2023 the respondent told the claimant she would not be given a pay rise due to her appraisal rating in 2021 and 2022 and on 2 January 2024 the respondent told the claimant that she had been notified on 20 December 2023 that she did not qualify for a pay rise because of her most recent appraisal rating was improvement required and she had been given a performance warning.
21. If the respondent did treat the claimant in any of the ways alleged above did these acts/omissions amount to

- (a) detriments; and
 - (b) unfavourable treatment.
22. If the respondent did treat the claimant unfavourably was this because of the something arising in consequence of one or more of her disabilities. The “some things” relied upon are :-
- (a) In respect of (a)-(c) and (l) the claimant's inability to keep up with the workload assigned her which increased her anxiety levels and caused her to feel overwhelmed and which contributed to her appraisal rating in 2021 and 2022. The claimant relies on her impairments of PTSD and/or anxiety, depression.
 - (b) In respect of paragraphs (a)-(h) and (l) the claimant's disability related sickness absence between 5 August 2020 and or around to November 2020 which contributed to her appraisal rating in 2021 and 2022. The claimant relies on her impairments of PTSD and/or anxiety, depression
 - (c) In respect of paragraphs (d)-(l) the claimant's disability related sickness absence commencing from 12 January 2022 and continuing to date. The claimant relies on her impairments of PTSD and/or anxiety, depression.
23. If the respondent did subject the claimant to unfavourable treatment because of something arising from her disability, can the respondents show the treatment was a proportionate means of achieving a legitimate aim? The respondent relies on the following legitimate aims :
- (a) the need to maintain an appropriate and acceptable level of sickness absence to maintain productivity and meet the expectations and demands of stakeholders
 - (b) the need to ensure appropriate standards of performance and deliver a good quality of service to stakeholders
 - (c) the need to ensure the flow of information between employees
 - (d) the need to carry out appropriate due diligence to ensure that funds are managed appropriately.

Failure to make reasonable adjustments

24. Did the respondent know or ought the respondent to have known that the claimant was disabled by virtue of the impairments
25. Did the respondent apply the following provisions criteria and or practises (PCP) :-
- (a) From around April 2021 requiring staff to take on and complete an appropriate share of the group's [REDACTED], as directed by the group leader ([REDACTED])

- (b) From around April 2021 requiring staff or [REDACTED] to take on the [REDACTED] as directed by the group leader
 - (c) From around April 2021 not giving undertakings that staff would not have contact with other members of staff
 - (d) From around April 2021 requiring staff to work with any other member of staff as directed
 - (e) From around June 2022 the respondents contractual sick pay provisions that entitle employees to full pay for six months and half pay for six months subject to an overall maximum of 365 calendar days (or 260 working days) in any four year period.
 - (f) From July 2022 the response managing attendance policy provision that provides (i) if there is a period of long term absence continuing beyond three months or there has been a series of absences over a period of time and it appears that the absence is likely to continue or if the level of short term absence continues to be of concern and there has been no improvement in their sickness absence record the employer will be invited to attend a meeting with the manager and HR and (ii) if there is no indication of a sustained return to work or the Bradford factor is not reduced to an acceptable level the employee will be issued with a written warning.
26. If the respondent did apply the PCP or PCPs set out above did such application put the claimant at a substantial disadvantage in relation to a relevant matter (her employment) in comparison with persons who are not disabled. The claimant alleges the following substantial disadvantages:
- (a) in relation to the PCPS at paragraphs (a) and (b) above did the claimant's inability to keep up with the workload assigned to her increase her anxiety levels and cause her to feel overwhelmed;
 - (b) in relation to the PCPS above at (a) (b)& (f) the claimant receiving low appraisal ratings in 2021 and 2022
 - (c) in relation to the PCPS of paragraphs (a) and (b) above the claimant being given a first written improvement warning and placed on a performance improvement plan on 12 August 2021
 - (d) in relation to the PCPS at paragraph (e) above the claimant not being paid full pay from June to November 2022 and from 11 January 2023
 - (e) in relation to the PCPS at paragraph (c) and (d) above the claimant's inability to complete her mental health treatment whilst at risk of relapse from contact with X and her increased anxiety levels and causing her to feel overwhelmed
 - (f) in relation to the PCP a paragraph (f) above the claimant being issued with a written warning for non-attendance under stage two of the managing attendance policy on 25 July 2022.

27. Are all or any of the alleged disadvantages are ones which are capable of being substantial disadvantages which the claimant was put by the PCPs as a disabled person?
28. If the respondent did apply the PCP or PCPs above did the respondent know that the PCP or PCPs place a claimant at the substantial disadvantage a set out above?
29. Did the respondent take such steps as were reasonable to avoid the disadvantage? The adjustments the claimant alleges would have been reasonable or as follows :-
- (a) reducing the claimant's workload to the level the claimant last felt comfortable with;
 - (b) providing the claimant with a small number [REDACTED] in the region of [REDACTED] per year;
 - (c) telling the claimant that she would not have to have contact with X;
 - (d) transferring the claimant to a different role or department;
 - (e) offering the claimant a severage package that was at least as generous as its redundancy claimant scheme
 - (f) paying the claimant full sick pay
 - (g) [REDACTED] paid to the claimant on 11 January 2023 or soon thereafter;
 - (h) withdrawing the warning given to the claimant for non-attendance under stage two of the managing attendance policy.

Remedy

30. Should a declaration be made by the Tribunal?
31. Should a recommendation be made by the Tribunal? The claimant requests a recommendation is made that the respondent provides confirmation that the claimant will not have to contact X and if that is not possible for the respondent to transfer the claimant to a different role or department and if that is not possible to offer the claimant a severance package that is at least as generous as its redundancy claimant scheme.
32. Has the claimant suffered a loss as a consequence of discrimination by the respondent
33. If so what level of compensation/other remedies should be awarded to the claimant
34. In respect of any liability for discrimination what award if any should be made for injury to feelings.

The hearing

35. The case was listed in private. The hearing was listed for 24 days with rest days on Wednesdays as a reasonable adjustment for the claimant along with sitting only half days and allowing a 10 minute break every 30 minutes of evidence. The claimant was also participating remotely with assistance from her husband as a reasonable adjustment. The respondent and the Tribunal were in person (save for the submissions when the parties were both remote).
36. On day 1 of the hearing the Tribunal explained that there was not 24 days to hear the case due to the Tribunal's other commitments and training days. It noted on the commencement of the first full week starting 14 October 2024 a rest day had been timetabled for Wednesday 16 October 2024 but the Tribunal could not sit on this case on 17 and 18 October 2024. The Tribunal requested that the parties consider whether it could use Wednesday 16 October 2024 to hear the case stressing that it was very important that the claimant feels she is able to participate and if she required 16 October 2024 as a rest day this was absolutely fine. At the end of day 2 the claimant confirmed she was feeling tired. In the circumstances it was determined, as originally planned day 4 will be a rest day.
37. The claimant was assisted by her husband who sat with her throughout the hearing for emotional support and conducted cross examination on behalf of the claimant. The Tribunal had to remind the claimant's husband on day 2 that his assistance did not extend to providing prompts to suggested answers to questions put in cross examination to the claimant by the respondent.
38. The Tribunal had been provided with Bundle A 2100 pages; Bundle B 334 pages, respondent's chronology, claimant's amended chronology, cast list, claimant's schedule of loss, agreed list of issues, 99 page witness statement from the claimant and 102 pages of witness statements from the respondent : [REDACTED] Group Leader and Line Manager of the claimant from November 2016 to summer 2019; [REDACTED] chair of claimant's grievance October 2020; [REDACTED], [REDACTED] of the respondent; [REDACTED], the claimant's manager since summer 2019, [REDACTED], heard the claimant's appeal against her stage 2 written warning under the managing of attendance policy, [REDACTED] Head of the respondent's Human Resources and [REDACTED], Group Leader who heard the claimant's informal grievance in February 2020. The Tribunal was also provided with a jointly instructed expert report from Lucy Griffin, Consultant Psychiatrist (page 1891 to 1912).
39. On day 3 of the hearing the claimant revealed she had covertly recorded a number of meetings with the respondent from 2020 to June 2022. As a result of this revelation the Tribunal granted the respondent's application for delivery up of any recordings and/or a witness statement setting out which meetings were recorded; how recorded; when the recording was destroyed and why it was destroyed.
40. The claimant applied to adduce 3 pages from a [REDACTED] [REDACTED]. The respondent resisted the admission of the document on relevance grounds. The Tribunal determined to permit the document to be adduced, because it may give context to the case and the

respondent was not prejudiced by a document which exists [REDACTED].
The document was added at pages 2101 to 2103.

41. Due to the lack of time the case was adjourned for the parties to draft written submissions at a hybrid hearing; the parties participated remotely and the Tribunal attended in person. The respondent prepared and sent their submissions to the claimant on 7 January 2025. The claimant sent her written submission to the respondent on 9 January 2025. The parties were permitted one hour each to supplement their submissions orally.
42. Initially the claimant had expressed some concern of having adequate time to consider the respondent's submissions. The Tribunal clarified the purpose of a written submission was an outline using the list of issues as a template to inform the Tribunal why one side should lose, and the other side succeed. The Tribunal determined the claimant had adequate time from the date of the close of evidence on 8 November 2024 to 9 January 2025 to prepare her written submission. Submissions did not have to be a work of art but could merely be brief bullet points and the claimant could supplement any written submissions at the date of the hearing for oral submissions. The claimant was invited to set out how if at all she was prejudiced but was unable to provide any reasons.
43. On day 25 of 27 (the submission hearing) the claimant made an application to adduce a medical report from Dr. De Waal dated 23 December 2023. The respondent had objected to the inclusion of this medical report on the basis that the claimant did not have leave to rely upon it; there was an independent medical report from an jointly instructed psychiatrist, Dr. Griffin available in the bundle dated 25 April 2023 and the claimant appeared by seeking to adduce Dr De Waal's evidence to go behind the independent jointly instructed expert report and had failed to ask the joint expert questions or seek cross examination of the joint expert. The respondent stated had it been aware that the claimant was to be allowed to rely upon this evidence, their strategy in the litigation may have included instructing their own expert or applying to cross examine Dr De Waal. The respondent also cautioned the Tribunal as to the veracity of Dr. De Waal's report because it was unclear as to his instructions; he appeared to misunderstand his role in providing expert evidence and in particular strayed into areas which were irrelevant for an expert to comment upon.
44. The claimant applied to rely upon the latest report of Dr. De Waal. The basis of the claimant's application to adduce Dr. De Waal's medical report dated 23 December 2023 was that she was unaware that she had to seek leave to adduce the expert report; the report had been available to the respondent for sometime, (at the end of 2023) and if she had known she had to seek leave to adduce the report she would have made her application sooner.
45. The Tribunal reminded itself of the principles in the **De Keyser Limited v Wilson 2001 IRLR 324** case. The EAT provided guidance on the steps to be taken if a party wished to rely on expert evidence. It was noted that the joint instruction of an expert is preferable. Further Judge Harding considered expert medical reports in the context of cross examination of the claimant on 20 October 2023 at page 422 paragraph 14. Judge Harding stated it was the opinion that it was the psychiatrist report that should be given the most weight Dr Griffin "is after all an independent medical expert and in many ways it seemed to

me therefore that she was best placed to form a view on what reasonable adjustments might be required for the claimant”.

46. The Tribunal took account of the fact that the claimant is a litigant in person but is also a trained lawyer but does not have a specialty in employment law. The Equal Treatment Bench Book references that Litigants in Person may face misunderstandings in terms of procedural case preparation. The Tribunal had already been taken by the claimant in evidence to the latest report of Dr. De Waal and had read it. The Tribunal concluded it would consider the report of Dr. De Waal, however the weight to be attached to such a report would be minimal in the context that the claimant had not until a very late stage applied for leave to rely upon the expert report; to give the report greater weight than minimal weight would be significantly prejudicial to the respondent who had entered into a joint instruction of the agreed expert psychiatrist Dr. Griffin; had the respondent been aware that the claimant sought to rely upon the latest report of Dr. De Waal its strategy in terms of the litigation may well have included obtaining its own medical expert and or seeking cross examination of Dr. De Waal. De Keyser notes that the preference is that an expert should be jointly instructed. The Tribunal concluded that this decision was in the interests of justice and pursuant to the overriding objective.
47. Both parties supplemented their detailed written submissions with oral submissions.

FACTS

48. The Tribunal has found facts proportionate to the issues it needs to determine.
49. On [REDACTED] 2000 the claimant commenced employment with the respondent as a [REDACTED]. The claimant received a new contract in 2004 (pages 515-523) and in 2022 (page 627-639). [REDACTED]
[REDACTED].
50. The respondent is a [REDACTED] with around [REDACTED] employees. It is a [REDACTED]
[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED], and reasonable adjustments have been put in place to amend standard working times, ability to switch the camera off during Team's meetings and adjustments in respect of travel.

51. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

52. The respondent operated a system of standard and individual performance objectives for all [REDACTED] which was set as part of the appraisal process. [REDACTED]

53. [REDACTED]

54. [REDACTED]

55. [REDACTED]

56. [REDACTED]

57. [REDACTED]

Relevant Policies

58. The Staff Handbook page 542 -551 sets out the system of appraisal. At paragraph 7.3 page 549 it states [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
59. The Managing Attendance Policy (page 552 – 568) at page 556 states that where an employee has six or more years' service, they are entitled to six months full and six months half pay. Further, sick pay is subject to an overall maximum of 365 calendar days in any four year period. In respect of managing poor performance informally, at page 584 paragraph [REDACTED] of the policy it is stated that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
60. At stage 3 of the Managing Attendance Policy which is defined as where there is little improvement, no improvement in the Bradford factor for short periods of absence, or the return to work programme is not effective and the employee is finding it difficult to return to their full duties following a reasonable period of adjustment; one of the considerations which may be taken into account in determining the appropriate course of action includes whether there are any alternative roles [REDACTED] which could be offered and would be more suitable in view of the nature of the illness or disability.
61. In respect of disability related absence at page 566 paragraph 87 it is stated at each stage of the sickness absence meetings procedure, particular consideration will be given to whether there are reasonable adjustments that could be made to the requirements of a job or other aspects of working arrangements that will provide support at work and/or assist a return to work.
62. Annual leave entitlement (page 567 paragraph 100) continues to accrue during sickness absence up to a maximum of four weeks annual leave (including bank holidays and holidays already taken in that year). Therefore, if an employee is absent due to sickness for a complete annual leave year, he/she will be entitled to the statutory annual leave as governed by the EC working time directive which is 4 weeks.
63. The Grievance Procedure (see page 524 to 528) provides an informal and formal procedure. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] In such instances the grievance must be raised with HR who will then advise on how the issue can be dealt with and will nominate someone to deal with it. Pursuant to [REDACTED] anyone hearing a grievance will have received appropriate training. The informal procedure provides a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

64. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

65. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From 2006

66. [REDACTED]
[REDACTED] In May 2006 [REDACTED]
[REDACTED] became the claimant's Group Leader.

67. On 1 January 2015 [REDACTED] became the claimant's Group Leader.

68. The claimant's appraisal dated August 2015 (page 688) noted that the claimant had [REDACTED] that year.

69. On 19 May 2016 the claimant was signed off sick with stress from work and latterly (from 5 August 2016) depression for a period of 130 days (see pages 1061,1693 to 1704). [REDACTED] became her Group Leader (page 705).

70. On 6 September 2016 (page 703-4) an Occupational Health report advised it was unlikely that the claimant was a disabled person within the meaning of the Equality Act 2010.
71. By letter dated 8 September 2016 (page 1696) the claimant wrote to [REDACTED] stating that she had a discussion with [REDACTED] about [REDACTED] (now her line manager) and that she did not want [REDACTED] to be informed about the claimant's reason for sickness absence and she did not want him to be involved in the risk assessment or her return-to-work plan. The claimant noted she had told [REDACTED] she had discussed this point with OH assist and was told she was entitled to ask for [REDACTED] line manager to act in his place.
72. On 6 October 2016 (page 705) the claimant wrote to [REDACTED] stating she had been diagnosed with depression. She stated that OH assist had recommended that [REDACTED] should not be told about the reason for the claimant's absence and should not be involved in any risk assessment. The claimant said she was intending to ask that she was allocated to a different group leader as part of her return to work. She stated she had told [REDACTED] that in the 16 years she had worked at the respondent her relationship with [REDACTED] had been defined by intermittent but consistent harassment characterised by snide remarks and ridicule. She said she dealt with it by keeping away from him and having little to do with him as possible. She stated she would like to return to work and become productive and felt this will be much better. She stated if she can work with a group leader who had previous experience of working with her. She didn't want any contact with [REDACTED].
73. By letter dated 7 October 2016 OH assist advised that the claimant was not currently fit for work due to the nature and severity of her symptoms. It was not envisaged a significant improvement or return to work until there was progress in addressing the perceived workplace issues. OH assist recommended an individual stress risk assessment be carried out prior to the claimant's return to work in order to identify any workplace stressors and develop an action plan to try where possible to mitigate them on the claimant's return to work. "This should be reviewed on a weekly basis and the action plan adjusted accordingly. This process should continue for as long as both parties feel it would be beneficial". There was no suggestion by OH assist contained in this report that the claimant's manager should not be told about the reason for the claimant's absence or involved in any risk assessment.
74. On 22 October 2016 (page 709) [REDACTED] HR manager wrote to the claimant to say she had noted the claimant's comments about her new manager [REDACTED]. She had passed those comments to [REDACTED]. [REDACTED] "was very concerned about the claimant's comments and has asked me to discuss this with you to get further details." [REDACTED] wanted to set up a meeting on 3 November to discuss the stress risk assessment with the claimant as soon as possible and any reasonable adjustments to ensure a sustained return to work.
75. On 3 November 2016 a meeting took place between the claimant and [REDACTED] (Head of HR) to discuss the completion of the stress risk assessment (pages 713-5). The claimant presented a risk assessment (see pages 640-650).

The manager was meant to be [REDACTED] but the claimant was moved to [REDACTED] group to avoid [REDACTED] who was in that group (see page 716).

76. On 16 November 2016 [REDACTED] became the claimant's Group Leader (page 716).
77. On 21 November 2016 the claimant met with [REDACTED] and [REDACTED] to discuss the stress risk assessment (see page 717-9). In the course of this meeting there was no promise that the claimant would have no contact with X. In answer to questions put in cross examination by the respondent, the claimant stated the contact with X was not discussed because the promise had been made in a telephone call with [REDACTED] and the claimant relied upon letters at page 1696 and page 705. The Tribunal rejected the claimant's evidence and determined that had a promise been given, this would have been discussed with [REDACTED] in this meeting as her Group Leader.
78. During this meeting the claimant confirmed that she was not sure she felt strong enough to cope with what might follow if the respondent took any action in respect of the individual incidents, she raised in her risk assessment. The claimant stated she wanted to start with a clean slate. She was invited to raise anything in the future with [REDACTED] or [REDACTED]. [REDACTED] also raised the fact that [REDACTED] was the only [REDACTED] in his group and the claimant had mentioned some problems working with him previously. The claimant said the problem was the micromanagement in relation to a particular [REDACTED] on top of everything else at the time; there was no personal problem between them. [REDACTED] explained that where a [REDACTED] disagreed with the [REDACTED], he usually advised the [REDACTED] to consider whether the [REDACTED] request was reasonable and if not, to talk it through with him. He believed that [REDACTED] and [REDACTED] had a role in terms of robust and appropriate challenge with regard to [REDACTED] and vice versa. The claimant said she hadn't felt supported in the past when challenging [REDACTED] but was happy with this approach
79. On 24 November 2016 (page 718) the claimant returned from sick leave.
80. At a meeting on 29 November 2016 (page 720-3) between the claimant, [REDACTED] and the claimant's trade union representative, the claimant was noted as agreeing that the respondent had made all the adjustments it reasonably could make in relation to the issues raised in the risk assessment meeting (page 723).
81. By letter dated 8 December 2016 (page 190) the claimant's GP stated that the claimant was awaiting CBT. He stated it was important for the claimant to be able to always make positive progress and crucial to this is the setting of achievable goals. He said it was detrimental to feel overwhelmed or stressed or have a sense of failure. He advised that she be allowed to continue to work from home as this is the least stressful environment and minimises her need to travel which is a challenge at the moment. Further he suggested her actual workload also needed to be carefully increased once she was clearly achieving her goals at the less intense level. A meeting arranged for the 12 December 2016 (page 76) was cancelled. The GP's note was forwarded to [REDACTED] by e-mail dated 9 December 2016 (page 724-5).

2017

82. On 11 January 2017 (page 726-9) the claimant met with [REDACTED] to discuss her return-to-work plan. The claimant's phased return was discussed. [REDACTED] confirmed there needed to be milestones and reviews in a phased return to ensure that satisfactory progress was being made on the way to achieving full capacity over a reasonable but limited period of time. [REDACTED] proposed a plan addressing the number of [REDACTED] ability to manage a [REDACTED] with parallel/different demands, complexity of [REDACTED], speed and new expectations of [REDACTED] in terms of upfront analysis/[REDACTED]. It was proposed that working from home arrangements would continue and would be revised on her return to full time hours. A table of work targets was prepared (page 729). The claimant said she was overwhelmed by [REDACTED] [REDACTED]. The claimant achieved the return-to-work plan. The claimant was able to comply with the back to work plan and had a [REDACTED] of [REDACTED] by the end of February 2017 one month earlier than required; see the claimant's appraisal at page 735 dated May 2017.
83. On 2nd April 2017 (page 731) occupational health stated that the claimant's current workload and job itself was not an issue for her; the main issue is the effect of being in the office environment and travel on her levels of anxiety. OH suggested reviewing the stress risk assessment regularly and updating it accordingly. No further adjustments were recommended at the time but management were advised to regularly review the claimant. OH also suggested (page 732) that the claimant may benefit from having the flexibility to work from home an extra day per week, *"if this can be reasonably accommodated by the business"*. OH stated the claimant was likely to have a disability by reason of anxiety and depression.
84. On 8 May 2017 (p.733-741) the claimant's annual appraisal was completed. The claimant stated she had been off sick for over six months; was on reduced hours for 12 weeks and had needed to take a large amount of leave since returning to work. She stated she had managed to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The claimant stated she was able to comply with the back to work plan and had a [REDACTED] of 8 [REDACTED] by the end of February 2017 one month earlier than required. [REDACTED], the claimant's then line manager, stated that the claimant did not produce a great deal of work in the first part of the year, but this should not be held against her as she was absent as a result of illness. She had met the expectations that were set for her for the second part of the year. On that basis [REDACTED] ranked the claimant's rating as "good" stating that a successful return to work gave us a basis to work on for the coming year.
85. On 24 May 2017 (page 744-6) a meeting took place between the claimant, [REDACTED] and [REDACTED] to discuss the occupational health report. At this meeting [REDACTED] raised the issue of meetings away from the office. Although no [REDACTED] were planned, and [REDACTED].
[REDACTED]. The claimant stated she did not go out on her own and that her husband took her to and met her from the train station. [REDACTED] agreed that the claimant could be

accompanied on any visits and that she could work three days at home. [REDACTED] suggested the claimant worked for 6.5 hours in the office on the two other days per week. The claimant was happy to compromise and do six hours and 45 minutes. The claimant was on a waiting list for cognitive behavioural therapy but did not know when it would take place. [REDACTED]

[REDACTED] The claimant's trade union representative suggested [REDACTED] as someone who could help as she knew the organisation well. [REDACTED] said he would look into suggestions for training in assertiveness or conflict management. Under cross examination, [REDACTED] was unsure whether this training was provided to the claimant.

86. On 8 September 2017 (page 748) [REDACTED] stepped down as Group Leader and joined the claimant's group as a [REDACTED]. [REDACTED] emailed the claimant on 12 September 2017 (page 749) wishing to speak to the claimant about this before he went on leave.
87. On 20 September 2017 the claimant contacted [REDACTED] to say that [REDACTED] will not have the opportunity to speak to [REDACTED] before his move into the group today. The claimant stated she was feeling a bit anxious and decided to take up his offer to work from home on Thursday and Monday; returning to work on the following Thursday by which time people would have had a chance to speak to [REDACTED]. She also confirmed she told both [REDACTED] and [REDACTED] that she did not want them to be told about the details of her health problems or that she had complained about the behaviour of two other colleagues. On 20 September 2017 [REDACTED] emailed the claimant saying he would let [REDACTED] take things forward when he returns (page 750).

2018

88. On 11 May 2018 (page 752-760) the claimant's annual appraisal was completed. The claimant was awaiting treatment for her hyperthyroidism. [REDACTED]
[REDACTED] She described having requested reduced hours in October 2017 in order to try and remain in work while waiting for treatment. Since October 2017 the claimant had not requested for her hours to be reduced. Under cross examination, the claimant stated this was because [REDACTED] had said on her return to work that a reduction of hours could not be accommodated. However, this point was not put to [REDACTED] and the Tribunal cannot reach a conclusion on that fact.
89. In the section of "working with others" in the appraisal, the claimant stated (page 754) the decision to move someone into the group who she had previously complained about in relation to bullying and her health problems have made it more difficult for her to interact with the rest of the group. Her overall assessment was rated as good (see page 759). [REDACTED] stated she had managed to have a very productive relationship with the in [REDACTED] and [REDACTED]. She did not complain about [REDACTED]. Under cross examination the claimant stated this was because she had agreed with [REDACTED] there could be a bank of desks between them with limited interaction with the group. The Tribunal determined that the claimant had not been given a blanket permission not to attend group meetings.

90. From 21 November 2018 until March 2019 (73 days) the claimant was absent from work as a result of her thyrotoxicosis (see page 1061).

2019

91. From 2019 a system was introduced so that each group had a manager who dealt with [REDACTED]. The group generally had contact with the [REDACTED] manager via email. X had this role, and the claimant has had no direct contact with him since 2019 on her admission (and had only one direct contact with his successor [REDACTED] via email). From October 2019 to October 2021 the claimant had no involvement with X. From October 2021, X had no involvement with the group. The claimant did not raise any issues about X in her consultations with her GP between 4 October 2019 and 3rd January 2020 (see page 1731).
92. In the appraisal dated 18 April 2019 (page 775) the claimant described that by [REDACTED] she was able to hold her own in terms of quantity despite her health problems until November when she went off sick. She stated that she knew she worked 3/4 of the year and completed just under [REDACTED] for the year. This was in addition to [REDACTED]. In terms of quality the feedback on [REDACTED] and the very limited number of [REDACTED], did not identify any significant problems with quality. [REDACTED] was building up the claimant's [REDACTED] gradually [REDACTED] and stated that they would talk regularly to check that this was going OK. Her overall performance was rated as "good".
93. The claimant successfully returned to work. In the summer of 2019, she moved to the group line managed by [REDACTED] which was a result of rebalancing of the groups and not specific to the claimant.
94. On 8 September 2019 [REDACTED] moved down from his group leader role and was placed into [REDACTED] group. [REDACTED] did not say that the claimant would have no contact whatsoever with [REDACTED] and the claimant did not complain about that. [REDACTED] explained to [REDACTED] at the time that there were some sensitivities and to limit contact with the claimant because the claimant did not want [REDACTED] to be told that she was accusing him of bullying.
95. In October 2019 X was to work on [REDACTED] in [REDACTED] group. The claimant alleged that she spoke to [REDACTED] on or about 17 October 2019 in a 1:1 that she didn't want to speak or to have contact with X explaining that from 2016 she was not to have contact with X. She suggested to [REDACTED] that he knew about this. [REDACTED] had no recollection prior to October 2019 when the claimant told him about an alleged incident with X. The Tribunal preferred [REDACTED] evidence for the reasons set out below (see credibility section).
96. On 26 November 2019 (page 2042) [REDACTED] contacted [REDACTED] and [REDACTED] stating he had spoken to [REDACTED] today and informed her that as things presently stand [REDACTED] is not minded to change the current arrangements for X dealing with the [REDACTED] had explained to the claimant that she didn't wish for the matter to be taken further

when she first raised it, then there is no reason for [REDACTED] making changes as things stand. [REDACTED] asked [REDACTED] to make contact with the claimant about this and advise about the above. He suggested digging out the HR papers from when she first raised this matter and the outcome of that and to speak to [REDACTED] who was her line manager. [REDACTED] said that the claimant did not tell him details about the 2016 incident (the Tribunal accepted his evidence).

97. On 28 November 2019 (page 2039) [REDACTED] contacted [REDACTED] explaining that he'd been informed there was an incident with X about a number of years ago. He did not know whether it was raised as a grievance and what procedure was adopted. From conversations with [REDACTED] and the claimant, ultimately the claimant decided that she did not wish to take the matter forward. He said as it was not his decision to make and with her agreement he spoke separately with [REDACTED] and HR then relayed the upshot of those conversations back to the claimant namely there was presently no good reason to change the arrangements because there's been no investigation and/or findings that justify it because the claimant decided not to take it forward when the incident happened and in these circumstances it would be unfair on X. The claimant was not happy about this and wanted to know in writing what she needed to do in order to complain about it. He said the respondent would have to see what form the complaint takes but from what she has told me she wants to complain about the incident of a number of years ago including how it was handled by those involved i.e. lack of support and about the decision to have [REDACTED] dealing with her [REDACTED] or failure to change the arrangements. He further stated it was for [REDACTED] ultimately to decide if the arrangement should be changed.
98. By email dated 28 November 2019 (page 784) [REDACTED] wrote to the claimant stating that [REDACTED] mentioned that the claimant asked how to take forward a complaint. He advised the claimant she should follow the grievance procedure, attaching a copy. The claimant forwarded this email to [REDACTED] stating that she had contacted [REDACTED] to request support from the union in making the grievance and she asked in the meantime if she could contact [REDACTED] for support if X e-mails or asks for a meeting. [REDACTED] responded to [REDACTED] and [REDACTED] on 30 September 2019 (page 784) stating to start treating X differently to other [REDACTED] who are dealing with [REDACTED] without him being aware of the reason why, worried him. At the same time, he stated he understood the claimant's request.
99. On 6 December 2019 (page 2038) [REDACTED] said he had read the material attached by [REDACTED]. He asked whether the claimant wanted [REDACTED] to take action in respect of the individual incident that had been raised in her stress risk assessment. The claimant replied that she wasn't sure she felt strong enough to cope with that or what might follow from that and in any case, she now wanted to start with a clean slate. [REDACTED] (page 2038) said standard practises to share the minutes for comment by all parties so that the claimant and her trade union representative would have seen them. The claimant was asked by [REDACTED] to raise anything in the future with him and confirm that such incidents would be treated seriously
100. The claimant stated in her witness statement at paragraph 92 she suffered a significant impact due to this incident with X; she described feeling hyper

anxious; impossible to sleep; having nightmares waking in a sweat with palpitations chest pains feels that feelings that her throat was closing and choking. The Tribunal found the claimant did not describe this effect to her manager, [REDACTED].

2020

101. An informal grievance meeting held on 21 January 2020 (page 876). It was led by [REDACTED] as the claimant's line manager on the advice of HR. Under cross examination the claimant stated that she had not recorded this meeting; she stated it was by reason of this meeting that she did start a recording but at this meeting she was making notes. The Tribunal rejected that evidence because of the detailed tracked changes made by the claimant to the minutes in particular at page 877 to 878. The Tribunal found on the balance of probabilities it was unlikely, the claimant could make such detailed track changes in the absence of covertly recording the meeting.
102. The purpose of the meeting on 21 of January was to discuss the claimant's grievance and get as much information from the claimant. At the meeting the claimant explained that she was in the kitchen, got her coffee and cups went to the fridge to get milk, X was doing coffees, the fridge underneath the water heater underbody touched breast the claimant froze X carried on doing what he was doing. The claimant did not tell anyone at the time and there were no witnesses. She said she was unwell at the time, so she avoided him, and she was very angry with him. The claimant described that the contact was made by X as he went to get his mug; "contact was made with her body not like when you do it in error immediately say sorry; difficult instant seemed a long time getting mug only purpose but did have contact if arm would not have thought twice I froze and didn't know what happened next she said I think it was an accident if anything my opinion is that he went to get a mug and was angry I was in his way no intention to touch invaded body space and continued violated and felt worthless made it known to him through my reaction that I was angry she did that by avoiding him and on one occasion. She was walking from [REDACTED] [REDACTED], and he was there. The claimant did not acknowledge him. She said she remembered looking at him. She said she believed he knew she was unhappy, and he knew what he had done. She stayed away from coffee making if either, went, to make coffee". The claimant edited these notes at page 876. She described the summary of her account in the minutes as being less clear than the full account she gave. She accepted at page 878 it was an accident. The claimant also said that while this was my view she did not know what his intentions were only he can know. She said she believed he knew what had happened was wrong because after this incident she avoided using the kitchen. The claimant also described that [REDACTED] mother died so she got a card for the group to sign but X refused to sign it.
103. The claimant first informally raised a grievance that she did not wish contact with X and the grievance was about a promise given to her by the respondent that there should be no contact with X. At paragraph 91 of the claimant's witness statement the claimant stated "I also did not want X to become aware of my complaint and go through what I was sure would be a badly run investigation

and be left with working with him after that consequently I made sure that my grievance related to the decision to align him with my group and not a grievance against him for touching me inappropriately. The claimant therefore deliberately took a choice not to raise the incident as part of her grievance. After the informal grievance was unsuccessful the claimant then lodged a formal grievance and was represented at that time by [REDACTED]

104. [REDACTED] was asked under cross examination about [REDACTED] who was mentioned by the claimant in the meeting on 21 January at page 874; this could have been an opportunity for the claimant to move round. [REDACTED] said that he had asked the claimant if he had to raise this with X how would she feel. There was a reluctance on the part of the claimant that X be told.
105. In about March 2020 the respondent became a [REDACTED] this meant that the default position was that all employees worked from home and have to book to be in the office. During lockdown all employees worked from home.
106. On 25 February 2020 (page 883) [REDACTED] director of [REDACTED] responded to the claimant's grievance. [REDACTED] explained that HR had advised [REDACTED] to take the lead to hear the grievance at the meeting on 21 January 2020. She was not in attendance but was provided with the notes prepared of the meeting by the respondent (page 870) and the claimant's (page 876) amended notes (page 883).
107. [REDACTED] refused to move X or the claimant to another group based on a number of factors including any contact between the claimant and X in the role of [REDACTED] because contact is likely to be minimal and infrequent if at all and can and will be supported. In her witness statement [REDACTED] noted that the claimant needed more management time and support than other colleagues and this had been factored into her decision making. The claimant further had expressly stated she did not want X to be told of the reason of any change. [REDACTED] found that no commitment appears to have been made to the claimant that she would never need to work with [REDACTED]; indeed, it would not be practicable in an organisation [REDACTED] to make such a guarantee as business requirements may necessitate the claimant working with particular individuals.
108. On 13 March 2020 (page 245 bundle B) the claimant emailed [REDACTED] to state that she wanted the salient point noted namely that during the one to one she had said she was feeling anxious and depressed since being told that the outcome of her grievance was that [REDACTED] would only offer her counselling to enable her to work with the person who she had said touched her inappropriately. She said she appreciated that [REDACTED] felt unable to discuss this during the meeting, but she thought it was right to note what was mentioned in the meeting.
109. On 25 March 2020 (page 888) [REDACTED], the claimant's trade union representative wrote to [REDACTED] requesting that the employer arranges contact by e-mail and that any request of face to face contact be referred to the claimant's group leader and requested that the employer confirms that the

claimant will not in the future be put in a position where contact between her and X is any more than it will be now.

110. [REDACTED] forwarded this e-mail checking her understanding of the position stating that she thought contact by e-mail was the current arrangement but stating that she could not guarantee that the claimant would not in the future be put in a position where contact between her and X's was any more than it will be now. [REDACTED] responded (page 887) that he thought contact by e-mail is in place anyway "I was uncertain about what the claimant meant about any more than it will be now". He agreed the respondent could not guarantee anything. The respondent concluded they couldn't really guarantee either suggestion without agreeing it with X (page 887). Another consideration was that [REDACTED] are run by [REDACTED] first. [REDACTED] did not consider this a good idea because if everything goes via him it defeats the point of moving the task to X in the first place. There were no current arrangements that apply specifically to X/the claimant. They're in exactly the same position as everybody else. We have not arranged with X that should he need to have a face to face contact that should involve [REDACTED] in any way. He stated it should not involve me on the basis of the current response to the grievance. If we wish to change that response, I am happy to play whatever part I can to support the claimant/X and a resolution; (see page 886).
111. In response to [REDACTED] e-mail [REDACTED]s responded on 25 of March 2020 (page 885) stating she stood by the assurances and commitments that she had made in the letter, but she could not make any more than that.
112. By e-mail dated 1 April 2020 (page 782) it was stated by [REDACTED], below is what we discussed about this when it first came up. It was never something I was comfortable doing and to the extent if it was agreed at all it was an interim measure pending us establishing the facts and without the complete picture.
113. The claimant's amendment to the notes of the informal complaints meeting dated 3 of April 2020 are set out at page 890 to 893. It was stated that a complicating factor was the respondent was not able to have a conversation with X about the underlying allegation something which made it difficult to implement the additional adjustments being requested by the claimant. [REDACTED]
[REDACTED] Plans were currently being made in readiness for the implementation of that change. [REDACTED] could not confirm exactly when it would begin but that required Board approval but it would nonetheless be implemented over the coming months that in itself would present problems giving the claimant the assurance sought that there would be no future increased engagement with X as he might well apply for one of the [REDACTED] through the normal recruitment exercise and might be successful.
114. In an appraisal dated 20 May 2020 (page 900) the claimant marked herself as having [REDACTED]
[REDACTED]. At page 903 there was a section concerning any other issues you would like to raise at your appraisal. The claimant left this paragraph blank.

The manager commented at page 903 *"it's been a difficult year for the claimant in terms of her health and she had gone through a grievance procedure. Both aspects have had an impact on her. It is to her credit that to date she has not allowed [REDACTED] to be detrimentally affected.* The objectives are noted as agreed. The claimant suggested she had no choice but accepted under cross examination (see page 906) she had signed these off.

115. On [REDACTED] instructions [REDACTED] of HR wrote to the claimant on 22 of May 2020 (page 912). He confirmed that three meetings were held in 2016 concerning the risk assessment and further having examined the notes of the meetings that took place in 2016 there was no evidence found to suggest an assurance was given to the claimant that she would never have to work with those named in her risk assessment. He referred to the letter of [REDACTED] and her meeting with the claimant on 3 April; the matter was now closed. [REDACTED] informed the claimant she could raise a grievance if she wished to do so. In the meantime, the claimant was to prepare a workplace adjustment passport together with her line manager and arrangements were to be made for counselling as requested.
116. The claimant requested copies of all data under GDPR (page 914) on 26 May 2020 and notified the respondent on 1 June 2020 (page 915) she would be making a formal grievance once she had the requested data (which she received on or about 1 July 2020).
117. On 1 June 2020 (page 1730) the claimant attended her GP surgery and referred for the first time about a history of 2015 having been touched by a male colleague from behind on her breast. She described having counselling at work *"and the counsellor wondered if PTSD"*. The claimant described getting nightmares, anxiety, not sleeping, flashbacks of what happened and feels her heart pounding. The GP said it sounded like PTSD. She was offered a sick note but it was noted that the claimant would rather not have one. In the short term she was given some sleeping tablets and recommended that she continue with counselling and sertraline. Further it was noted that the claimant was discussing her case with a solicitor. Her union was involved, and the grievance process was currently being looked at.
118. On 16 July 2020 (page 2047) [REDACTED] emailed [REDACTED] stating that the claimant had said she was feeling very low in mood and was depressed and was having another counselling session tomorrow and is going to discuss how she's feeling.
119. On 28 July 2020 (page 924) [REDACTED] emailed the claimant seeking an update about the claimant's health having discussed it with her counsellor and/or GP and if she was well enough to work. The claimant responded on 31 July 2020 (page 924) stating that her appointment with the counsellor was cancelled and it was next on 5 August. She said she told [REDACTED] she was depressed and weepy but had been working her full hours. [REDACTED] kept HR in touch as to how the claimant was feeling; this was the start of the process of a discussion about a workplace passport.
120. The claimant's counselling assessment notes (which [REDACTED] did not see) noted on 5 August 2020 (page 918) that the claimant indicated she was not

coping with work. She felt the demands of the workload whilst completing the grievance was too much. She stated she felt unsupported by her manager. It was agreed that the employee would seek support from her GP today based on recognition of current well-being and she may take time away from work as sickness absence or request that the manager review the workload demands to enable her to remain in work. It was noted that the claimant was under the care of her General practitioner and that the *“General Practitioner indicated a diagnosis of PTSD”*.

121. On 5 August 2020 (page 927) the claimant lodged a formal written grievance. The claimant stated in highlighted ink **“I request that X is moved to a different team when there are five people performing this role in five different teams. I do not see how such a move can unfairly affect anyone. Whereas expecting me to ensure the mental distress caused by working with X is unfair to me these be feeling unsafe and unprotected and is having an adverse impact on my mental health.** At page 935 she stated *“I cannot control the respondent chooses to do. However, I do not give permission for X to be told of my allegation”*. She stated she did not trust the respondent to undertake an adequate investigation given the poor record of her account in the minutes of 21 January 2020 or an unbiased investigation into the incident and did not trust the respondents to keep her safe from X who she previously stated came across as extremely angry. The claimant stated in her written grievance that she had been diagnosed with PTSD by her GP (see page 927).
122. From 5 August 2020 to 2 November 2020 (64 days) the claimant was absent. The reason given for her absence was PTSD (page 1061).
123. On 13 August 2020 (page 2052) HR acknowledged receipt of the claimant's formal written grievance dated 5 August 2020 stating “due to the serious nature of the allegations you have raised in your formal grievance and separately to the response internal process whilst the respondent is not making any prior judgement on the matters you complain of it is of course a matter for you to decide whether you need to raise any concerns outside of the respondent including with the police and the respondent would not seek to stop you from doing so.”
124. On 7 October 2020 (page 938) the claimant's grievance was not upheld by [REDACTED]. It was concluded at page 940 that no promise was made to the claimant to keep her away from X. At page 940 it was determined that although it doesn't appear that a risk assessment was appropriately completed [REDACTED] did not believe that it had a material impact on the actions taken as a result of the risk assessment review the reasonable adjustments covered 3 areas; level of work; interpersonal issues and practical issues. The stress risk assessment was actually done in a number of meetings. Under cross examination of [REDACTED] it was suggested to him that he failed to take into account the claimant's ill health. The Tribunal did not find that allegation was sustainable on the evidence; [REDACTED] considered the claimant's health at page 940; page 945 (appendix B) and 946. [REDACTED] was sympathetic to the claimant and noted that it was clear that the claimant was ill and going through a difficult time although the claimant was assessed as fit for work. It was further suggested to [REDACTED] in cross examination that his finding not to make the suggested reasonable adjustment to allow no contact with X had focused on a lack of transparency to X. [REDACTED]

considered it was a relevant factor of [REDACTED] findings that there needed to be transparency, and it could infer that X had done something wrong. [REDACTED] formed his determination upon perusal of a significant amount of documentation (page 939) and was told by [REDACTED] in a letter dated 28 August 2020 (page 2031) the claimant wanted her grievance to continue in her absence.

125. In respect of the claimant's complaint that it had been agreed that she would not be required to work with three [REDACTED] named in her risk assessment, [REDACTED] found it was reasonable to expect that there may have been an intention to minimise the interaction with three managers in an informal way.
126. On 16 October 2020 the claimant appealed the grievance decision (page 948-951). The claimant did not want any contact with X. The claimant referred to the respondent's duty of care to her under health and safety law. The claimant referred to the request as a reasonable adjustment and stated at page 951 "my union representative has advised me that my treatment throughout this process from my return to work in 2016 until now could be considered sex discrimination; the respondent has a duty to record this matter as a potential incident of sex discrimination". The claimant's evidence was that the trade union representative told her to include the reference to discrimination in this letter. By 2020 the claimant had undertaken some research into the Equality Act; the claimant thought she didn't ask a trade union representative about tribunal time limits for bringing claims as she thought she needed to go through the grievance process and [REDACTED] didn't tell her about tribunal time limits. The Tribunal did not find that credible.
127. The claimant returned to work in November 2020 and had a phased return for 6 weeks (see page 967). There was no fit note suggesting any adjustments were required by the claimant's General practitioner.
128. By e-mail dated 1 November 2020 (page 957) the claimant wanted to confirm that she'd also asked [REDACTED] to ask HR for referral to occupational health, a mental health risk assessment and a referral to a psychiatrist. She stated the counsellor appointed by PAM assist advised her to request these, stating that employers of other clients she had in similar situations to hers had made these referrals and she could not understand why the respondent had not.
129. On the claimant's return to work there were a number of changes to the working systems. The claimant stated in evidence that the respondent was in a state of "chaos" because [REDACTED]
[REDACTED] disputed the description of chaos. The respondent was converting systems to new platforms. By the end of 2020 there were hybrid systems in place. The claimant did not have a working laptop until 11 November 2020 (page 978). The Tribunal concluded that these changes would have inevitably impacted on all employees work at the time.
130. On 5 November 2020 (page 257) the claimant wrote to [REDACTED] stating that she still experienced mental health problems as previously discussed and her medication had been increased. She asked as part of the return to work whether

she could [REDACTED] in order to help her cope while the grievance appeal is ongoing and cope with counselling.

131. By e-mail dated 13 November 2020 (page 964-965) [REDACTED] suggested they needed to decide [REDACTED] for the claimant to work on whilst a risk assessment/workplace passport was carried out. He requested the claimant's thoughts about [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
132. By email dated 16 November 2020 (page 964) the claimant responded to say that her trade union representative would be back in the office on 17 November 2020 and was willing to discuss her return to work in a meeting with HR and her trade union representative being present. This caused a delay in meeting with [REDACTED] She had access to the new computer system since last Thursday and had no training on the new system. [REDACTED]
[REDACTED]
[REDACTED]
133. A return-to-work meeting took place on 26 of November 2020 (page 988-992). The claimant attended with her trade union representative along with [REDACTED] [REDACTED] HR. There was a delay in organising this meeting because [REDACTED] the claimant's trade union representative, was not back in the office until 17 November 2020. [REDACTED]
[REDACTED]
[REDACTED] suggested discussing the IT issues and addressing them first [REDACTED]
[REDACTED]
[REDACTED] At the meeting the claimant's trade union representative [REDACTED]
[REDACTED] and agreed with the proposal made by [REDACTED]. [REDACTED]
[REDACTED]. The claimant did not want the stress risk assessment or the workplace passport to be completed until medical and occupational health assessments were complete (page 991). The claimant had started the stress risk assessment but without a diagnosis "it is all a bit up in the air". The claimant was informed that she was over the Bradford absence scoring at 268 but that [REDACTED] was not doing anything about that at present. Following this meeting [REDACTED] sought to arrange an IT overview and [REDACTED] but the claimant cancelled this because she was preparing for her grievance appeal hearing.

134 [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
135. On 30 November 2020 [REDACTED] (see page 1166). The claimant went on annual leave between the 30 of November and 11 of December. [REDACTED]
- [REDACTED]
136. On 2 December 2020 (page 995) the claimant emailed [REDACTED] stating I'm also dealing with my grievance appeal which involves a meeting with [REDACTED] on 10 December. [REDACTED] was aware at the time of the meeting but informed the Tribunal (and the Tribunal accepted his evidence) that he tried to re-arrange alternative dates for the meeting but this proved difficult ,so it happened on the same day as the grievance appeal. A meeting was fixed for 3 December 2020 (p999) but the claimant cancelled it.
137. On 4 December 2020 (page 997) the claimant emailed [REDACTED] stating that the respondent was aware since 2016 that she had depression and anxiety disorder. She stated she went on sick leave in August 2020 because she had a meeting with [REDACTED], and she had informed him she was depressed because someone had touched her inappropriately. She stated [REDACTED] terminated the meeting and advised her to go to her GP. The claimant further stated the reports from her counsellor sent to work described the support she needed, had been ignored and apparently not even read. [REDACTED] under cross examination stated that they were not aware of that information and the respondent may have been sent the reports, but the respondent had not seen the counsellor reports. The Tribunal found on the balance of probabilities they preferred the evidence of [REDACTED] that the respondent had not seen the counsellor reports.
138. [REDACTED]
- [REDACTED]
139. The claimant at this stage was not engaging in [REDACTED] was instigating and leading discussions. When he asked for the claimant's response, he received very little response and he had to chase her to meet with him. Generally, the respondent met with staff one per month but [REDACTED] put into place additional support by meeting the claimant on a weekly basis.
140. In December 2020 (precise date unclear) (page 1000) the claimant asked that she be able to return to work [REDACTED]
- [REDACTED]

██████████". ██████████ refuted that the ██████████". The claimant was unwilling to meet with him. He tried to meet with the claimant for a ██████████ and try to meet the claimant in mid-year review but the claimant was resistant to this.

141. On 10 December 2020 ██████████ met with the claimant and he informed her he was unable to give her a decision on ██████████
██████████
142. On 10 December 2020 the grievance appeal hearing took place (see 1002-5) via video link. Prior to the hearing the claimant sent in some information about what she wanted to say (page 1006-9).
143. On 10 December 2020 by e-mail (page 1012) ██████████
██████████
██████████
██████████
██████████ The respondent stated that it had provided support to the claimant during the period including PAM assist counselling but the respondent does not have access to any reports as the material was internal to PAM assist and was only to recommend additional counselling sessions. The counsellor did not recommend a referral into psychiatric services. PAM assist do not and it appears neither do the respondent's occupational health provider offer this service so it was not within ██████████ gift to refer the claimant to a psychiatrist. However, the respondent informed the claimant if she wished to pursue this she could speak to her GP and ask for a referral. In the circumstances the advices (at page 191) dated 21 September 2020 and 8 December 2020 (page 193) from the counsellor to expedite the outcome of the claimant's grievance complaint were not seen by the respondent.
144. In the report from Joanne McCarthy dated 8 December 2020 (page 194) she also suggested that a step care assessment be completed to assess if further therapeutic support was required and an occupational health assessment to provide management advice with recommendations of operationally feasible adjustments. These were not seen at the material time by the respondent either. The respondent stated in the e-mail dated 5 January 2021 (page 1023) that the respondent was not receiving the reports from the claimant's counsellor because it had elected not to receive those reports because it took the approach that staff counselling sessions are confidential between the individual and their counsellor. ██████████ explained under cross examination the respondent had access to the reports from mid-2022; its belief is that the meetings between the counsellor and the claimant were confidential and had no expectation to actually view the reports. However, the respondent did pick up some recommendations from the second report in December 2020 and took those forward.
145. On 11 December 2020 (page 1010) the claimant emailed ██████████ and ██████████ stating that she was finding the way matters were being dealt with was extremely confusing and unhelpful. The claimant stated that the communication is fractured between different meetings and e-mail covering the same issues and it is inconsistent and confusing for her. ██████████
██████████

146. [REDACTED] responded to this e-mail on 17 December 2020 (page 1010) stating that the request [REDACTED] AGREED. Under cross examination it was suggested to [REDACTED] he was shouting at the claimant by using the capital lock for the word "agreed". [REDACTED] refuted this (and the Tribunal accepted his evidence) that this was his house style to emphasise something that was important. He said he adopted a similar style in respect to his e-mail to [REDACTED] dated 2 November 2020 (page 966-967) when he used capitals to emphasise psychiatrist because it was important to the claimant, and he did not wish the point to be missed by HR. He further stated and the Tribunal accepted that the tone of the e-mail dated 17 December 2020 at page 1010 was friendly; stating *"I hope this is welcome news to you and if as expected you are reading this in the new year I hope you had a really good Christmas"*. The claimant raised no offence as to [REDACTED] e-mail in her response dated 5 January 2021 page 1010. [REDACTED]
[REDACTED] He suggested agreeing the specifics in the New Year i [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
147. By letter dated 17 December 2020 (page 1015-8) [REDACTED] informed the claimant that her appeal had been unsuccessful. [REDACTED] dealt with each of the claimant's appeal points in turn. [REDACTED] rejected the claimant's ground 1 that there had been a departure from the grievance procedure as outlined in paragraph 15 which she said prevented the claimant from getting a fair hearing. The claimant contended that she did not agree that the grievance should go ahead in her absence without the hearing. [REDACTED] concluded there was no persuasive evidence that the claimant wanted to attend the grievance hearing from the documents within the file. The claimant wanted the grievance to proceed on 28 August 2020. The Head of HR wrote to the claimant confirming that normally she should be invited to attend but in an e-mail exchange between the claimant and her manager in August the claimant indicated she wished the process to continue whilst she was on sick leave and she wanted [REDACTED] to keep her and the union updated. Both the claimant and her union representative had the option of attending. If she wanted an oral hearing she could have asked for one (she did not). [REDACTED] found [REDACTED] had given careful consideration to the file and grievance; the allegations were voluminous and detailed but provided all the information necessary to make a decision. In the circumstances she found the claimant received a fair hearing in respect of her grievance. In respect of ground 2 namely no attempt made to clarify any of the points raised by her. [REDACTED] rejected this point finding that [REDACTED] did not consider it necessary to interview anyone in connection with the issues in the grievance because the papers were extremely full and contained all the information needed; had he needed clarification on any points he would have contacted the claimant. In terms of ground 3, the claimant alleged the decision was inconsistent; [REDACTED]

rejected this ground stating that [REDACTED] found no evidence of an agreement that the claimant would not have to work with three [REDACTED]. In terms of ground 4, namely the contention that the decision did not seem to have considered the detrimental impact on the claimant's mental health as a result of the individual stress assessment not being appropriately completed or reviewed "if this had been done then I may not have had to resort to submitting a grievance"; [REDACTED] rejected it. [REDACTED] found that the respondent reviewed all documentation including those which address the claimant's mental health approaching the process with care and sensitivity. [REDACTED] concluded that the respondent had provided support to the claimant during this period including PAM assist counselling. The respondent had no access to the counselling records. Following further clarification from PAM assist, the counsellor had not recommended a referral into psychiatry services neither did occupational health.

148. [REDACTED] further stated that the claimant indicated in her appeal notice that she feels that the respondents should tell X of her allegation if they are not prepared to accede to her request; the decision in respect of whether X should or should not be told is not pertinent to the appeal. It was stated the position remains that the claimant has not made a formal complaint against X. The claimant may choose to do so. It will then be for [REDACTED] to decide the extent to which an investigation may be possible or appropriate given the passage of time; that is not something I need to address here (see page 1018).
149. The claimant referred to the administration's gaslighting her because in her e-mail dated 11 December 2020 a number of questions were raised including that the reports were confidential between the claimant and the counsellor; the reports created by the counsellor were intended for the respondent and the reports should have been sent to the respondent. The fact is the respondent did not see them, regarding them to be confidential matters between the claimant and her counsellor.

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150. By email on or about 4 January 2021 (page 1031-9) the claimant raised a grievance against X for sexual harassment stating that she had told the respondent in 2016 during a back to work interview that she had been touched inappropriately by X. She said she was told she would not have to work with him and when asked if she wanted to take out a grievance she said she didn't feel strong enough. At the top of the page the claimant had stated "*I do not give [REDACTED] permission to disclose any personal information about me to [REDACTED] during the course of this investigation without my written consent.*" Although the claimant under cross examination denied the suggestion that she was the gatekeeper as to what information was to be provided stating that she wanted to know what information was passed to X the Tribunal determined that the claimant was acting as a gatekeeper. The claimant's purpose in lodging such a grievance was to get X moved or her moved away from X.
151. On 7 January 2021 (page 1027) the claimant wrote to [REDACTED] stating she did not give permission for [REDACTED] to see the reviews/reports from PAM assist. The claimant gave permission for them to be sent to occupational health. [REDACTED] noted at page 1026 the claimant didn't wish the PAM discharge reports

to be shared. The claimant corrected this that she did not object to the review or reports being shared with occupational health.

152. [REDACTED] in his e-mail to the claimant dated 7 January 2021 at page 1022 confirmed the approach taken to confidential sessions is that they are confidential between the individual and their counsellor and this is the reason the respondent does not request any reports. He stated the confusion seems to have arisen from the fact a counsellor was under the impression she had submitted reports to the respondent when in fact she had not. The claimant accepted in her e-mail dated 7 January 2021 at page 1022 how the confusion had evolved.
153. In January 2021 the claimant was due to have a review of her performance, but she cancelled this based on her trade union advice.
154. On 21 January 2021 (p.1050) [REDACTED] emailed the claimant. He suggested discussing with the claimant that afternoon a final document sent to him by [REDACTED] or suggested if the claimant had not had a chance to consider it properly, they could rearrange the mid-year review for tomorrow. He also gave the option to the claimant that they could keep the mid-year review for that afternoon but revisit the particular feedback on another occasion. The claimant responded (page 1049) stating that she had been back since the beginning of November and that [REDACTED] had chosen a couple of hours before the mid-year review to provide a document dating from June 2020 where it was suggested the claimant's work was non-compliant. The claimant said she felt ambushed and distressed and did not feel it was appropriate to raise the matter for the first time. The claimant was going to contact a trade union representative. She stated she was in no fit state to have a meeting with [REDACTED] that afternoon and was cancelling it. [REDACTED] responded that he was disappointed and concerned by this; he would reflect, take advice and respond accordingly. The claimant replied that she had spoken to a trade union representative, and he advised that until the assessment discussed in her back to work meeting and those advised by her counsellor were completed and reasonable adjustments were agreed it was not appropriate for the respondent to hold a mid-year review looking at her performance targets and assessing her performance.
155. The staff handbook sets out the appraisal scheme (pages 542 to 551). At page 550, mid-year reviews are dealt with. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
156. Under cross examination [REDACTED] was asked about the proposed mid-year review; at the time of him seeking a mid-year review with the claimant in January

2021 there were only 9 weeks left of 2021. The claimant had been on sick leave. [REDACTED] was asked as to whether the claimant's objectives had been reviewed in the context of this sickness absence. [REDACTED] stated to the Tribunal (the Tribunal accepted his evidence) that the respondent had not had an opportunity to look at the objectives because the claimant had been off sick. He stated the first opportunity to discuss these was in January 2021 and that was the opportunity he could have checked with the claimant her objectives were appropriate. Under cross examination [REDACTED] was also asked about the return-to-work meeting in February 2021; he could have considered the claimant's mid-year review then. [REDACTED] evidence was it was not appropriate to press pause on the process. He took an interim decision; the objectives could be set and reassessed if other processes were required. He stated he tried to set up a meeting with the claimant to have a major review, but she cancelled this meeting (see page 1049). At a mid-year review the respondent may discuss a phased return. He stated that the mid-year review is supportive and not punitive. A mid-year review meant he could discuss with the claimant whether the objectives were still appropriate and help the employee better achieve any objectives or amend objectives.

157. The claimant completed a mid-year review document (page 1040 to 1043) dated 21 January 2021. In the document the claimant suggested that the respondent and herself review on a monthly basis [REDACTED]

[REDACTED] the other issues which I have had to engage in regarding the grievance/medical treatment/ HR issues such as this document and other assessments and meeting and other work/training required."

158. By e-mail dated 26 January 2021 (page 1046 and 1047; page 1048) [REDACTED] considered it perfectly reasonable and proper to undertake a mid-year review under the appraisal scheme and not wish to delay it even further than it had been already. He stated "I would prefer to discuss the performance now taking proper account of all the surrounding circumstances and considering what if any further reasonable adjustments can be put in place to support the claimant to achieve her objectives than wait until the end of year appraisal to determine whether any objectives have been met". [REDACTED] wanted to meet with the claimant [REDACTED] stated that the claimant had returned to work for almost three months, and it would not be reasonable [REDACTED] [REDACTED] He stated he had to take her needs and the duty to consider the impact of the reduced workload [REDACTED] and colleagues and that some progress must now be made. He noted that at the claimant's request the respondent had agreed a reasonable adjustment s [REDACTED]

[REDACTED] He also said that the respondent continued to consider further reasonable adjustments that are recommended or request [REDACTED]

_____.

159. By e-mail dated 26 January 2021 (page 1051) the claimant said she would be reading [REDACTED] e-mail in more depth and consulting with a trade union representative before making any further responses. On 2 February 2021 [REDACTED] [REDACTED] contacted the claimant (page 1057) thanking her for submitting the mid-year review form. The claimant at (page 1057) stated that once the respondent had agreed to reasonable adjustments, she would be happy to attend a mid-year review and for her work to be assessed on the basis of the agreed adjustments. The Tribunal found that despite the efforts of [REDACTED] the claimant was avoiding meeting with him.
160. By e-mail dated 27 January 2021 (page 1051) [REDACTED] informed the claimant they had set up a full assessment of the claimant's presenting symptoms. He apologised if he was taking so long to establish the correct course of action regarding the recommendations from the discharge report of 8 of December. He said he just finished speaking to Malcolm Smith Head of Psychological Services for PAM Well-being after he called a case review meeting following his request for information. There some difficulty in arranging the psychiatric assessment because the respondent OH provider does not provide psychological reports.

161. On 2 February 2021 (page 1055-6) Malcolm Smith, Head of Psychological Services, provided a report noting that the claimant has been assessed by her PAM colleague, Joanne McCarthy and her impact of events scale score was in excess of the threshold for a likely diagnosis of PTSD. He stated as he was not a psychiatrist and he could not give the claimant a formal diagnosis. Under cross examination [REDACTED] stated he was unaware of this report.
162. On 2 February 2021 (page 1057) [REDACTED] responded to some of the comments made by the claimant on the mid-year review form noting that the claimant had stated [REDACTED]. He did not agree that this amounted to enough work to do, particularly given the claimant's experience and return to full hours. He was concerned the claimant considered otherwise. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. He stated that the claimant was aware that when the manager does the full appraisal, managers are expected to review progress over the full 12 months and reach a rating accordingly. The claimant sought to explain that the reason why there was no progress was because there was an IT system issue on occasions and administration had not identified [REDACTED].
163. At this point of time, it was 8 weeks until the end of the year (end March 2021). The claimant had been off sick during this period of time and the respondent had not obtained the stress risk assessment or workplace passport. However, the Tribunal accepted the evidence of [REDACTED], that all these factors were taken into account by [REDACTED]
164. [REDACTED] stated that the claimant had been given objectives in November 2020 which had been set out in the appraisal earlier in the year. It was not appropriate to discuss objectives at a phased return to work meeting or practicable to set objectives [REDACTED]s. The first opportunity to set objectives was a meeting with the claimant but the claimant cancelled this meeting. In the letter dated 2 February 2021 [REDACTED] had suggested a further meeting at a mid-year review which he would like to undertake as soon as possible as it is well overdue. He requested a response from the claimant about a mid-year review. [REDACTED] looked at performance as part of the mid-year review, but he did not view as a performance issue. He was happy to meet the trade union representative in November 2020 but the claimant had wanted other processes to be completed as soon as those processes were completed [REDACTED] had a meeting with Human Resources and the claimant in March 2021 and he followed the wishes of the claimant in this regard.
165. [REDACTED]
[REDACTED]
[REDACTED] The Tribunal concluded the claimant have been spending most of her time working on her grievance as noted (page 1131) where the claimant stated that most of the year, she was engaged with dealing with the grievance and she made the point that her appeal against a grievance outcome did not conclude until December 2020 and the grievance against X did not include until February 2021. It was likely that the

claimant was spending time on her grievance rather than doing the work allocated to her by her manager.

166. By letter dated 11 February 2021 [REDACTED] rejected the claimant's grievance (page 1062-3) stating she was not satisfied that the investigation of the allegation was a fair or appropriate way to proceed particularly in the absence of any compelling reason as to why the allegation had not been raised as a grievance prior to this point. As a result, her determination was that it was not possible to carry out a fair investigation at this stage. [REDACTED]. [REDACTED] stated this necessarily means that [REDACTED] is not in a position to conclude that there has been any wrongdoing that would make it appropriate to move either of you. The Tribunal found it was clear to the claimant by this stage that the respondent had refused to change the working arrangements between the claimant and X. The claimant stated that she had provided information to the respondent from the ECHR that just because the grievance had not been upheld, they could still consider moving the claimant or X.
167. [REDACTED] also raised concerns that the claimant having not obtained an outcome to her grievance appeal in December 2020 that was satisfactory to her, immediately lodged a second grievance in effect seeking to overturn the earlier decision. The respondent could not agree to this. [REDACTED] urged the claimant to accept support offered and to engage with her manager in discussing what other support the respondent could put into place. Under cross examination, [REDACTED] was asked what support was the claimant actually being offered. [REDACTED] evidence was she expected those matters to be explored with the claimant's line manager. [REDACTED] maintained under cross examination that she could not guarantee at any time no contact with X and this could not be a reasonable adjustment for the respondent to comply with. It was suggested in cross examination that X was an interim group leader, the claimant could be put back into his group if she returned to work. [REDACTED] stated she thought that would be unlikely. [REDACTED] evidence (which the Tribunal accepted) was that it was not a reasonable adjustment to guarantee no contact between the claimant and X.
168. The respondent referred the claimant to Occupational Health attaching the claimant's job description ([REDACTED]) and sought advice as to the reasonable adjustments that could be put in place to assist the claimant to fulfil all the duties of the role of [REDACTED] (page 1060).
169. On 17 February 2021, (page 1069) [REDACTED] said the mid- year review represented an opportunity for us to discuss matters, but that discussion has not taken place. The reasons for that are on record. In the circumstances and given that the appraisal year ends on 31 March 2021 and in the light of your views about it, he would no longer press the matter of a mid-year review meeting. Instead, he would revisit the matters when the claimant came to a full appraisal meeting. [REDACTED] was seeking to meet the claimant to look at her objectives, but the claimant was unwilling to meet with him.
170. The Occupational Health report dated 17 February 2021 from Christopher Ide Physician in Occupational Medicine stated that the claimant was currently fit to be at her work provided that current adjustments were maintained. [REDACTED]

saw this report. Mr. Ide stated he was unsure as to how the phased return to work was progressing “but if it shows signs of and a significant shortfall by the beginning of March deadline then I would suggest that the workload is reset to the last level at which the claimant felt comfortable, “mark time” at that point for two or three weeks and then gradually start to raise the levels of expected performance. The claimant told the consultant about inappropriate touching by another male member of staff where she was said to have described being “stroked”.

171. The claimant had been provided with this Occupational Health report before it was given to the respondent and had not corrected the suggestion that she had said she was “stroked”. Despite saying that she was taken aback when she saw this, the claimant did not discuss whether she believed it was deliberate or inadvertent. The consultant did not recommend that the claimant should not have any contact with X from a medical perspective or suggest that the claimant should not do any work or any particular type of work. He stated that it will be important for her to be able to believe that her perceptions have been thoroughly and fairly investigated as expeditiously as allowed by your organisation’s policies. He stated that the Equality Act legislation was relevant because of the claimant’s mental health problems and thyroid disorders. The report also stated at page 1066 the claimant may never get back to the previous level so that hours and work may have to be looked at.

172. By letter dated 17 February 2021 (page 1068-1071) [REDACTED] responded to a number of recent emails from the claimant [REDACTED]. He stated he was concerned about the claimant’s approach and responses; namely not accepting reasonable managerial decisions and direction. He stated the claimant was expected to [REDACTED]

[REDACTED]

[REDACTED] In respect of the mid-year review, he stated at the full appraisal managers are expected to review progress over the full 12 months and reach a rating accordingly. He raised that he was concerned that the claimant’s performance over the last 12 months will meet the criteria for a rating of good under the appraisal scheme. He stated he would this against the challenges of the year and wider circumstances and the claimant’s views about matters. He said it would be remiss of him not to let her know about this is a concern.

173. [REDACTED]

- [REDACTED]
174. [REDACTED]
175. By e-mail dated 15 March 2021 the claimant said she was feeling stressed and complained that on her return to work she had [REDACTED]
[REDACTED] The claimant referred to the Occupational Health report stating she needed to be on a reduced workload. The claimant complained that she had [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
and needed the respondent to make some reasonable adjustments.
176. On 16 March 2021 (page 1078) [REDACTED] responded to the claimant stating [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
177. On 16 March 2021 (page 1078) [REDACTED] in his email to the claimant he said he wished to meet her to go through a stress risk assessment and workplace passport. H [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
178. The claimant responded to [REDACTED] on the same date stating (page 1078) that she believed he was overloading her with work in the hope she would go on sick. The claimant explained that if she told [REDACTED] she wasn't coping he told her to go on sick leave. The claimant did not accept it was appropriate to recommend sick leave if someone was struggling and feeling overloaded. The

claimant said there had been insufficient reasonable adjustments made for her. The claimant in addition at page 1078 accused [REDACTED] of bullying her.

179. On 22 of March 2021 (page 1081) a meeting took place to discuss the OH report (dated 17 February 2021) and stress risk assessment. The claimant had prepared the stress risk assessment (page 980) and workplace passport. The meeting took place some four months after the claimant's return to work because the claimant had wanted other processes to take place before the stress risk assessment was considered. [REDACTED] the claimant's trade union representative stated that the grievance could remain separate to this since the risk assessment was looking at health and safety and he did not want to discuss at that stage the claimant's grievance.
180. In the stress risk assessment, the first matter which the claimant raised as giving her stress was the contact with X which the claimant accepted under cross examination was central to her case.
181. She also raised the workload (page 983). In the course of the meeting, [REDACTED] went through each of the points raised by the claimant including having further contact with X to which [REDACTED] had stated a grievance outcome had been received by the claimant and that matter was concluded. There was also a discussion about the claimant's hours. Although the claimant had said on day 2 of the Tribunal hearing she was never offered a reduction of hours there was an apparent discussion of this issue at page 1085. When [REDACTED] asked the claimant at the meeting whether she was able to provide 7.5 hours, the claimant said she was unable to cope with the increased workload. The claimant complained (page 1082) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The claimant stated at page 1084 she was unable to cope with the increased workload [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] said he would have a look at it to understand the situation.
182. [REDACTED] on behalf of the claimant stated that within the workplace passport a reduced target should be agreed today (see page 1087). The agreed outcome of this meeting (page 1091) [REDACTED]
[REDACTED] the claimant was to raise this with [REDACTED] immediately. The claimant stated that she had already said she couldn't manage [REDACTED]
[REDACTED] stated the workload, and any queries can be discussed at a further meeting.
183. Although the claimant was critical in cross examination of [REDACTED] for failing to discuss her OH report dated 17 February 2021, there was no mention of this

by the claimant or her trade union representative in the meeting by either or any desire by them to discuss it.

184. On or about 22 March 2021 (page 1076) [REDACTED] took the opportunity to re-balance [REDACTED] groups. The claimant stated that [REDACTED] could have used this as an opportunity to move the claimant. [REDACTED] stated he did not move the claimant.
185. By letter dated 1 April 2021 (page 1092-1096) [REDACTED] responded to the claimant's stress risk assessment. He stated that there would be no change with working with X because that matter had already been dealt with through the grievance process. He further noted there had been a number of reasonable adjustments including [REDACTED]
[REDACTED]
[REDACTED] It is envisaged that this will be a weekly plan with agreed targets and expectations [REDACTED]. There will be weekly meetings to review progress and to agree the next weeks plan. Arrangements can be reviewed at 4 weeks. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
186. Under cross examination it was suggested to [REDACTED] that [REDACTED] had no recollection at all of this. The claimant suggested that at page 1074 on 12 March 2021 that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
187. [REDACTED]
[REDACTED] He carried this out by having regular meetings with the claimant in April, May, June, July to October. [REDACTED]
[REDACTED] said that the arrangements would be reviewed at 4 weeks. The claimant did not raise that she wanted anymore meetings with [REDACTED]

188. By e-mail dated 22 April 2021 at page 267 bundle B Mr [REDACTED] wrote to the claimant [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Appraisal form - you have not had a chance to start the form. I asked if you had any thoughts about this weeks' plan, you replied no. [REDACTED]
[REDACTED]
[REDACTED]
189. [REDACTED] set up agreed weekly meetings to talk through the claimant's progress so to make plans about her work and these commenced on 15 of April 2021 (page 1096). At a meeting on 6 May 2021 (page 1107) [REDACTED] had a look at [REDACTED] and suggested a working plan this was intended to be supportive and helpful to the claimant but the claimant said she didn't find it so. The claimant said she kept telling [REDACTED] she couldn't cope, and he told her to go on sick leave.
190. At a 1:1 meeting on 20 May 2021 [REDACTED] noted from the 1 :1 meeting on 20 May 2021 Page 273 bundle b that he had asked whether and how the claimant's health was impacting on her work. The claimant had described that she was sitting in front of her laptop and that she took hours to do the work. She stated she had explained this all previously in a stress risk assessment of the workplace adjustment passport. The claimant said "so you want me to go through it again". [REDACTED] replied that previously the claimant had stated that she was able to do her hours of work. (page 1116) [REDACTED] asked the claimant whether she had any thoughts on next week's plan to which she said "no". [REDACTED]
[REDACTED]
[REDACTED] suggested that the claimant follow the plan [REDACTED] and then if capacity allows [REDACTED] suggested the following plan for the week and asked how it sounded, and the claimant stated "whatever". [REDACTED] asked whether there was anything else the claimant wanted to raise or discuss, and she said "no". The claimant explained that she felt tired and deflated. The Tribunal found that the claimant was not participating or engaging in the support offered by her manager and that because the respondent would not give the claimant what she wanted namely an assurance that there should be no contact with X the respondent had to accept the level of work she was prepared to do [REDACTED]
[REDACTED] (see page 274 of bundle B).
191. At a one to one meeting on 27 May 2021 page 276 bundle B, the claimant had said that last week had gone as normal; [REDACTED]

_____ and the claimant said same as last week; it's sometimes difficult to concentrate and absorb information. The claimant was recording everything to make sure she double checked things and that everything was OK. The claimant did not wish to discuss anything else.

- _____

This was an extremely low level of work and significantly below the performance level that is expected of a full time [REDACTED] of the claimant's experience. [REDACTED] further factored into account the circumstances of the year including the period of sickness and phased return. He was satisfied that the rating of improvement required was justified despite the health issues that the claimant had experienced and the time off work. As a result he stated he would review progress and performance since 1 April 2021 to inform his decision making

around next steps that needed to be taken to achieve the necessary improvements.

196. On 16 June 2021 [REDACTED] emailed the claimant asking her to take a quick look at [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] It was suggested (under cross examination) to [REDACTED] that the claimant was having to [REDACTED]
[REDACTED] [REDACTED] stated this was an issue which affected everybody [REDACTED]
[REDACTED] The claimant was unwilling to attend the team meeting. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
197. At the 1: 1 on 24 June 2021 (page 279 of bundle B) [REDACTED]
[REDACTED]
[REDACTED] asked the claimant how she was finding [REDACTED]
[REDACTED]
[REDACTED] asked the claimant had she any thoughts on what to work on this week and the claimant replied [REDACTED]. [REDACTED] asked if there was anything else the claimant wished to discuss to which the claimant responded "no".
198. On 8 July 2021 (page 1152) [REDACTED] noted the conversation of the 1:1 on the same date. The claimant described she had a lot of work to do for [REDACTED]
[REDACTED]
[REDACTED]. The claimant stated it was more efficient for her to keep working on and trying to understand [REDACTED]
[REDACTED] so as to avoid forgetting [REDACTED]
[REDACTED] The claimant was asked how much work was involved. The claimant said she did not know. [REDACTED]
[REDACTED] or anything she wished to discuss and she said "no". [REDACTED]
[REDACTED]
[REDACTED]. He would let the claimant know about the outcome shortly.
199. On 8 July 2021 (page 1151-2) following the 1:1 the claimant sent [REDACTED] an email stating that her health was impacting on her performance. She had requested and been refused to know each assessment. She stated the stress risk assessment form and workplace adjustment passport form had still not been properly completed to take account of her health needs and the OH report she stated on the advice of her trade union representative "I'm stating that I cannot have contact with X" as he was having a detrimental impact on her mental health. She said her psychiatrist has stated that she has PTSD and that she was unable to have therapy to treat her mental health condition while she at risk of re- traumatization by contact with this person.

200. On 15 July 2021 (page 1154) the claimant was invited to a stage 1 poor performance meeting. In the context of this [REDACTED] suggested postponing the current weekly [REDACTED] meetings until after the stage one meeting. However, he stated if there were any specific issues or matters that the claimant needed to discuss with [REDACTED] he could let her know and that something could be arranged (see [REDACTED] e-mail 15 July page 1161).
201. The claimant at no stage complained about the 1:1 s being put on hold.
202. [REDACTED] stated that having considered both the findings of the appraisal and the review, the claimant's performance in the [REDACTED] role was significantly below the standards to be expected and it was at a level that was a cause for concern. [REDACTED] set out that the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
203. Further since April 2021 the weekly [REDACTED] 1:1s had occurred but the claimant hadn't engaged well at the meetings and shown little or no interest [REDACTED]
[REDACTED], usually answering no when asked for her thoughts and on one occasion replied "whatever." The claimant had rarely achieved the weekly plans set at the meetings even though these plans had only involved the claimant working on a [REDACTED] but she had spent several days working on [REDACTED] which raised doubts about whether the claimant was working effectively on carrying out [REDACTED] and showed little recognition or insight into the fact that her [REDACTED] and hence performance was low. [REDACTED] stated he was concerned the claimant wasn't taking much or any responsibility for the timely progression of the [REDACTED] or for moving towards a position whereby the claimant could resume taking on [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] He stated that a significant amount of time had passed already since the claimant carried out the normal duties of a [REDACTED]. The claimant had returned to work for some eight months and over six months had been in full-time due duties from 1 April. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
204. [REDACTED]
[REDACTED]
[REDACTED]
205. Under cross examination, [REDACTED] was asked whether at any stage he embarked on an informal management of the claimant's performance. [REDACTED] stated he believed that he did through day-to-day management attempts to manage the claimant's performance before entering into a formal process. He was also asked whether he sent the claimant the Management of Performance

policy. He stated that all employees have access to the policy via the internal Internet system.

206. On 4 August 2021 (page 1166) the claimant emailed [REDACTED] noting that there was a meeting planned for 5 August 2021.

207. At a meeting with the claimant on 5 August 2021 (see page 1185-1190) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The claimant raised the issue of the stress risk assessment and workplace passport and how her trade union representative enquired about the Workplace Passport. At the last meeting the claimant herself also made points about the non-completion of the stress risk assessment. [REDACTED] [REDACTED] had gone back to the stress risk assessment to make the position clearer. [REDACTED] was happy to discuss the stress risk assessment and workplace passport at today's meeting but equally the claimant no longer wished to discuss them; that was also fine. On the issue of the occupational health referral [REDACTED] understood that this was declined by HR on the basis that the claimant had been told why a further OH referral was not considered necessary. He stated his understanding that HR have said they would consider the matter again and any medical or GP report but the claimant had not submitted any supporting evidence for HR to consider. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The claimant raised that the policy described where an employee has a disability adjustments need to be in place. [REDACTED] said the stress risk assessment was completed before the process was entered and the decisions made on the stress risk assessment did not require review of adjustments already made. The claimant had now been back at work for 8 months and as an experienced [REDACTED]

[REDACTED]. The claimant stated she did not know why they were in this PIP at all. [REDACTED] explained if someone is being performance managed the individual has worked that week then a manager can expect a week works to be done. If the claimant is unable to work she should follow the sickness policy. The expectation was made clear that the claimant should take responsibility for [REDACTED] in her portfolio. The [REDACTED] would not be [REDACTED] because by this stage the claimant was several months into her return to work and should be managing her own portfolio.

208. The draft Performance Improvement plan dated July 2021 (page 1218) referred to the claimant taking [REDACTED] by the end of the PIP (see page 1220). The final PIP dated August 2021 (page 1197) following discussion with the claimant (page 1194) removed the need for the claimant to do [REDACTED] (see page 1199) and amended significant progress to progress and removed communication. [REDACTED] discussed the draft PIP with the claimant and her trade union representative on 5 August 2021 and took account of their views and amended the PIP.
209. On 12 August 2021 (page 1172- 1177), the outcome of the stage 1 poor performance meeting was set out in writing to the claimant. The meeting had taken place over two dates on the first date the claimant was given a PIP to consider and on the second day she was given the opportunity to comment on the PIP. The claimant had not completed enough work despite a decrease in the volume of [REDACTED] and their decreasing complexity. It was stated that the claimant's performance and output since first April 2021 had been considered. She had been working almost exclusively on [REDACTED] but by mid-July had only managed to progress [REDACTED]
[REDACTED]
[REDACTED]
since her return to work which was very low and follows on from very low points total for last year. He stated the main concern has been around the claimant's poor [REDACTED] output but also concerned about behaviours and attitude displayed by the claimant negatively impacting on her performance and output. The claimant was not taking responsibility for or lacking insight into the need for the [REDACTED] performance and output to improve instead the claimant appeared to have adopted an approach of repeated challenge, querying, criticism of the respondent for what the claimant perceived to be its failings. The claimant approached matters from a position of what you may be described as mistrust paranoia and anger. Under cross examination the claimant accepted that she was angry with the respondent.
210. The claimant stated that she hadn't been given enough time to improve and that the [REDACTED] were too complex to progress. [REDACTED] did not accept the claimant's points; the claimant wanted to work on [REDACTED] and her targets to be decreased.
211. The performance improvement plan dated 16 August 2021 (at page 1197) stated that the claimant needed to resume [REDACTED]
[REDACTED]. It was suggested that for the period of the PIP the claimant should [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The claimant stated she didn't understand the meaning of progress. The Tribunal rejected this evidence because it was actually set out in the document as to how that was to be defined. It was suggested that the claimant needed to significantly improve her output when it came to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

██████████ which is significantly lower than what is reasonably expected and notably would be similar to the output that has resulted in a rating of three improvement required for last year. An appropriate ██████████ will be set for the claimant at mid-year review. For the period of this PIP the claimant should make the above mentioned progress on ██████████

[REDACTED]. Furthermore, in terms of communication it was stated that the claimant should attend and engage with any team meetings that are held during the period of the PIP.

212. On 25 August 2021 at page 1181 the claimant sent a copy of the psychiatric assessment from Dr. Hugo de Waal (dated 1 May 2021) to [REDACTED]
213. 1:1 meetings resumed in September 2021 after the stage 1 process. A 1:1 took place on the 27 of September 2021 (page 1269). The claimant was asked if there were [REDACTED] that she wanted or needed to discuss the claimant said “no”. [REDACTED] asked how the claimant felt she was doing; the claimant replied she was doing her best to try and comply with the PIP. She was asked if there was anything in the PIP the claimant wanted to go through. The claimant replied that she was fully occupied with [REDACTED] [REDACTED] Annual leave was discussed. The claimant was informed that only 5 days should be carried over so that they should ensure that they take any remaining annual leave before the end of the year The claimant expressed some concern about the impact of [REDACTED] in the PIP. [REDACTED] said that any annual leave would be factored in when assessing the PIP. If needs be the PIP could be extended to allow for any leave the claimant was asked if there was anything else she wanted to raise and she said “no”.
214. Under cross examination [REDACTED] was asked whether he gave the claimant any feedback at this point of time, six weeks into the PIP. [REDACTED] stated he was closely monitoring the progress against targets at that time. He said he was happy with the progress. [REDACTED] He did not accept there was any lack of clarity in respect of the PIP. If there

was the claimant could have made representations and amendments could have been made. The Tribunal found that the claimant was clear about requirements as evidenced by her failure to raise any concerns at meetings.

- 215 [REDACTED]
[REDACTED]
[REDACTED]
216. From 4 October 2021 X was moved out of the claimant's group and was no longer doing [REDACTED] (see page 1273). He became a group leader (see page 334 bundle B).
217. On 15 October 2021 (page 1275) the claimant emailed [REDACTED] stating "I'm also currently waiting for a response from HR to my request for an OH report by an assessor with experience of mental health issues as per [REDACTED]'s e-mail of 25 August 2021. The claimant stated that this is relevant to her case because "you now have a copy of my psychiatric letter and following changes at the respondent means that my request for reasonable adjustments ought to be reconsidered." The claimant set out that the respondent had become a first a [REDACTED]. She said the person who inappropriately touched her had been moved from being aligned with her group for the purpose of [REDACTED] on 4 October 2021. The claimant stated "*without a reasonable adjustment to assure me that this person will not be put in a position where I have to work with him I'm still unable to get treatment due to a risk of re traumatization of result of the contact*". [REDACTED] under cross examination said that the respondent did eventually agree to the claimant's request for a further occupational health report.
218. On 27 October 2021, a stage 1 appeal meeting was held. It was chaired by [REDACTED] [REDACTED] The outcome dated 3 November 2021 (page 1301) referred to the respondent's policy at paragraph 3.6 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] stated in this case it was obvious that reasonable adjustments have not been agreed and there remains an impasse between the claimant and her line manager and HR. There is clear evidence that significant adjustments to the claimant's workload were implemented in January 2021 and subsequently following the OH report and completion of the stress risk assessment and workplace passport in April. However these are considered insufficient by the claimant and her representative and as a result very little improvement in performance has been observed. [REDACTED] noted it wasn't his role to arbitrate on the sufficiency of the significant adjustments and he stated he thought it would be dangerous for him to do so but in the face of such an impasse there should be scope for a swift and independent arbitration when such disagreement persists; that said it's well documented that upon receipt of the OH report in March 2021 the respondent did not ignore its recommendations and implement adjustments that it considered as reasonable on the basis that the claimant had previously presented herself as fit to perform full time duties. In the absence of an agreement he stated he did not believe it to be unreasonable

for [REDACTED] to have nevertheless engaged the performance improvement plan when this had clearly remained on the cards for several months.

219. On 25 November 2021 by email (page 1321) the claimant stated she had been coping well until October 2021, but her husband became ill on 1 November 2021 which put her back. Under cross examination the claimant clarified also that she was allocated one further [REDACTED] on 1 November 2021 and had a holiday which also put her back. The claimant also noted she had cl [REDACTED]
[REDACTED]
[REDACTED] was unable to say whether this was progress or whether it was just a running [REDACTED]
[REDACTED]
220. By e-mail dated 9 December 2021 (page 305 bundle B) the claimant stated in respect of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The claimant did not feel that she was being supported. The PIP stated her work would be consistently monitored and she would be supported. [REDACTED] acknowledged that the discussion about the claimant's [REDACTED] was relevant to the requirement and also if there was anything you wanted to say about it. The claimant replied that she had done her best to progress [REDACTED] and felt that she was progressing them until her holiday and then the issues that arose afterwards. [REDACTED] noted that the claimant was making some progress but it was not satisfactory progress.
221. On 16 December 2021 (page 1353) the outcome of the PIP review took place with the claimant and [REDACTED]. The claimant told the Tribunal she did not record this meeting. [REDACTED] took into account the claimant's personal circumstances. He also set out concerns and conclusions based around the claimants attitude/ engagement and approach with a reluctance or seeming refusal to perform certain duties which were important elements of the role. It was stated there was a continuing low overall [REDACTED] output and he questioned the quality of her [REDACTED]
[REDACTED]. [REDACTED] did not consider that performance in the following requirements of the PIP had been achieved to a satisfactory standard namely : [REDACTED]
[REDACTED], communication and mentoring and support. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Under cross examination it was suggested to [REDACTED] that he failed the claimant because she was not doing [REDACTED] (see page 1354); [REDACTED] disputed this. The Tribunal rejected the suggestion put by the claimant as nothing suggested at page 1354 was that she had been failed because she was not [REDACTED] considered the claimant was making some progress, but it was not satisfactory progress. This was a reasonable assessment for him to make.
222. [REDACTED] noted that the claimant appeared to be aiming to complete the [REDACTED]
[REDACTED] which was an improvement. However he did not consider the timeliness of [REDACTED] was satisfactory; a

There was insufficient progress of [REDACTED]. He did not consider that the claimant was achieving the standards of [REDACTED] expected across the portfolio or showing strong evidence of moving towards the position.

223. In the circumstances the assessment of the claimant's performance page 1354 was poor [REDACTED]. By this time the claimant had returned to work for a period of 13 months and was doing [REDACTED]. [REDACTED] concluded at page 1356 he would not do anything else until the OH, stress risk assessment HR processes had taken place.
224. The claimant stated she had requested the following from HR namely : a further OH referral, a stress risk assessment and reasonable adjustments. [REDACTED] was to make inquiries about those. He inquired with HR and they confirmed they currently are considering the matters. [REDACTED] said this had been previously discussed and the outcome was communicated to the claimant in the letter of 1 of April 2021. He said it is important that any next steps regarding your performance are taken in conjunction with and after the consideration of these matters. He would write to you the claimant again in the New year following the discussions and consider next steps in accordance with the respondents Managing Poor Performance and Capability.
225. By 14 December 2021 there had been a number of changes. Since February 2021 [REDACTED] was working remotely. The claimant stated that she had PTSD; X had moved. HR (page 1344) wrote to the claimant stating (page 1344) it agreed to the claimant's request for a further OH assessment because circumstances had changed. On 16 December 2021 (page 1343) the claimant said she wanted to confirm she wanted to proceed with an OH referral and repeated this on 20 December 2021.

2022

226. The claimant took annual leave on or about 16 of December 2021 and notified the respondent by e-mail dated 12 January 2022 (page 1362) that she was unwell with her mental health. She described feeling distressed, panicked and had chest pains. She said she took an extra weeks leave in the hope that this would help but it had not. She had an appointment to discuss this with her GP and so would not be in work. On 13 January 2021 (page 136) [REDACTED] responded that he was sorry to hear the news and to keep him updated by e-mail. The claimant stated her GP had signed her off sick for a month and would send the sick note once received.
227. The claimant did not return to work after this date. The claimant submitted a number of fit notes; none of which have suggested that the claimant was fit for work or fit to work with reasonable adjustments.
228. The Occupational Health report dated 25 February 2022 (page 1617) concluded that the claimant was currently unfit for work due to her poor mental well-being at this time. In the opinion section of the report Kelly Lynes Occupational Health

advisor concluded that the claimant had completed a table of requested adjustments (see page 1617); recommended that the claimant may consider the completion of a stress risk assessment to help clearly identify the sources of stress. It stated a stress risk assessment could help to explore possible solutions or actions to help reduce perceived stress at work. Further advice that an agreed review date is established so to evaluate as solutions or actions taken forward and that monitoring continues. It stated on the claimant's return to work the respondent may wish to consider a phased return as a supportive measure and suggested considering giving a lighter workload and increased time for familiarisation with new tasks and processes. The report noted the claimant had completed a table of requested adjustments and that the respondent should explore these with the claimant.

229. On 17 March 2022 (page 1364) the claimant emailed [REDACTED] to state that she had been signed off for 30 days from 14 March 2022. She stated that the respondent had received the OH assessment which advised her request for reasonable adjustments should be considered including her request for confirmation she would not have to work with X in the future so she could get treatment for PTSD. [REDACTED] said it was simply not practicable to assure the claimant she would not have to work with X.
230. The respondent sought to meet with the claimant to discuss reasonable adjustments but because the claimant's computer was not working the respondent determined to consider the adjustments themselves. The respondent considered each adjustment in turn. [REDACTED] had no authority to tell X not to come into the office in 2022.
231. There had been some delay in setting this meeting up (see page 1380) where it was rescheduled for 28 April 2022 "Please note this will be the final attempt to reschedule this stage one meeting". The claimant was getting a new lap top that afternoon. The claimant responded to this at page 1384 at 14.55 stating that her trade union representative [REDACTED] had already declined the meeting. She said she knew nothing about it until 5 minutes ago because her laptop has taken this long to set itself up. [REDACTED] was unaware there was a problem for the claimant when the meeting took place.
232. On 29 April 2022 (page 1395-1396), [REDACTED] provided his response to the occupational health report dated 25 February 2022 and the suggested reasonable adjustments made by the claimant. In his letter he stated that the respondent remain committed to supporting the claimant in her role as [REDACTED] and doing what it reasonably can to enable her to perform the role. [REDACTED] was happy to implement the following recommendations made in the OH report namely to maintain regular contact with the claimant and provide the required support and reviews (the nature and frequency of these is to be agreed with the claimant); a four week phased return to work; a lighter workload on the return to work; regular 1 to one and a stress risk assessment. In respect to the claimant's requests made on 10 April the respondent had a reasonable expectation that the claimant will undertake the duties required by the role of [REDACTED] and cannot agree to adjustments that wouldn't seek to materially alter the role or this enable it to be performed properly to the standards required that would be neither reasonable practicable or not appropriate. He further stated the respondent was happy to agree the following:

a return to work [REDACTED] a lighter workload at the start and then a gradual build up (agreed with the claimant when she returned to work); [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The claimant will be offered whatever regular support and one to ones are required from her line manager to help her perform the roles required and reasonable time off to attend counselling and medical appointments; the frequency and amount of time off should not detrimentally affect the performance of the casework. He confirmed that the respondent was unable to agree (because it was considered unreasonable or not practicable) to confirm in writing that she didn't have to work with or have contact with X at all in any capacity in the future; to obtain a further OH report by a doctor with experience of mental health and followed the advice given by the assessor to obtain another assessment; sick leave if needed and no attendance review procedure triggered; [REDACTED]

[REDACTED]; reduce targets; c [REDACTED]
[REDACTED]
[REDACTED]; being allowed to work from home with no visits or meetings to take place at other venues; allow to refrain from attending meetings and limiting calls and only communicating by e-mail and plan telephone calls and no calls to be taken from [REDACTED]. [REDACTED]

[REDACTED] confirmed under cross examination that suggestion that reduced targets [REDACTED] as far as possible so that the claimant knows what to expect each month, the respondent could not agree at this stage but that was subject to change and subject to review on another occasion.

233. On [REDACTED] (page 1387) workplace adjustment passports were launched at the respondent as living documents between an employee and their line manager.
234. On 13 May 2022 (page 1400) HR suggested to [REDACTED] that since the respondent can't give a written guarantee that X will never work with the claimant [REDACTED] could ask all [REDACTED] employees to not send any [REDACTED] her way rather they send it to [REDACTED] first and if it is from the other [REDACTED] staff they can proceed to the claimant. [REDACTED] raised a concern that if they ask on what basis we have told them not to contact the claimant and the measure wouldn't be permanent but during any period of a phased return so she could begin treatment which she says she can't do as she is at risk of re traumatisation. [REDACTED] wrote 13 of May (page 1400); I don't think we need to elaborate to other members of the team as to why we're asking [REDACTED] first; we cannot ever guarantee that the claimant won't ever cross paths with X it's impossible who knows what will happen in the future what (the claimant) is asking for us to put a ceiling on how far or wide X might progress and the claimant's own progress to we simply cannot foresee the unforeseeable and it

would be wrong or to even pretend otherwise that's the message we need to stick with.

235. On 17 May 2022 (page 1402 -1404) [REDACTED] asked the claimant about returning to work to which the claimant responded it was not something she was able to say even with reasonable adjustments. The claimant said she was not well enough to return in the last month. She said her laptop being broken has set her back. She described being less well than at Easter. She said she needed to get treatment for PTSD because it's gone on for too long and is making me ill. The claimant was asked when treatment is likely to commence and the claimant said she had not been referred for it yet as she was at risk of re-traumatisation [REDACTED] suggested that the option of discussing any reasonable adjustments which might support a return to work sounds like a conversation for another day when you're closer to returning to work. The claimant asked for a further OH assessment with the doctor. [REDACTED] said he would go away and consider that. The claimant stated that regarding the contact with X she wanted to see the respondent's suggestion first. She wanted to see anything [REDACTED] has on me regarding contact with X. The claimant made significant amendments to these meeting notes at page 1405 to 1410.
236. Under cross examination, the claimant accepted that she had recorded the meeting covertly and made a number of detailed track changes in the document.
237. The outcome of the stage 1 informal attendance meeting was set out in a letter dated 17 June 2022 (p1419-1422). The respondent stated it was looking at what measures it can reasonably implement to support the claimant. The respondent expressed its willingness to meet with the claimant again for a discussion and put forward some proposals. The respondent stated it could not sensibly commit to any kind of guarantee or undertaking about the claimant not working with X due to the nature of the respondent's work and there will be circumstances where staff need to have contact with each other either as part of core duties or work events that require participation. The respondent stated it could not anticipate let alone pre-empt every circumstance or situation at present where contact might occur between two members of staff either inadvertently unplanned or indeed necessarily as part of their roles. Further the respondent cannot foresee, pre-empt any future development changes that might happen at to the respondent which alters the situation around contact. The respondent also stated the individual concerned is also no longer doing [REDACTED] for the group and remote working has also virtually eliminated the possibility of any in person contact. The respondent is not aware there have been any contact between the claimant and the individual concerned or the present need for any contact between them. The respondent was not able to offer any guarantee about such contact but was willing to look at what reasonable measures and support can be provided to support the proposed adjustment by further reducing the currently extremely limited chance of any contact. For example the respondent suggested it could discuss with the claimant the need for her to attend the office in a way that assists with her treatment or looking at [REDACTED] [REDACTED] to the claimant and getting material scanned onto the system where practicable and managing the claimant's participation in online work or online training events in a way that assists with your treatment for a reasonable period. The respondent stated by implementing these in any other measures the

respondent would not be singling out any individual nor making any finding of wrongdoing by any individual rather the respondent would be approaching this from the perspective of trying to support any treatment needs and the return to work to the extent that it is reasonably practicable to do so. The respondent stated in considering the reasonableness and practicability of any measures and in determining whether it would be appropriate to implement them and appropriate timescales the respondent would need to understand when the claimant's proposed treatment would commence and its duration. Any measures would be revisited once in place to monitor their effectiveness and practicality. The respondent would only be able to consider having these types of measures in place for as long as would be reasonable and practicable. The outcome was as there was no imminent prospect of a return to work and the sickness absence was ongoing the respondent would be moving to stage 2 of the managing absence policy and would write to the claimant shortly about that meeting.

238. On 20 June 2022 (page 1435) the claimant was invited to attend a stage 2 management of attendance meeting. On 21 June 2022 the claimant provided an amended request for reasonable adjustments to support the claimant's mental health and amended this table to include the halting of the PIP and [REDACTED] and reassessment of workload.
239. By e-mail dated 21 June 2022 (page 1423-1424) the claimant stated that she attached an amended request for reasonable adjustments support any return to work stating that there was no point in her returning to work to become overwhelmed dragging her mental health and well-being even lower.
240. On 21 June 2022 the claimant raised a grievance against HR complaining about a privacy breach whereby the claimant's meetings with her line manager were not locked in as private meetings in the diary so that individuals could tap on the outlook calendar and see that the claimant was meeting her manager (see pages 1452 and 1451). The claimant's case is that the invite should have been set to private and any meetings with [REDACTED] should be set to private (page 1451). [REDACTED] said the meeting should have been marked private and apologised to the claimant (see page 1450). [REDACTED] explained his approach that he did not label what the meetings with the claimant were for which he felt was sufficient. He stated there was nothing odd about having a meeting with a team member. He did not label any meetings in the diary accessible by colleagues as either stage 1 or PIP so believed that level of privacy was sufficient. He further explained that he did click the padlock yesterday, but he also needed to press send. The Tribunal concluded that this could have happened to anybody, and that [REDACTED] just wasn't good at IT.
241. In the circumstances the issue raised by the claimant was rectified on the second occasion. The claimant complained in her evidence that she had raised this before and perhaps her manager should have known how to do it and she did not know it was deliberate. The Tribunal concluded that it was not a deliberate act on the part of [REDACTED]; he was not good at IT.
242. On 30 June 2022 (page 1453) the Stage 2 Absence Review Meeting took place (outcome letter page 1513). The claimant stated (at the tribunal hearing) she had covertly recorded this meeting. The purpose of the meeting was to consider the claimant's ongoing absence since January 2022; reasonable adjustments;

likelihood of return to work in the light of reasonable adjustments. The claimant stated her health was better than it was at the stage one meeting but she was not completely well and can't be until she had some treatment which she could not access until the issue was sorted out (no contact with X). She described it as a catch 22 situation. As the claimant had stated the issue of adjustments were said to be the main impediment to return to work. The respondent agreed that it was important to discuss the amended table of adjustments during the stage two meeting. [REDACTED] looked at the claimant's most recent table of adjustments which (page 1426). At the top of the list was the claimant's assertion that she required confirmation in writing from the respondent to undertake to ensure that she didn't have to work or interact in any capacity with X in the course of her employment but in the event that this is not possible in her present role she requested the respondent to explore with her a transfer to another suitable role [REDACTED] but if this is not possible the respondent will offer me a severance package equivalent to early retirement or a full pension of £28,000 per annum. The claimant suggested preventing contact and interaction could be achieved as follows (a) not placing her in the same group as X or aligning him to any group she was in (b) instructing X that he is not to contact me for any reason there is no reason why the respondents should have to explain to [REDACTED] the reason for this instruction (c) blocking all contact between me and X on outlook teams and any other relevant system at work (d) if I'm able to go into the office have a system to ensure that X will not be in the office at the same time (e) if there is any training that I am put in a different session or allowed to watch a recording of the training. The claimant accepted in cross examination that at the meeting (page 1453) that [REDACTED] went through all these points. The claimant was requesting there not to be contact ever or on an indefinite basis with X.

243. A discussion took place about workload. [REDACTED] stated that he would not provide the claimant with an unreasonable workload. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] explained that a return to work must mean that the claimant was well enough to work so that she could do the required duties and put in the time. He stated there had to be a reasonable balance between what difficulties are managed through work time and what difficulties mean that the claimant was really not well enough to work or to work the hours required. In those circumstances the claimant should really take sickness absence; there should be a reasonable and workable approach. [REDACTED] said that they were part way through the performance process when the claimant became absent with illness so that the process was being managed through the sickness and not the performance one. He stated that the meeting on that day was not to discuss performance; that was for another day.
244. The claimant stated at page 1533 that she was told in 2016 that there would be no contact with X but then the respondent reneged on it. The claimant stated even following the treatment she still could not have any contact with X

otherwise she said she would become unwell again. The claimant stated that she was giving the respondent a way out here if they were saying that the respondent cannot guarantee no contact with X. At this point the claimant had requested the possibility of a severance package. The claimant stated she was not asking for one now but she wanted an undertaking that there will be no contact with X. If the respondent was unable adhere to that she wanted, she wanted some form of severance (page 1535).

245. The claimant was asked to expand on her concerns about long term difficulties. The claimant said if she was having treatment, she did not know what to expect from it. She said people had told her it's hard and they needed time off after sessions and they were ill the next day. [REDACTED] informed the claimant a return to work must mean that she was well enough to work namely doing the duties required.
246. [REDACTED] discussed the measures suggested by the claimant at page 1426. The claimant raised the amended reasonable adjustments document and sought confirmation in writing that the respondent will undertake to ensure that she didn't have to work or interact in any capacity with X in the course of her employment.
247. [REDACTED] explained to the claimant that there were no plans to change the groups or align X to the group. The respondent as taking measures to minimise the risk of any contact between the claimant and X and he said he could not see there being any problem with this for the claimant to access treatment. Further he stated if he was to give X such an instruction, he may want to know the reason so we would not be able to say that he doesn't need to know the reasons. [REDACTED] said that respondent needed to consider whether it was reasonable to give X that instruction and whether it is reasonable. The claimant had referred in the meeting to the fact that her husband had made such instructions to other staff in his organisation and didn't give a reason and is seen as a standard. Under cross examination the claimant stated that this was the same request she had made in respect of [REDACTED] and the respondent had no problem in implementing it. However, the Tribunal determined that the claimant's request about X was far more extensive because the claimant did not even want to be in the same [REDACTED] as X. The consequences of this was that the claimant couldn't be his group leader nor could X be her group leader. In respect of the electronic block the claimant had not requested this for [REDACTED]; consequently, her requests as regarding X were far wider. The claimant was effectively asking that X shouldn't be in building at the same time. In respect of any electronic block between the claimant and X, [REDACTED] (page 1456) clarified the system was unable to block messages and communications between internal respondent users. The claimant stated that she'd set it up herself by sending Xs messages to junk and doesn't read them. Effectively the claimant was stating she wasn't able to come back to work unless she had no contact with X. The claimant stated that was right because she had supportive medical material. At page 1111 Dr De Waal added that the claimant was unable to get effective treatment for the PTSD while at risk of re-traumatization from contact with the person who she said touched her inappropriately. The respondent determined a guarantee of no contact with X was both impossible and unreasonable. [REDACTED] suggested as previously stated whilst the claimant's current roles do not require her to work

together as a matter of course it is entirely possible that either of you might change roles at the respondent which role change might require there to be contact and communication between them. Therefore the respondent does not consider it reasonable to provide the requested guarantee of no contact as this would likely and unreasonably disrupt the legitimate operation functioning and work of the organisation. The respondent questioned whether such a guarantee is necessary given that there has been no contact for years the likelihood of contact occurring is extremely small. [REDACTED] said the respondent had proposed measures to reduce that likelihood even further.

248. The claimant raised (page 1524) that management had not been supportive to date or that a punitive approach had been taken. On the contrary the respondent concluded that it had made all reasonable adjustments to support the claimant at work. The respondent could agree to the continuation of supportive management but this should not be taken to mean that any legitimate concerns around performance will not be managed when necessary and appropriate. The claimant was not expected to have the level of productivity of a full time employee without health conditions. The claimant will continue to be given a reduced target for a period of time as befits the circumstances. Following any return to work the exact target can only sensibly be determined by the claimant's line manager during a return to work taking the then prevailing circumstances into account. In respect of the claimant suggestion she should [REDACTED] [REDACTED], the respondent did not see any sound or persuasive reason as to why this should be the case. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The respondent was willing however to agree to this as a temporary measure to support the claimant's return to work. The claimants line manager would keep this under review and decide when it would be appropriate for the claimant to be given [REDACTED]

249. The claimant also requested a reduced workload [REDACTED].
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The respondent stated it would be unreasonable to agree to a permanent or long term substantial reduction in the claimant's workload. [REDACTED]

Country	Share of GDP
United States	1.0%
Germany	0.8%
France	0.7%
Italy	0.6%
Japan	0.5%
China	0.4%
India	0.3%
South Korea	0.2%
United Kingdom	0.1%
Canada	0.1%
Other countries	0.1%

[REDACTED]

250. Furthermore, in response to the claimants request to halt the performance improvement process and performance to be measured against agreed targets the respondent stated that it had an important business need to ensure that its staff are performing roles to the required standards and to address any performance issues. The appropriate time the respondent should take a decision on the performance improvement process that the claimant was subject to was following a return to work. It will not resume the performance improvement process during the period of any phased return to work. It will agree that the claimant would be set reduced targets as the claimant was in the original performance improvement plan.

251. By email dated 25 July 2022 (page 1513 to 1530) [REDACTED] disputed that the respondent had been unsupportive of the claimant and stated it had made all reasonable adjustments to support the claimant at work. The respondent can happily agree to the continuation of supportive management, but this should not be taken to mean that any legitimate concerns around performance will not be managed where necessary and appropriate. The exact target can only sensibly be determined by your line manager during a return to work taking the then prevailing circumstances into account. He emphasised that the claimant was not expected to have the level of productivity of a full-time employee without her health conditions. He stated that he would give the claimant a reduced target for a period of time which befits a return to work period. [REDACTED]

252. [REDACTED]

253. An appraisal form dated 29 July 2022 was completed by the claimant's line manager [REDACTED] because the claimant was unable to complete it due to long term sick leave (since January 2022). It was not possible to arrange for the

completion an appraisal meeting with her. However following advice from HR and noting that the claimant had more than the requisite 60 days of actual performance (see the policy paragraphs 9.6 and 9.7) during the appraisal year from April 2021 to March 2022 [REDACTED] continued with the appraisal process in the claimant's absence. He concluded [REDACTED]

[REDACTED] well below what could be reasonably expected of the claimant. These [REDACTED] reinforced the rating given and he further stated there were periods of absence from work during the appraisal year resulting in concerns about the Bradford factor. He reached the conclusion that the rating of improvement required was appropriate. He informed the claimant during one of the recent meetings under the sickness policy that a decision on the performance process will be made once she returned to work. He stated it was also the appropriate point to consider what objectives and targets the claimant might be set for the coming year.

254. On 5 August 2022 the claimant submitted her stage 2 absence appeal (see page 1552 to 1585) together with the claimants marked up meeting minutes (1586 to 1598). The claimant had requested an appeal against the decision to refuse to make reasonable adjustments needed so that she could obtain treatment for PTSD and be able to return to work and to give her written warning for poor attendance. The claimant requested that the decision be overruled; "the first written warning for attendance from her file be removed and apply the reasonable adjustments outlined in the attached table or apply something very similar which allows me to return to work and be supported to remain in work while I wait and then receive treatment for PTSD".
255. [REDACTED] was delegated to hear the appeal having not been involved in an original decision (page 565) and was provided with the paperwork on 22 August 2022 (page 1609). He was also unknown to the claimant
256. [REDACTED] read all the background information including minutes from the stage 2 meeting with the claimant's amendments (pages 1453 to 1464); the outcome of the stage two meeting (pages 1513- 1531); the claimant's appeal (p.1553-1585); the managing attendance policy (p.522-568); and the table of requested reasonable adjustments (p.1426-33). The claimant requested the appeal was done in writing and that she was unable to attend a hearing to make representations (p.1553). [REDACTED] considered the appeal on the papers. The claimant appealed against the decision to refuse to make the reasonable adjustment needed (no contact with X) so that she could obtain treatment for PTSD and be able to return to work and give her written warning for poor attendance. The claimant wanted the respondent to remove the first written warning for attendance from her file and apply the reasonable adjustments outlined in her table or something very similar which allowed her to return to work and be supported to return at work while she awaited and then received treatment for PTSD.
257. [REDACTED] requested further information from [REDACTED] including on 2 September 2022 the claimant's job description (p.1610-1614); the claimant's occupational health report and he read the case of Hill v Lloyds Bank Plc, mentioned by the claimant in her appeal documentation. [REDACTED] role was to

assess the claimant's appeal against the Managing Attendance policy; whether there was a possibility of a sustained return to work. [REDACTED] having read the claimant's appeal felt that much of the content of the appeal was not specific to the Managing Attendance policy but was a retelling of the case.

- [illegible]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
261. Under cross examination, it was suggested to [REDACTED] [REDACTED] relying on his witness statement, [REDACTED]
[REDACTED]
[REDACTED]
262. He also noted it was expected that the claimant would have the level of productivity of a full-time employee, although this would not have been the case initially. He believed any return to work could be considered and adapted depending on how the claimant bedded in, balancing the needs of the individual against the needs of the organisation and the workloads of others. In respect of a phased return to work he noted the Occupational Health report suggested it could take the claimant four weeks to return to usual duties (page 1617). [REDACTED] the claimant's manager had agreed longer timeframes on certain elements of the claimant's work. In [REDACTED] stage 2 outcome letter he agreed to minimise the need for the claimant to attend the office or other than use for a period of up to 12 months (page 1522) and agreed that the claimant would not be required to [REDACTED] for up to six months (page 1523). [REDACTED] This was in excess of the OH recommendation. [REDACTED]'s view was that the adjustments the claimant was asking for were significantly more extensive than the recommendations set out in the occupational health report.
263. It his outcome letter [REDACTED] explained that he agreed with [REDACTED] that there was no indication of a sustained return to work and that the claimant could not move past her view that there should be a guarantee of no contact between her and X which the respondent had made clear it was not possible to provide. He felt there was no prospect of an imminent return to work let alone for a sustained period of time. The claimant had indicated she would be open to exploring alternative options with [REDACTED] so that he recommended this should be explored further by HR. He also made a couple of additional recommendations namely a stress risk assessment should be completed as soon as reasonably possible to better understand what tasks the claimant could undertake. He also recommended a further referral, preferably an OH with greater experience of mental health. Although there had been no prospective return to work and the claimant had been off sick for almost 2 years by then he noted that the previous OH report was six months old and suggested that the assessment takes place from 4 to 8 weeks. He concluded that the written warning had been appropriate as there was no indication of a sustained return to work by considering whether there was any currently a prospect of a return.
264. It was also suggested to [REDACTED] in cross examination that the claimant was looking for temporary reasonable adjustments. [REDACTED] relied upon the claimant's letter at page 1558 which concerned the guarantee of no contact with X; where it was stated *"you seem not to understand that the request has always been that the no contact is permanent and until it is agreed I'm unable to have*

treatment for PTSD because contact will cause re-traumatisation. It is matters like this which make me question whether you have been listening at all to what I say because you seem to have no understanding of my case at all". [REDACTED] stated that the claimant was looking for permanent "reasonable adjustments". In re- examination [REDACTED] was also taken to the claimant's response to [REDACTED]

[REDACTED] please understand that these adjustments will only continue for a period and in any case no longer than six months from a return to work"; the claimant had responded *"I have told you repeatedly that I have no control over how it will take to obtain treatment under the NHS so placing some arbitrary fixed time limit on any adjustment is unreasonable."* From this [REDACTED] concluded the claimant [REDACTED]

265. Under cross examination the claimant was asked that in June 2022 if the respondent had agreed to promise no contact ever with X would the claimant have returned to work. The claimant stated if the respondent had promised the reasonable adjustment she requested and a supportive phased return to work was in place she would have tried to return to work. Since October 2021 X was no longer the [REDACTED] but the claimant stated there were different ways he could have contacted her. The claimant therefore could not say at this point of time in June 2022, even if the reasonable adjustment for no contact with X was made, she would on the balance of probabilities been able to return to work.

266. In respect of a potential move for the claimant, [REDACTED] sought advice from [REDACTED] on 30 November 2021. [REDACTED]

[REDACTED]

267. The claimant provided a CV in response to this request. The claimant stated she came to the top of her list for post-traumatic stress disorder treatment but having discussed it with her therapist she decided to take herself off the list wait for PTSD treatment (8 weeks) and then go back on the list to progress with treatment. The claimant accepted no one had said she was not eligible for treatment in the absence of no contact with X but the claimant maintained there was a risk of re traumatization.
268. Pursuant to the respondent's policy annual leave may be carried over by 20 days and was carried over by 20 days for the period 2022 to 2023. If the claimant had not been off sick, she would not be entitled to carry over 20 days.
269. The claimant was entitled to six months full pay in six months half pay and the claimant was paid this contractual entitlement. On 31 May 2022 (page 1416) the claimant emailed [REDACTED] of the respondent stating that she'd received the letter about how much sick leave she had taken in the last four years. She said she had noted that bank holidays seemed to be included as sick days. On 1 June 2022 [REDACTED] responded stating in our policies that the respondent automatically gives back days for bank holidays that are scheduled during a period of continuous sickness; however having reviewed the claimant's previous absence from August to November 2020 in which you requested lieu days for bank holidays falling in the sickness period, the respondent credited the 2021 annual leave entitlement with the days in lieu. She also noticed that the breakdown sent to the claimant based on 260 days a year; the guidance uses 365 calendar days as the maximum so she had re-calculated the claimant's absence over the last four years to include all days of the claimant's total sickness days. She had taken using the criteria total 363 and therefore added two days on the end of the full pay expiry date which was now 11 June 2022. A table was provided to the claimant to explain this calculation. The claimant responded on 10 June accepting [REDACTED] response.
270. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
271. I [REDACTED]
[REDACTED]
[REDACTED] completed the employer section and submitted the form on 1 July 2022. The claimant attached a personal statement in support of her claim (page 1437-1442) and [REDACTED] attached an employer statement (page 1946-1948). [REDACTED] explained that the respondent had managed the claimant's condition in accordance with policies and met her to have discussions about reasonable adjustments. He stated that regular OH referrals had been made but it had not been possible for the respondent to give a complete guarantee there would be no contact with X. The claimant perceived that she was unable to seek treatment for a fear of re-traumatization. He also set out the background to the grievance and attendance management process to date. The claimant [REDACTED]

- [REDACTED]
272. On 7 September 2022 the claimant's GP provided report [REDACTED] stating that the claimant's illness was related to inappropriate touching in 2015, overwork and bullying that she was still unwell and there was no evidence that she had experienced mental health problems prior to 2016 (see page 1953-4).
273. The medical report was completed on 14 October 2022 (see page 1956-1957). The [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
274. On 9 November 2022 the [REDACTED] wrote to the claimant to say she had been granted an extension of paid sickness absence [REDACTED] for ongoing absence with effect from 12 January 2022. This meant that the claimant was actually entitled to one year full pay and six months half pay whilst absent. The claimant had received this. [REDACTED] on 9 November 2022 (page 1958) stating that the claimant had been granted an extension of sickness absence pay at full pay under [REDACTED] for the ongoing absence and with effect from the 12 of January 2022 the extension of paid sick leave can be up to a maximum of 182 days. It was stated "please make the necessary adjustments to the employees' sickness absence record and if appropriate please arrange for any raise of salary to be paid. If the employee remains on sick leave beyond this 182 day for the same [REDACTED] they may be eligible for a [REDACTED]. If there has been any loss of earnings resulting from being downgraded or employed in a different capacity with a loss of earnings or loss of allowances or reduction in working hours during a phased return to work part time rehabilitation. Please let us know as early as possible with any of the above applies to this employee".
275. On 11 November 2022 [REDACTED]
[REDACTED]
[REDACTED] mental health problems were an injury which had occurred [REDACTED]
[REDACTED] and was wholly or mainly attributable to the nature of that [REDACTED] see [REDACTED] 1955 to 1956. [REDACTED]
[REDACTED].
276. On 11 November 2022 the claimant asked [REDACTED] as she had been on sick pay for longer than 182 days she could be considered for [REDACTED] [REDACTED] (see page 1963). [REDACTED] was inexperienced in processing such applications but wrote on 7 December 2022 to [REDACTED] requesting a meeting (see page 1492) because he wanted to explore the possibility of appealing the initial decision that the claimant had a [REDACTED]

277. On 14 December 2022 (page 1958) he wrote [REDACTED] to inform the claimant's entitlement to sick pay would end on 6 January 2023. He explained he was informing them of the reduced pay condition and that they would determine whether [REDACTED] was entitled to a [REDACTED] (page 1958). He also asked if they could confirm if they needed any further information and what the time scale may be involved. [REDACTED]
278. [REDACTED] received a reply from [REDACTED] to his e-mail of 7 December on 14 December agreeing to a meeting but despite efforts to find a date the meeting didn't take place. On 22 December 2022 his colleague [REDACTED] sent a number of written queries which were responded to on 4 January 2023 (see page 1497 to 1501). [REDACTED] advised that due to the queries that had been raised and our intent to challenge the original decision they had not taken any action with regard to [REDACTED] and could only process it once this had been resolved.
279. On 28 December 2022 at page 1639 the claimant asked [REDACTED] to confirm that he had contacted [REDACTED] to inform them that her entitlement to contractual sick pay runs out in January so that they can [REDACTED]
280. On 2 December 2022 (page 1643) [REDACTED] wrote to the claimant about alternative work. She stated that she had circulated the claimant's CV and current job description which had generated some queries and requested the claimant to respond confirming that [REDACTED]
[REDACTED] V. She said the [REDACTED] have no [REDACTED] at present. She asked whether the claimant would consider hybrid working roles involving a mix of home or office working. Further there was a potential role and she attached a job description. She further stated that [REDACTED] have a vacancy for [REDACTED]
[REDACTED]
281. On 6 December 2022 the claimant responded (page 1643) stating [REDACTED]
[REDACTED] She was currently not well enough to leave home. It may be possible after treatment but she was unable to have treatment at the moment as a result of decisions by the respondent. [REDACTED]
[REDACTED]
The claimant said she was willing to consider any roles. The job description at page 1645 was a role in [REDACTED] and the claimant said she was not well enough to travel. The claimant interpreted the e-mail from [REDACTED] on 6 of December hinting that there was a vacancy [REDACTED] but the respondent disputed this and that stating that it was her interpretation only. In response to the claimant's e-mail [REDACTED] stated she had further liaised with the HR contact in the [REDACTED]. The claimant said she had not been looking regularly at jobs [REDACTED]

282. In a letter dated 22 December 2022 (page 1498) [REDACTED] stated that due to the queries you have raised and advised of your intended challenge the original [REDACTED] we have not taken any action with regards to [REDACTED] can only progress it once this has been resolved. You should advise your employee accordingly. The claimant had not been advised by the respondent they had raised queries about [REDACTED].
283. On 19 December 2022 (page 1654) the claimant received a letter from [REDACTED] which was a standard letter informing that in accordance with the policy and the rating of improvement required she was not entitled to increase in salary. The claimant received the same letter one year later 10 December 2023 at page 1676.
284. The [REDACTED] respondent on 22nd December 2022 (page 1499) that due to the queries raised and advising of the intent to challenge the original decision no action with regards to [REDACTED] was taken and can only process [REDACTED] once it's been resolved.
285. The claimant stated that whilst off sick she did not engage in treatment because of the fact that she had been advised of a risk of re-traumatization and it was not firm that the respondent would not permit any contact between her and X. The claimant's evidence is that the PTSD diagnosis was first given in August 2021 where the counsellor (page 894 to 895) had mentioned trauma in June 2021. At 1730 the GP mentioned PTSD; the claimant stated she'd suffered from agoraphobia which is an on off mental problem since 2016 but since lockdown it had been far worse.

2023

286. From 16 January 2023 [REDACTED] emailed [REDACTED] concerning the claimant's [REDACTED] stating "I can confirm there is ongoing liaison [REDACTED] and they are aware the occupational sick pay expires in January". The claimant emailed on 27 January 2023 at page 1657 stating she had spoken to the [REDACTED] to ask them why they had not sent her forms to complete the claim and told her that the respondent would not contact them to raise a service request and that until they received it they could not progress the [REDACTED]. The claimant stated that she been told by the respondent on 16 of January 2023 that the respondent had contacted them. The claimant asked the respondent to liaise with the [REDACTED] to ensure they have everything they need to progress [REDACTED]
287. [REDACTED] wrote to the claimant on 31 January 2023 (page 1657). He stated they had a couple of queries with her [REDACTED] at the moment but as soon as they have been resolved [REDACTED] will go ahead. He said he anticipated he should have answers in no more than 11 or so working days. In the meantime, he asked the claimant would a salary advance on her February pay help with the shortfall. The claimant said this was not satisfactory because if she was not entitled to [REDACTED] she may have to pay the money back. [REDACTED] responded on 15 of February (page 1656) *"I'm sorry for the delay..your [REDACTED] the queries I mentioned have been raised with the key medical adviser rather than [REDACTED] which is why they have no contact noted on your case record. I've chased for a response and as soon*

as my queries are resolved I will confirm this to [REDACTED] who will process your [REDACTED] and backdate it to January. I'll continue to chase and we'll be in touch when I have an update for you".

288. Under cross examination the claimant stated that she had not been informed that the respondent was appealing [REDACTED]. She had been told there was outstanding queries but that was not the same as an appeal which she had a right to know about. It was suggested to the claimant that the resolution was dependent on the scheme responding to [REDACTED] queries. The claimant stated when the respondent withdrew the appeal, she had her benefit paid. It was suggested to the claimant in cross examination there was a lack of response to the respondent's queries that caused the delay. The claimant refuted this stating "no" the respondent was appealing the decision and failed to tell her.
289. On 30 January 2023 (page 1657) the claimant asked [REDACTED] whether he had contacted [REDACTED] and raise the [REDACTED] to cover her loss of pay and sent a chaser e-mail on 31 January 2023. [REDACTED] responded on 31 January (page 1656) stating they had a couple of queries with [REDACTED] "but as soon as they were resolved the assessment of your case for [REDACTED] will go ahead I anticipate I should have answers in no more than 11 working days in the meantime would a salary advance on your February pay help you with any shortfall".
290. On 31 January 2023 [REDACTED] completed a complaint form seeking clarity on whether the medical adviser had taken into account (1) the pre-existing conditions (2) actions taken when the incident with X was known and further details of the incident since it had taken place and (3) the extent to which treatment had not been sought and the resulting lack of progress with recovery (see pages 1665 to 1668). [REDACTED] was concerned about the medical advisors finding that [REDACTED] is PTSD was work related given that the report did not mention her thyroid can function which he considered could also have impacted upon her mental health condition see the OH report 11 December 2018 at page 172 to 175. He could not see that the medical advisor had considered that the claimant had not wanted any action to be taken following her complaint in 2016 or the fact that the claimant had not sought any treatment since that date.
291. On 14 February 2023 the claimant asked [REDACTED] to confirm whether he had raised the issue in order for her to be paid [REDACTED] "I did not get the [REDACTED] I was due at the end of January and will not receive it at the end of February unless I received the forms to complete soon".
292. On 16 February 2023 the respondent wrote to the [REDACTED] stating [REDACTED] went on to half pay on 11 January 23. The respondent asked the payment to be processed as soon as possible. On 16 February 2023 (page 1501) the [REDACTED] stated "we would be grateful if you could confirm if you're happy for [REDACTED] to proceed with processing of a [REDACTED] on the basis of the [REDACTED] being subject to half pay with effect

from 6 January 2023 or if you intend to contest the decision to find the [REDACTED] injury/illnesses meeting the qualifying criteria and therefore the granting of an extension of paid sickness leave if you do intend to contest the decision and don't wish us to process the [REDACTED] at this time please update your employee accordingly. The claimant refuted any suggestion that the respondent did not delay the process. The claimant stated that at the preliminary hearing she had added a claim that the respondent withholding the award and that's why she received the award and it was backdated when she received it in April 2023.

293. On 16 February 2023 [REDACTED] received an e-mail advising that the [REDACTED] had not been logged on the internal complaint system (see page 1661) and also received an e-mail from [REDACTED] asking him to confirm whether he was happy for it to proceed with the processing of a [REDACTED] (see page 1501 and 1502). [REDACTED] said he had raised a couple of queries and was awaiting a response but added the purpose of the queries was to seek clarification that the medical advisor had taken into account all relevant factors rather than contesting the decision. [REDACTED] concluded the claimant had gone to half pay on 11 January 23 and asked [REDACTED] to process the payment as soon as possible page 1503 this was because I did not want to keep [REDACTED] waiting any longer and following day [REDACTED] confirmed they had raised the necessary case page 1504.
294. On 16 February 2023 (page 1655) the claimant asked what queries the respondent had raised with the [REDACTED]. She stated "if the queries do not affect the amount of [REDACTED] to which I'm entitled why do you need to delay raising a service request and if they do affect the amount of [REDACTED] then how will a salary advance to anything but create a larger deficit in my future income making it even more difficult for me to cope then".
295. On 17 February [REDACTED] responded that [REDACTED] have confirmed this morning that they will now process the [REDACTED] and they would be making the payment directly to the claimant's bank account.
296. On 21 February 2023 [REDACTED] received a response to the [REDACTED] advising that the former he'd used was not to complain about the outcome of the referral but the service provided by the medical advisor. He was informed that if he wanted to make such a complaint, he should discuss it with [REDACTED] (page 1864). [REDACTED] did not take it any further.
297. On 7 March 2023 (page 1504 to 1505) [REDACTED] chased the payment of the award and was informed that [REDACTED] was awaiting information from the claimant (see page 1506). On 30 March 2023 [REDACTED] was informed [REDACTED] that the claimant would be going onto nil pay from 7 April 2023 and asked to process payment for that date (see page 1507). On 11 April 2023 the claimant was informed that she was eligible to receive a [REDACTED] due to moving on to half pay by reason of her ongoing sickness absence see (page 1977). The payment of this [REDACTED] is ongoing.

298. On 10 December 2023 (page 1676) [REDACTED] of the respondent informed the claimant that due to the fact the claimant had received a performance of improvement required her salary remained unchanged.

Submissions

299. Both parties provided detailed written submissions and were given the opportunity to supplement these with oral submissions.
300. The respondent submitted all of the claimant's claims should fail. It was submitted that the claimant although disabled by reason of anxiety and depression was not disabled by reason of PTSD relying on the jointly instructed expert, Dr Griffin who did not substantiate a diagnosis of PTSD.
301. Furthermore, the respondent raised concerns about the credibility of the claimant relying upon the fact that she had covertly recorded meetings; failed to address in her witness evidence the OH report dated 25 February 2022 which did not advise a long term adjustment in the reduction of the amount of or type of work to be done by the claimant nor any guarantee of no contact with X. Further it was submitted that Dr Griffin diagnosed the claimant with recurrent depressive disorder with prominent anxiety features (page 1902). She said specifically that she could not confirm a PTSD diagnosis as there was no full assessment letter and the claimant had not been exposed to an incident reaching the threshold of severity warranted to trigger PTSD (see page 1903 to 1904).
302. In respect of the discrimination arising from disability claims, the respondent accepted at all relevant times the claimant was disabled by reason of depression/anxiety. In respect of whether the respondents subjected the claimant to the following treatment namely on 15 July 2021 the claimant was invited to a meeting to discuss her appraisal outcome for year 1 April 2022 to 31 March 2021 where improvement was needed and told that her performance was unacceptable the respondent contended this was factually wrong. The claimant was invited on 15 July 2021 to a stage 1 poor performance meeting having already been provided with her appraisal rating for 2020 to 2021 appraisal year see page 1154 and 1155. In respect of the claimant being given a warning, the claimant was given a first written improvement warning (see pages 1172-1177 and page 1860 and 1861). On 16 December 2021 the claimant was told that she had failed to meet the requirements of the performance improvement plan. The respondent submitted the claimant was told this by letter page 1353 to 1356. The claimant was invited to the managing attendance meeting which took place on 17 May 2022 (see the invitation letter at 1402 to 1404). Further on 26 May 2022 (later amended on 1st June 2022) the claimant was informed her sick pay would end on 9 June 2022 and a statutory sick pay would end on 26 July 2022. The respondent reduced the claimant sick pay from June to November 2022 and from 11 January 2023; the relevant correspondence was at pages 1411 to 1412 1414 to 1415, and the claimant's sick pay was reduced (see page 2004). The respondent submitted the claimant's pay was subsequently restored once she had received that payments of full sick pay until 11 January 2023 (see page 1962 and 2007) under the payment [REDACTED] [REDACTED] from 11 January 2023 onwards (see page 1977 to 1978) and 2009 by reason of her successful application for [REDACTED].

The respondent accepted that the claimant was invited to a stage 2 managing attendance meeting on 30 June 2022 see page 1453 to 1464.

303. The respondent relied upon the following cases **Copal Castings Limited v Hinton UKEAT/0903/04**; **Trustees of Swansea University of Pension and Assurance Scheme v Williams (2019) 1 WLR 93**; **Sheikholeslami v University of Edinburgh 2018 IRLR 1090**; **Pnaiser v NHS England 2016 IRLR 170**; **Hardy & Hansons plc v Lax 2005 ICR 1565**; **York City Council v Grosset (2018) ICR 1492**; **Royal Bank of Scotland v Ashton 2011 ICR 632**; **First Group Limited v Paulley (2017) IRLR 258**; **Ishola v Transport for London 2020 ICR 1204**; **Griffiths v Secretary of State for Work and Pensions (2017) ICR 160**; **Fernandes v Department of Work and Pensions (2023) IRLR 967**; **Parnell v Royal Mail Group 2024 EAT 130**; **Ohanlon v Revenue and Customs Commissioners (2007) ICR 1359**; **Tameside Hospital NHS Foundation Trust v Mylott UKEAT/0352/09**; **Hill v Lloyds Bank Plc**.
304. The claimant provided a very detailed written submission (114 pages). The submissions were too extensive to be detailed here. She submitted in summary that the respondent did not employ many disabled people. Her estimate was about 2%. The claimant submitted that she was not a disgruntled and difficult employee. She was an empathetic, tolerant and relaxed one which was supported by her historical appraisals. The claimant submitted that the respondent should (but failed) to adjust her workload so that she could have remained in work in 2021 and adjusted her workload and given her clear targets in 2022. The claimant submitted that she was disabled by reason of anxiety, depression, Graves disease and PTSD. She relied upon the report of Joanne McCarthy; GP notes; psychological report of Mr. Smith; Dr. Hugo de Waal's report; her medical assessment for a [REDACTED]. The claimant disputed the joint medical report of Dr. Griffin who she says failed to undertake any tests. The claimant submitted there was sufficient evidence to establish she was disabled by reason of PTSD. The claimant submitted that the respondent did have knowledge of her disability of PTSD. The claimant submitted that the respondent has the OH assessments and psychological report of Mr Smith.
305. Further the claimant submitted it was a reasonable adjustment for the respondent to give a written undertaking not to have contact with X. After all the claimant submitted she had no contact with X, [REDACTED] and [REDACTED] since about 2016. Her case is that there was an agreement she would not have to work with those people since 2016.
306. The claimant submitted that the respondent are subject to the [REDACTED]. Relying on the case of **Hill v Lloyds Bank** the claimant submitted the employer could give an indefinite written undertaking the employee would not have to contact with perpetrators. It was a reasonable adjustment for the respondent to prevent contact with X. If the claim is out of time the claimant submitted it is just and equitable to extend time (including) because she believed she needed to exhaust the grievance procedure and advice received from her trade union representative.
307. The claimant relied upon **Secretary of State for Work and Pensions (Jobcentre Plus) v Jamil (UKEAT/0097/13)**; **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194**; **Southwark London**

Borough Council v Afolabi 2003 ICR 800; British Coal Corporation v Keeble 1997 IRLR 336; Osajie v London Borough of Camden EAT/ 0317/96.

308. The claimant submitted that the respondent failed to make a reasonable adjustment by adjusting her workload; the same workplan put in place in 2016/7 should have been put in place in 2021. Further the claimant submitted that she was invited to a stage 1 poor performance meeting in July 2021; on 17 May 2022 invited to a stage 1 managing attendance meeting; stage 2 managing attendance meeting on 30 June 2022; these were acts of discrimination arising from disability; her poor performance was a result of anxiety, PTSD and sick leave. The former process was commenced without a proper review of the stress risk assessment or workplace adjustment passport. As a result of an inability to cope the claimant went on sick leave. The claimant submitted her sickness absence was a result of her disabilities. The claimant further submitted that not being paid her contractual sick pay was an act of discrimination arising from disability. She was further subject to a breach of privacy and subject to a first written warning for poor attendance on 25 July 2022. Further in 2023 the respondent failed to raise an order for payment of the [REDACTED]

The Law

Knowledge of disability

309. In the case of **A Limited v Z (UKEAT/0273/18)** the EAT held the tribunal was wrong to attribute knowledge to a respondent. The EAT summarised the legal principles in relation to constructive knowledge at paragraph 23 of the judgement and considered **York City Council v Grosset (2018) ICR 1492 CA, Donelien v Liberata UK Limited UKEAT/0297/14, Pnaiser v NHS England & Another 2016 IRLR 170, Henry v Dudley Metropolitan Council (2017) ICR 610 and Secretary of State for Work and Pensions v Alam 2010 ICR 665** stated that “reasonableness for the purposes of section 15(2) must entail a balance between the strictures of making inquiries, the likelihood of such inquiries yielding results and the dignity and privacy of the employee as recognised by the code”. The EAT upheld arguments of the appellant that if a proposed inquiry would not have yielded the requisite knowledge it cannot have been reasonable to have had to make it and it could not be the function of section 15 (2) to impose significant obligations and burdens on employers nor should an employer be required to impose itself upon an employee's concerted wish to suppress exposure of a health condition in particular a mental health condition. To determine otherwise would run counter to the requirement in the code that investigations are conducted in accordance with dignity and privacy. The ET in this case had found that the employer would not have obtained knowledge of the disability even if it had asked the right questions of her the respondent did not have constructive knowledge of the disability at the relevant time.
310. The Code of Practice from the ECHR about constructive knowledge states that an employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances

this is an objective assessment (see paragraph 5.15 of the equality and Human Rights Commission code of practise on employment 2011 the code).

311. The ECHR code paragraph 6.21 states if an employer's agent or employee such as an occupational health advisor HR officer or a recruitment agent knows in that capacity of a workers or applicants or potential applicants disability the employer will not usually be able to claim that they do not know of the disability and that they therefore have no obligation to make a reasonable adjustment. Employers therefore need to ensure that where information about disabled people may come through different channels there is a means -suitably confidential and subject to the disabled persons consent-for bringing that information together to make it easier for the employer to fulfil their duties under the act.
312. At paragraph 6.22 of the Code, it states "information will not be imputed or attributed to the employer if it is gained by a person providing services to employees independently of the employer. This is the case even if the employer has arranged for those services to be provided".
313. Paragraph 6.21 does suggest that because information gained by the occupational health consultant on the employer's behalf is assumed to be shared with the employer the occupational Health advisors knowledge means that the employers duties under the 2010 act will apply as a lack of knowledge defence will not be available to the employer.
314. In the case of **Hartman V SE Essex Mental Health Community Care NHS Trust 2005 EWCA Civ 6** the Court of Appeal determined that the employer was not fixed with knowledge of a psychiatric condition that was disclosed in confidence to occupational health even where the occupational health practitioner was employed by them Scott Baker LJ at paragraph 34 quoted from the publication medical ethics today published by the British Medical Association which stated the fact that a doctor is a salaried employee gives no other employees of that company any right of access to medical records or to the details of examination findings. Where the employees consent the employer may be revised of any relevant information relating to a specific matter on a strictly need to know basis the significance of which the employee clearly understands. If an employer explicitly or implicitly invites an employee to consult the occupational physician, the latter must still regard such consultation as strictly confidential. Paragraph 35 he stated there was no basis upon which the first instance judge could properly conclude that the trust was fixed with knowledge of the confidential information disclosed by Mrs Hartman to the occupational health department.
315. In the case of **Q v L 2019 UKEAT 0290/18** An issue arose regarding the employees knowledge of the complainants tourette's syndrome when disclosed to a third party occupational health practitioner expecting that information to be passed on to the employer. Mrs justice Slade sitting in the E80 followed Hartman and held that the employment tribunal erred in holding that the employer was fixed with knowledge of OHG assist and that they knew about the claimants threats from the outset. She said in paragraph 70 of the judgement that in the absence of wider written consent the fact that the claimant expected information to be passed by OH assist to the respondent did not change the binding nature of the obligation of confidence on them.

Reasonable Adjustments

316. Employers are required to take reasonable steps to avoid a substantial disadvantage where a provision criterion or practise applied to a disabled person puts a disabled person's substantial disadvantage because of the disability compared to those who are not disabled. The word substantial in this context means more than minor or trivial. The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that the particular provision criterion or practise disadvantages the disabled person. Accordingly, there is no requirement as there is in a direct discrimination claim to identify a comparator or comparative group whose circumstances are the same or nearly the same as the disabled person circumstances. A comparison can be made with non-disabled people generally.
317. The phrase provision criterion practise is not defined by the 2010 act. It broadly encompasses requirements placed upon employees by employers and can extend to formal or informal policies rules practises or arrangements.
318. An employer only has a duty to make adjustments if they know or could reasonably be expected to know both that the affected worker is disabled and that they are placed at a substantial disadvantage by the application to them of the relevant provision criterion or practise. The words could reasonably expect it to no encompass the concept of constructive knowledge. The question of whether the employer had or ought to have knowledge of the disability in question is one of fact for the tribunal.
319. The duty to make reasonable adjustments requires employers to take such steps as is reasonable to have to take in order to have to make adjustments. There is no onus upon the disabled person to suggest what adjustment should be made. By the time the matter comes before the tribunal the disabled person ought to be able to identify the adjustments which they say would be of benefit.
320. There is no requirement for the disabled person to show that on balance the adjustment would ameliorate the disadvantage. In **Project Management Institute v Latif (2007) IRLR 580** paragraph 54 Elias P stated
- “the claimant must not only establish the duty has arisen but there are facts from which it could reasonably be inferred absent an explanation that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty but it provides no basis on which it could be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made.”*
321. The following are some of the factors which according to the ECHR code might be taken into account when deciding what is reasonable step for an employer to take including (a) whether taking any particular step would be effective in preventing the substantial disadvantage (b) the practicability of the step (c) the financial costs of making the adjustments and the extent of any disruption caused (d) the extent of the employers financial or other resources (e) the availability to the employer financial or other assistance to make the adjustment (f) the type and size of the employer.

322. Ultimately the test of reasonableness is an objective one and will depend upon the circumstances of the case. Adjustments may include transferring the disabled person to fill an existing vacancy altering the disabled persons working hours or providing them with training or assigning a disabled person to a different place of work or arranging home working

Discrimination arising from disability

323. Pursuant to section 15 of the Equality Act 2010 a person A discriminates against a disabled person B, if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. The provision will not apply if A shows that A did not know could not reasonably have been expected to know that B had the disability.
324. The claimant needs to establish that they have been unfavourably treated. The unfavourable treatment must then be shown to be of because of a relevant something and that the relevant something arises in consequence of the disability. In the case of **Pnaiser v NHS England (2015) UK EAT/137/15** guidance was given up on the correct approach to section 15 cases. The Tribunal must firstly identify whether there was unfavourable treatment and if so by whom. The Tribunal must then determine what caused the treatment or what was the reason for it. The focus at this stage is on the reason in the mind of the decision makers. 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 a trivial influence on the unfavourable treatment and so amount to an effective reason for it.
325. The Tribunal must then determine whether the reason for the unfavourable treatment is something which arises in consequence of the claimant's disability. A loose causal link may be established by the complainant.
326. The second stage of the causation test that the thing causative of the treatment arose because of disability involves an objective question and does not depend on the thought process of the alleged discriminator. The required state of mind is simply that the unfavourable treatment should be because of the relevant something there is no requirement that the alleged discriminator also should have known that the relevant something arose from the disability.
327. Should the complainant established that they have been unfavourably treated for something of arising in consequence of disability then it is open to the respondent to justify that unfavourable treatment. The burden is upon the respondent when seeking to run a justification defence to show that the treatment of the complainant is a proportionate means of achieving a legitimate aim.
328. The aim must be legitimate and unrelated to any discrimination based on any prohibited ground. This means all measures adopted to achieve the aim must be capable of doing and must be proportionate. The objective of the measure must be sufficiently important to justify the limitation of a protected right. This involves the Tribunal considering whether a less intrusive measure could have been used and balancing the severity of the measures of fact upon the complainant against the extent that the measure will contribute to the achievement of the aim from

the perspective of the employer. The test to be applied by the Tribunal is objective. The Tribunal has to make its own judgement as to whether the measure applied by the respondent is reasonably necessary as a proportionate means of achieving the aim in question.

329. The Tribunal must evaluate the employees legitimate aim and not some other aim that the Tribunal may consider would have been preferable. Where there is no other way of achieving the identified aim then the means will inevitably be proportionate. The employer must persuade the Tribunal that there was a legitimate aim and that it was appropriate and necessary to adopt the means in question in order to achieve the aim. It must be shown that the means adopted actually contributed to the pursuit of the aim.
330. The Equality and Human Rights Commission's Employment Code sets out guidance on objective justification. The code says that the main aim pursued should be legal should not be discriminatory in itself and must represent a real objective consideration. In respect of proportionality the code notes that the measures adopted by the employer do not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective.

Time

331. By section 123 of the Equality Act 2010 the general rule is that a claim concerning work related discrimination must be presented to the tribunal within the period of three months beginning with the date of the act complained of. However there is no bar on claims being presented outside the three month limitation period cause the tribunal has a discretion to allow a claim to be brought within such other period as the tribunal thinks just and equitable.
332. Conduct extending over a period is to be treated as done at the end of that period. Where there is a series of distinct acts, the time limit begins to run when each act is completed whereas if there is a continuing discrimination time only begins to run when the last act is completed.
333. Where an employer operates a discriminatory regime, rule, practise or principle then such will amount to an act extending over a period. What however there is no such regime, rule practise or principle in operation an act will not be treated as continuing even though the act has ramifications which extend over a period of time. For example, a decision not to appoint or re grade an employee will be a one off act or decision but with continuing consequences. The tribunal needs to look at the substance of the complaints in question and determine whether they can be said to be part of a continuing act by the employer. In doing so one relevant but not conclusive factor is whether the same or different individuals were involved in the incidents.
334. In southwestern ambulance service **NHS Foundation Trust v King EAT 0056/19** the Employment Appeal Tribunal held that if any acts are not established on the facts or found not to be discriminatory then they cannot form part of the continuing act. In that case, the single act of victimisation found to be made out by the tribunal was held to be out of time. The complainant was unable

to extend time by pointing to the other acts of which he complained but which were held not be in contravention of the 2010 Act.

335. Where the complaint relates to an omission to do something then failure to do something is to be treated as occurring when the person in question decides upon it. A person is to be taken to decide upon a failure to do something when they do an act inconsistent with it or (where there is no inconsistent act) upon the expiry of the period in which the decision maker might reasonably have been expected to do it.
336. Where the claim arises out of an act inconsistent with the doing of the act then the matter is fairly straightforward, as when time starts to run is clearly identifiable. A more difficult situation arises where the complainant is seeking to argue that there is no inconsistent act that the employer may reasonably have been expected to do the act in question. Upon a consideration of whether a claim is in time or not it will be in the interests of the employer to argue that they might reasonably have been expected to deal with the reasonable adjustment earlier and in the interests of the employee to assert that the employer had not been unreasonably slow to act.
337. The application of these principles to reasonable adjustments claims was considered in the case of **Matuszowicz v Kingston upon Hull City Council 2009 ICR 1170**. The Court of Appeal held in that case there where an employer's alleged failure to make an adjustment is inadvertent the three months time limit for bringing a claim starts to run on the expiry of the period with in which the employee might reasonably have been expected to make the adjustments.
338. There may be separate acts of discrimination about the same matter. Where this situation arises there may be discrete decisions each of which gives rise to a separate cause of action. Time will run from each occasion upon which his specific provision, criterion or practise was applied and resulted in a specific disadvantage. In the Court of Appeal case of **Rovenska v General Medical Council 1997 IRLR 367** it was held that the time limit begins to run again on each occasion on which the policy is applied. Where the claimant was refused the same request on a number of occasions each refusal caused the three months time limit to start afresh.
339. It is open to a tribunal to extend time should it be just and equitable so to do. Time limits are exercised strictly in employment cases. It is for the complainant to convince the tribunal that it is just and equitable to extend time. The exercise of the discretion is the exception rather than the rule. In considering whether to exercise discretion under section 123 to extend time all factors must be considered including in particular the lengthen reasons for the delay.
340. In the case of **Robertson v Bexley community Care trading as leisure link 2003 IRLR 434** the Court of Appeal held there is no presumption that the tribunal should extend time unless they can justify failure to exercise the discretion. The reverse is the case. The tribunal cannot hear a claim unless the claimant persuades it that it is just and equitable to extend time. The exercise of the discretion is the exception rather than the rule.

341. However, the tribunal's discretion to extend time upon an out of time complaint is a wide one. The factors which are almost always relevant are the length of and the reasons for the delay and whether the respondents suffered prejudice. There need not be a good reason for the delay it is not the case that time cannot be extended in the absence of an explanation for the delay from the complainant. The most it can be said is that whether there is an enemy explanation or apparent reason for the delay and the nature of any reason are relevant matters to which the tribunal ought to have regard. However there needs to be something to convince the tribunal that it is just and equitable to extend time see the case of **Abertawe Bro Morgannwg University Local health board v Morgan 2019 EWCA Civ 640**.
342. While the exercise of the discretion is the exception rather than the rule this does not mean that exceptional circumstances are required before the time limit can be extended on a just and equitable basis. The law simply requires an extension of time should be just and equitable.
343. The tribunal may take into account any factor which it considers to be relevant. The strength of the claim may be a relevant factor when deciding whether to extend time. In disability cases the tribunal may recognise that disabled claimants might find it difficult to comply with the three months' time limit.
344. It is necessary for the tribunal to weigh the balance of prejudice between the parties. A refusal to extend time will inevitably prejudice the claimant. However, the claimant needs to show that the loss of the claim because of the application of the relevant limitation period will prejudice them. If that were to be difficult it would emasculate the limitation. Plainly Parliament has legislated for relatively short limitation periods in employment cases. The limitation period must be applied unless the claimant can persuade the tribunal that time ought to be extended.
345. The other side of the coin is that some prejudice will of course be caused should the respondent if an extension of time is granted given that the case would otherwise be dismissed. However, the prejudice cause needs to amount to more than simply that. Otherwise, such would emasculate the discretion vested in tribunals by parliament to consider just and equitable extensions of time.

Conclusions

Credibility

346. On day 3 of the hearing during cross examination the claimant admitted she had covertly recorded a number of meetings with the respondent from 2020 to end of June 2022. She accepted that she had not asked permission of the attendees at the meeting to record or inform them that she was recording the meetings. She stated that she had done this so she could accurately edit minutes of the meetings and that she had destroyed the recordings by recording over them with the next recorded meeting. She had destroyed the recordings whilst she had issued two claims in the Tribunal. She stated that she was unaware she had to disclose the recordings. She said she was unaware as to whether her trade union representative had taken notes of the meetings and did not ask him for any meeting notes. The Tribunal found the claimant's conduct had been deceitful

in failing to inform the respondent until day 3 of the hearing that she recorded the meetings and incredible that she was unaware [REDACTED] that the recordings were disclosable.

347. Furthermore, the Tribunal did not find that the claimant was honest about all the meetings she recorded. In particular at the informal grievance meeting held on 21 January 2020 the claimant stated she had not recorded the meeting and had made notes. However, taking into account the amount of tracked changes made by the claimant in particular pages 877 and 878, the Tribunal concluded that the claimant had not been honest about this and on the balance of probabilities she must have recorded the meetings (particularly as her representative who was in attendance did not take any notes). The claimant destroyed these notes following amendment of the minutes. Furthermore, the claimant's evidence to the Tribunal that she recorded the meetings via a cassette tape was not credible by reason of the fact that she said that she did not change cassettes during the middle of meetings. There have been some meetings when the claimant did not want her camera on. The Tribunal concluded this was in part to conceal the recording.
348. The claimant was well prepared for cross examination and familiarised herself well with the bundle being able to direct the Tribunal to look at pages in response to the questions by counsel to her. The Tribunal noted that the claimant had failed to include any reference within her 99 page witness statement to an occupational health report dated 25 February 2022 (page 1616). Under cross examination the claimant denied she had deliberately not dealt with the occupational health report because it was unhelpful to her case; she stated that she didn't realise she hadn't dealt with the occupational health report in her witness statement and further considered it was not a good report noting that the report was completed by a nurse and at page 1616 had referred to the claimant as him. The Tribunal did not find this explanation credible in the context of the very thorough preparation by the claimant for the hearing and the claimant's detailed knowledge of the Tribunal bundle. The Tribunal concluded that the claimant had deliberately not dealt with the report because it was unhelpful to her case as it did not suggest there should be no contact as she requested with X nor did the report suggest that the claimant should have an adjustment to just do one particular type of work.
349. The conduct of the claimant with her demand to have a guarantee of no contact at all with X meant that she had become unmanageable. She requested adjustments which were not reasonable. Her demand that she have a written assurance she would have no contact with a colleague X, the Tribunal concluded was unrealistic, impractical and unreasonable. In the work premises there are a number of communal areas including the kitchenette [REDACTED] where the claimant and X in the course of their work if in the office may meet. The suggestion that [REDACTED] should consider any of the [REDACTED] (the work of X) before passing to X would mean that [REDACTED] along with his management responsibilities and [REDACTED] was having to do another member of staff's work. [REDACTED] was having to spend an inordinate amount of time having to manage the claimant's requests. Despite being informed that the claimant's grievance was not upheld so that her request to have written assurance she would have no contact with X was refused, she persisted on

making this request. The Tribunal having heard all the evidence concluded that the way in which colleagues worked was a collaboration of [REDACTED]; talking about [REDACTED] and sharing [REDACTED].

350. In the course of the hearing, the Tribunal found the claimant to be aggressive in answering questions put by Counsel and talked over counsel using her aide memoire and at times ignored the questions put. She failed to answer questions consistently preferring to inform the Tribunal about her version of events contained in the witness statement (already read by the Tribunal). She failed to make concessions despite being faced with evidence inconsistent with her answer. For example, failing to concede that she had not agreed to allow [REDACTED] to see her diagnosis. The Tribunal found it very surprising that the claimant [REDACTED] had failed to research time limits in an Employment Tribunal particularly when she used legal language about failures to make reasonable adjustments following researching the ECHR. In the course of raising a formal grievance the claimant was represented by a trade union representative. The claimant stated he did not provide her with any advice as to making a Tribunal claim. The claimant said she did not ask any questions about bringing a Tribunal claim but thought it common sense to pursue a grievance and then consider a tribunal claim. The claimant accepted [REDACTED] and she thought she just went through the grievance. Further she was unwell and she relied on her trade union representative. She was also crisis managing doing a grievance process and keeping on top of her job.
351. The Tribunal was not satisfied that the claimant, [REDACTED], would have accepted a "promise" to have no contact with [REDACTED] by way of an alleged oral conversation without ensuring such a promise was included in writing or at least fully discussed at the stress risk assessment on 21 November 2016.
352. The claimant was inconsistent in terms of her criticism of [REDACTED] handling of her return to work. In her evidence to the Tribunal she stated in November 2016 the return to work managed by [REDACTED] was a bit rocky. The claimant had been working from home. [REDACTED] wanted her to come in every day which she found difficult due to her mental health. However, she described him to the Tribunal as being flexible by January of 2016. This contrasted with the claimant's narrative to her General Practitioner recorded at page 1741 where it was recorded on the 24 January 2017 the claimant stated work being confrontational and defensive but so far is managing their targets rather than phase return they behave more as if she is being performance managed; she did not suggest that [REDACTED] here was being flexible or compromising.
353. The claimant described that she was being managed out of the respondent because she was given written warnings for poor performance and had been told to go on sick leave. However, the respondent had not taken any steps since January 2022 to manage the claimant's performance.
354. The claimant did not record in her witness statement accurately the conversation of 3 April 2020. In the claimant's witness statement at paragraph 98 the claimant suggested that X would now have a greater contact with the claimant. However the notes, at page 890 dated 3 April 2020 (having been amended by the

claimant) her trade union representative stated that would be no future in present problems giving the claimant assurance sought that there would be no future increased engagement with X as X might well apply for one of the [REDACTED] through the normal recruitment exercise and might be successful.

355. The claimant had a tendency to make very serious allegations without any corroborative evidence, including accusing her line manager of bullying when all [REDACTED] was doing was attempting to make reasonable adjustments. She was highly critical of [REDACTED] management of her and complained that he failed to set objectives; this allegation ignored the fact that [REDACTED] had conscientiously tried to meet with the claimant to set objectives and the claimant kept cancelling meetings with him.
356. The claimant's requests for adjustments did change. Initially she did not want contact with X. This then evolved into not wanting email contact in the context that the department was working remotely working.
357. The Tribunal found that the claimant became consumed with her situation and obtaining her way (or no way) in the workplace so that she had lost perspective of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This was evidenced by the claimant spending working time on drafting her grievance rather than getting on [REDACTED]
358. The Tribunal also found the claimant to have dishonestly represented to her G.P. a diagnosis of PTSD. It is recorded that Joanne McCarthy, Stepped care therapist stated under therapist opinion, in my view (the claimant) reports she has a GP diagnosis of PTSD and has been prescribed appropriate medication. However, that was untrue. Review of the claimant's GP notes demonstrates that PTSD was not mentioned in the claimant's GP records until 1 June 2022 (page 1730) when the claimant mentioned it for the first time to Dr. [REDACTED] The claimant stated that she was having counselling at work and the counsellor wonders if she may have PTSD; a matter which the claimant had informed her counsellor that was the GP's opinion.
359. The Tribunal found the respondent's witnesses to be straightforward and credible.
360. [REDACTED] was a highly professional and conscientious manager who strived to make reasonable adjustments for the claimant in the workplace. He was a credible witness and gave thoughtful and considered responses in cross examination.

Conclusions

Disability/PTSD

361. The respondent conceded at all material times that the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of

anxiety and depression. It disputed that the claimant had PTSD at all material times.

362. The claimant drafted a disability impact statement which was provided to the respondent in January 2022 (page 1871). The claimant described that her condition fluctuated and at page 1881 the claimant dealt with communication and a paragraph HA page 188 to the claimant stated *"since 2016 I panic when I get emails and I often misunderstand what has been written"*.
363. In the claimant's GP records page 1730, the claimant mentioned for the first time the alleged sexual assault on 1 June 2022 to Dr. [REDACTED]. The claimant stated that she was having counselling at work and the counsellor wonders if she may have PTSD; gets nightmare anxiety not sleeping flashbacks or what happened and feels heart pounding etc sounds like PTSD. The GP wrote on the fit for work diagnosis PTSD. The claimant accepted under cross examination that the GP did not carry out any formal assessment to reach a clinical diagnosis.
364. In a psychological services discharge report dated 8 December 2020 from Joanne McCarthy Stepped, Care Therapist it is stated under therapist opinion "in my view [REDACTED] reports she has a GP diagnosis of PTSD and has been prescribed appropriate medication". A counsellor was not qualified to make such an assessment. The claimant's evidence to the Tribunal is that in May 2021 a psychiatrist said she had PTSD this is Dr. de Waal the doctor the claimant privately instructed. This report was not provided to the respondent until 25 August 2021. In her email the claimant did not say that her manager [REDACTED] was allowed to see the diagnosis (see page 1181). In the report of Dr. De Waal (page 1860) the claimant accepted under cross examination that she had told him she had been touched inappropriately.
365. The Tribunal was provided with a jointly instructed expert doctor Lucy Griffin dated 25 April 2023 page 1891-1912. The claimant stated page 1895 in October 2019 she started the grievance process. This was initially informal, later becoming formal. The grievance was not upheld so she lodged an appeal which was unsuccessful. "I believe that it was the grievance process that marks the deterioration in her relationship with her employer". The claimant was unsure as to whether she actually told the doctor this. The Tribunal concluded on the balance of probabilities that she did.
366. At paragraph 70 of the report page 1903 Dr. Griffin states with regards the diagnosis of PTSD "I am unable to confirm this. The letter she has from the telephone consultant with Dr. de Waall 10 May 2021 suggests that she scored highly on a test for PTSD. However, without a full assessment letter it is not possible to comment further. For an ICD-11 diagnosis of PTSD the index exposure must be of an extremely threatening or horrific nature. Although the claimant was clearly upset about the incident, she alleges occurred at work the said event cannot be perceived as reaching the threshold of severity warranted to trigger PTSD".
367. The claimant relied at pages 1955 and 1956 to the medical evidence which was considered in respect of the medical injury to inform the view there had been a PTSD diagnosis.

368. There is no rule of law which requires a claimant to adduce medical evidence to establish a positive answer in her favour to the four questions under section 6 of the Equality Act 2010 in terms of disability status. However, this is a case where the claimant states she has an express PTSD diagnosis. In the case of **Igweike v TSB Bank Plc UKEAT/0119/19** HHJ Auerbach made clear where a claimant does not provide medical evidence a claimant runs the risk that the tribunal finds that the claim has not been made out. The Tribunal here is asked to make a preference between the claimant's medical evidence and that of the jointly instructed expert, Dr. Griffin. Further the question of whether an individual has a disability is to be determined by reference to the condition (or impairment) they in fact have as opposed to the condition the parties may mistakenly have believed to have see the case of **Copal Castings Limited v Hinton UKEAT/0903/04**.
369. The Tribunal found the jointly instructed medical expert's report compelling. Dr. Griffin concluded that "for an ICD-11 diagnosis of PTSD the index exposure must be of an extremely threatening or horrific nature. Although the claimant was clearly upset about the incident, she alleges occurred at work the said event cannot be perceived as reaching the threshold of severity warranted to trigger PTSD". The Tribunal finds that on this basis that the claimant did not sustain post-traumatic stress disorder from the incident with [REDACTED] in the kitchenette. The Tribunal also found that the claimant had dishonestly represented to medical advisers a diagnosis of PTSD. It is recorded that Joanne McCarthy, Stepped care therapist stated under therapist opinion, in my view [REDACTED] reports she has a GP diagnosis of PTSD and has been prescribed appropriate medication. However, that was untrue. Review of the claimant's GP notes demonstrates that PTSD was not mentioned in the claimant's GP records until 1 June 2022 (page 1730) when the claimant mentioned it for the first time to Dr. [REDACTED]. The claimant stated that she was having counselling at work and the counsellor wonders if she may have PTSD; a matter which the claimant had informed her counsellor that was the GP's opinion.
370. The Tribunal found the report obtained by the claimant from Dr. De Waall to be unsatisfactory and unpersuasive. The claimant privately instructed this expert but no letter of instruction to Dr. De Waall had been provided to the Tribunal to determine what he was told about the incident. Further it is a very short report spanning just over one page of A4 and there does not appear to be any detailed analysis of any medical information of the claimant. The Tribunal determined to disregard this report in preference to the agreed medical expert report of Dr. Griffin.
371. The Tribunal notes the report of Mr. Smith for the claimant's [REDACTED]. However the most compelling and persuasive evidence is that of the jointly instructed expert, Dr. Griffin.
372. In the circumstances the Tribunal concluded that the claimant has not established that she was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of PTSD.
373. In so far as jurisdiction time needs to be considered the Tribunal notes

374. The claimant contacted ACAS in relation to :

- (e) Claim 1 on 3 June 2021 (certificate issued 22 June 2021)
- (f) claim 2 on 20 October 2021 (certificate issued 30 November 2021)
- (g) claim 3 on 22 June 2022 (certificate issued to August 2022).
- (h) Claim 4 on 27 February 2024 (certificates issued on 4 March 2024).

375. In respect of time

- (f) any claim relating to an act/omission before forward March 2021 is out of time in respect of claim 1;
- (g) any claim relating to an act/omission before 21 July 2021 is out of time in respect of claim 2;
- (h) any claim relating to an act/omission before 23 March 2022 is out of time in respect of claim 3;
- (i) any amended claim relating to an act/omission before 7 November 2022 is out of time in respect of the amendments on 6 February 2023
- (j) any claim relating to an act/admission before 28 November 2023 is out of time in respect of claim 4.

376. To the extent that any of the complaints are out of time, do they amount to conduct extending over a period;

377. If not would it be just and equitable for the tribunal to extend time to consider the claims on their merits?

Discrimination arising from disability

378. Did the respondent know or should the respondent have known that the claimant was disabled at the relevant times by virtue of one or more of the impairments set out above

The respondent conceded it had knowledge about the claimant's anxiety and depression. The OH report dated 2 April 2017 opined that the claimant was likely to be disabled by reason of depression and anxiety (see pages 731 to 732). The Tribunal determined that the respondent was aware at all material times that the claimant had anxiety and depression.

The Tribunal has already determined that the claimant did not have PTSD at all material times and consequently the respondent could not have known that she was disabled by reason of PTSD.

379. Before dealing with the precise section 15 allegations, the Tribunal reminds itself of the factual background. The Tribunal has already determined that there was no corroborative evidence to the claimant's contention that she was unable to keep up with the workload assigned to her. [REDACTED] made significant efforts to reduce the claimant's workload despite the lack of medical evidence to support the claimant's assertions that she was unable to keep up with the workload. On the claimant's return to work in November 2020 there was no medical advice from either GP or OH that she required any adjustments to her workload. On 17 February 2021, the Occupational Health advice was that the claimant was fit to be at work provided current adjustments were maintained page 1064-5.
380. The respondent made significant reasonable adjustments as follows : on 17 December 2020 she was given [REDACTED] (page 1010); from 26 January 2021 (page 1046-8) [REDACTED]
[REDACTED] The claimant's own evidence to the Tribunal was that [REDACTED]
[REDACTED] The claimant accepted under cross examination that this was a reduced workload and a matter for her to decide when the work should be completed [REDACTED]. [REDACTED]
[REDACTED] The claimant did not return to her pre-absence level of working before going on long term sick. From April 2021 to 9 December 2021 [REDACTED]
[REDACTED]. The claimant also had weekly meetings with her manager [REDACTED]. There was no evidence before the Tribunal that the claimant requested other work from [REDACTED] (had she felt that she could not have achieved her objectives).
381. During the PIP the claimant was able to improve her performance from August 2021. On 9 December 2021 when the claimant met her manager [REDACTED] she stated she was managing her workload until her husband became unwell in November 2021 (page 1339-1342). The claimant felt she was making progress in terms [REDACTED] page 1353-6.
382. The respondent also runs a justification defence. The claimant did not challenge in evidence the respondent's pleaded legitimate aims namely :
- (a) the need to maintain an appropriate and acceptable level of sickness absence to maintain productivity and meet the expectations and demands of stakeholders
 - (b) the need to ensure appropriate standards of performance and deliver a good quality of service to stakeholders
 - (c) the need to ensure the flow of information between employees
 - (d) the need to carry out appropriate due diligence to ensure that funds are managed appropriately.

383. Did the respondents subject the claimant to the following treatment:

(a) On 15 July 2021 the claimant by letter was invited to a meeting to discuss her appraisal outcome for the year 1 April 2020-31 March 2021 of improvement needed and told that performance for that was unacceptable and that she would be placed on the performance improvement procedure

By letter dated 15 July 2021 (page 1154-5) the respondent did invite the claimant to a stage 1 poor performance meeting to discuss her appraisal outcome for the year 1 April 2020 to 31 March 2021 which had been provided to the claimant and rated her performance as "improvement needed". The letter from [REDACTED] was extremely detailed setting out his concerns about [REDACTED]; attitudes and behaviours of the claimant in terms of the claimant's lack of engagement. In the letter the respondent said it may put the claimant onto a PIP (page 1156). At this point the claimant had returned to work and had a phased return.

The respondent concedes that this amounted to unfavourable treatment and a detriment. The Tribunal concluded this amounted to unfavourable treatment and a detriment.

The claimant contends that her inability to keep up with the workload assigned to her which increased her anxiety levels and caused her to feel overwhelmed and which contributed to her appraisal rating in 2021 and 2022 is the "something arising" in consequence of the claimant's disabilities.

The Tribunal determined it was important to consider the factual context. By the time the claimant was invited to a stage 1 poor performance meeting, the claimant had returned to work some 9 months (since November 2020). On her return to work she did not provide any fit notes from her GP/medical advisers that required the respondent to amend her role in any way.

The respondent put a number reasonable adjustments into place to support the claimant on her return to work. On 17 December 2020 the claimant's manager [REDACTED] agreed at the claimant's request [REDACTED]. One month later 26 January 2021 the claimant was provided with an opportunity to [REDACTED]. The claimant agreed that this temporary situation (until 16 March 2021) presented a reduction in workload. [REDACTED]

[REDACTED]. The claimant also accepted it was a matter for her as to when to carry out work [REDACTED]. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. The respondent restricted [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]

[REDACTED] the claimant's manager worked extremely hard to support the claimant's successful return to work and conducted weekly meetings with the

claimant. In the meetings [REDACTED] discussed the claimant's workload. However the claimant did not fully engage in the meetings and was recorded in the notes as not wishing to raise anything else (see page 1128).

The respondent sought and obtained advice from the Occupational Health adviser including the claimant's job description (page 1060). The OH report dated 17 February 2021 (page 1064 to 1065) concluded that the claimant was fit to attend work provided that the current adjustments were maintained. The current adjustments were maintained.

The Tribunal was not satisfied that the claimant was unable to keep up with the workload in the context of the support that the respondent offered to her. As the Tribunal observed in its fact finding this claimant was very focused on her grievance against X which took a great deal of her time; despite support in place, she did not fully engage with the work she was provided with and appeared mistrustful of the respondent.

In the circumstances the Tribunal rejected the claimant's case that the alleged unfavourable treatment arose from the claimant's inability to keep up with the workload assigned to her (because of her disability). Her case is not made out on the facts and is dismissed.

(b) On 12 August 2021 the claimant was given a first written improvement warning and placed on the performance improvement plan

By letter 12 August 2021 (page 1172 to 1176) the claimant was given a first written improvement warning and placed on a performance improvement plan (see pages 1860 to 1861). The respondent concedes that this amounted to a detriment. The Tribunal concluded this amounted to less favourable treatment and a detriment.

The Tribunal repeats its findings above, noting that the respondent had put in place significant reasonable adjustments and support. The Tribunal was not satisfied that the claimant was unable to keep up with the workload in the context of the support that the respondent offered to her. As the Tribunal observed in its fact finding this claimant was very focused on her grievance against X which took a great deal of her time; despite support in place, she did not fully engage with the work she was provided with and appeared mistrustful of the respondent. In the circumstances the Tribunal rejected the claimant's case that the alleged unfavourable treatment arose from the claimant's inability to keep up with the workload assigned to her (because of her disability). Her case is not made out on the facts.

(c) On 16 December 2021 the claimant was told she had failed to meet the requirements of the performance improvement plan

By letter dated 16 December 2021 (page 1353-56) the claimant was told she failed to meet the requirements of the performance improvement plan. The respondent in a very detailed letter gave full reasons as to why it considered it was appropriate to take this action.

The respondent concedes that this amounted to less favourable treatment and a detriment. The Tribunal concluded this amounted to detrimental treatment.

The Tribunal repeats its findings of fact above. Furthermore, the claimant improved her performance during the period following the implementation of the Performance Improvement Plan from August 2021. Under the terms of the PIP the claimant was required to [REDACTED]

[REDACTED] The claimant was making progress [REDACTED] until her husband became unwell in November 2021 (see pages 1339-1342). The Tribunal concluded that the claimant was able to meet the requirements of the performance improvement plan when she applied herself.

In the circumstances the Tribunal concluded that the claimant failed to meet the requirements of the performance improvement plan because she failed to apply herself to the work; became consumed with her grievance against X and concerned about her husband; none of which arise from the claimant's disability. This allegation is also dismissed.

(d)The claimant was invited to a stage 1 management attendance meeting which took place on 17 May 2022

The claimant was invited by letter (see pages 1402-1404) to a stage 1 management attendance meeting which took place on 17 May 2022.

The respondent concedes that this amounted to less favourable treatment and a detriment. The Tribunal concluded this amounted to less favourable treatment and a detriment. Furthermore the respondent conceded that the claimant's attendance was managed because of her sickness from January 2022 which was the result of her disability.

However the Tribunal determined that the respondent's justification defence was established. The respondent's contended legitimate aims were pleaded as follows :- the need to maintain an appropriate and acceptable level of sickness absence to maintain productivity and meet the expectations and demands of stakeholders; the need to ensure appropriate standards of performance and deliver a good quality of service to stakeholders; the need to ensure the flow of information between employees and the need to carry out appropriate due diligence to ensure that funds are managed appropriately.

The claimant did not challenge the legitimacy of the aims. The tribunal determined the same were legitimate aims and went on to consider the issue of proportionality.

The respondent and in particular [REDACTED] the claimant's line manager made substantial efforts to support the claimant from her return to work in November 2020. The tribunal has already detailed these above but repeats as follows; [REDACTED] agreed on 17 December 2020 that the claimant on her

_____ (see pages 1046-1048). The claimant was

reduced workload. [REDACTED]

[REDACTED]. The evidence from the respondent which the tribunal accepted was the bell curve of normal performance for employees [REDACTED]

██████████. ██████████ met with the claimant on a weekly basis from April 2021 to discuss her workload but the claimant chose to not fully engage with the meetings. The notes indicate despite ██████████ wishing for some engagement from the claimant she often answered no she did not want to talk about something or “whatever” to suggestions of what she should work on. The claimant displayed a poor attitude.

The respondent did not invite the claimant to an attendance management meeting to take place until May 2022 which was at a time when she was absent for a period of four months. The Tribunal concluded in the context of the significant reasonable adjustments made by the respondent and the fact it did not assess the claimant's performance until she had returned to work for a period of over 7 months it was reasonable and justified to invite the claimant to a management attendance meeting.

(e) On 26 May 2022 (later amended on 1 June 2022) the claimant was informed her sick pay would end on 9 June 2022 and her statutory sick pay would end on 26 July 2022. The respondent reduced the claimant's sick pay from June to November 2022 and from 11 January 2023;

The claimant's sick pay was reduced see page 2004.

The claimant's sick pay was restored and she received backdated payment of full sick pay until 11 January 2023 (page 1962 and 2007). The claimant was [REDACTED] so that [REDACTED] from 11 January 2023 onwards (see pages 1977-1978 and page 2009).

The Tribunal determined simply informing the claimant that her sick pay would be reduced in the future is not an act of unfavourable treatment nor a detriment in the sense a reasonable worker might understand a disadvantage in the context that the claimant's sick pay was actually restored and she received backdated payments [REDACTED]

In any event the reduction of the claimants pay was a result of the claimant's ongoing sickness absence and that was justified at the time. It is not disproportionate for a respondent to reduce pay when a claimant is not able to do work in return for any payment.

The Tribunal determined that this claim failed on the facts.

(f)The claimant was invited to a stage 2 managing attendance meeting which took place on 30 June 2022

The claimant was invited by letter (see pages 1453-1464) to a stage 2 managing attendance meeting which took place on 30 June 2022. The respondent concedes that this amounted to a detriment. The Tribunal concluded this amounted to detrimental treatment. Further the respondent accepted that the claimant's attendance was managed because of her sickness absence from January 2022 which was the result of her disability.

In respect of the respondent's justification defence, the tribunal has already concluded that its aims (unchallenged by the claimant) were legitimate. Further on the balance of probabilities the tribunal determined that the management of the claimant's attendance and decision to give her a written warning reasonable and justified in the context there was no prospect of a return to work on the claimant's own case (see page 1405) or in the absence of the "reasonable" adjustment demanded by the claimant as a precondition of her return to work (see page 1453). The Tribunal has determined that promising no contact between the claimant and X was not a reasonable adjustment but the claimant was in effect using the demand for this adjustment as a condition for her return to work.

(g)When the respondent booked the 30 June 2022 stage two meeting the meeting plan was unsecured with the result that anyone looking in the diaries of the claimant, the claimant's line manager, or the HR advisor would be able to see the claimant was attending a stage 2 managing attendance meeting with her line manager, HR, and a union representative

The Tribunal rejected this allegation. [REDACTED] did not lock the meeting in the calendar so that the fact that a meeting was taking place on 30 June 2022 was visible in the calendars of those attending as it had not been marked private (page 1452) as well as others looking at the calendar. However [REDACTED] did not detail in the diary what the meeting was about. It was noted there was just a meeting. [REDACTED] felt that was sufficient to keep the privacy of the nature of the meeting. This did not mean that anyone who happened to be looking in the relevant calendars would know that the claimant was attending a stage 2 managing attendance meeting as the relevant entry simply stated meeting (page 1450).

The Tribunal concluded in the circumstances that an employee could be having a meeting with their line manager for any reason that the fact that the meeting was not marked as private did not amount to detrimental treatment.

Alternatively the fact that the meeting was not marked private was not discrimination arising from the claimant's disability; the fact that the meeting

was not locked and noted as private was because [REDACTED] was not particularly good at IT. This claim fails.

(h)On 25 July 2022 the respondent issued the claimant with a written warning for non-attendance under stage 2 of its Managing Attendance Policy for a period of 12 months;

By letter dated 25 July 2022 the claimant did receive a written warning (see page 1513-1531). The respondent concedes that this amounted to a detriment. The Tribunal concluded this amounted to unfavourable treatment and a detriment. The respondent conceded that the claimants attendance was managed because of her sickness absence from January 2022 which was the result of her disability. The tribunal repeats its findings of fact in terms of the significant efforts made by the respondent and in particular by the claimant's line manager [REDACTED] to provide reasonable adjustments for the claimant on her return to work. The tribunal determined the issue of a written warning for non-attendance was a proportionate means of achieving a legitimate aim. The tribunal has already determined but the aims pleaded by this respondent are legitimate. The context here includes the significant attempts made by [REDACTED] to support the claimant on her return to work by making reasonable adjustments; the period of absence from the workplace meant that it was reasonable and justified by this respondent to subject the claimant to a warning under the attendance management policy

(i)The claimant was not paid her full pay from June to November 2022 and from 11 January 2023

The claimant did not receive her full pay on the dates set out. However, the claimant's pay was subsequently restored and she received backdated pay namely full sick pay until 11 January 2023 (page 1962; 2007) and a payment of equivalent to 85% of her [REDACTED] from 11 January 2023 onwards (p.1977-8; 2009) by reason of her [REDACTED]
[REDACTED]

The Tribunal finds that the reduction of the claimants pay by reason of continuing sickness absence was reasonable. It was reasonable, justified and proportionate to reduce pay when no work is being done in return for any payment.

(j)The respondent failed to raise the order for the claimant's [REDACTED]
[REDACTED] so that it would be paid to the claimant on 11 January 2023 or soon thereafter

The claimant's disability related sickness was irrelevant to the dealings with her award. The reason why no order for [REDACTED] was raised in or around 11 January 2023 was because the respondent was not told that it should do so.

On 9 November 2022 the respondent was informed the claimant's [REDACTED] (page 1958-9). The respondent made some enquiries about this. [REDACTED] informed the Tribunal in accordance with his witness statement at paragraph 77 that he had no previous experience of processing such a benefit. The email requested the respondent to inform the [REDACTED] know if the claimant remained off sick beyond the initial 182 extension to sick pay which was done on 14 December 2022. The respondent was not actually informed that it had to raise an order for [REDACTED]

In his e-mail dated 22 December 2022 [REDACTED] raised a number of queries about the decision to grant the claimant the benefit. On 4 January 2023 (page 1498-1501) [REDACTED] provided a response.

On 16 February 2023 [REDACTED] contacted the respondent and asked whether the respondent was happy for [REDACTED] to be paid to the claimant or to confirm whether the respondent intended to contest the decision.

On 16 February 2023 [REDACTED] replied to the [REDACTED] asking for confirmation that [REDACTED] should be paid (page 1501-1502). This allegation fails.

(k) On 16 December 2022 the respondent told the claimant she would not be able to take more than 20 days annual leave into the next leave year

In accordance with the respondent's Managing Attendance Policy an employee is not entitled to carry over more than 20 days. The respondent told the claimant on 16 January 2023 that she was entitled to carry over 20 days leave into the next year leave because she was unable to take her leave by reason of sickness absence (see page 1637 to 1638).

Further the ability of an individual who has been unable to take the four weeks of annual leave provided by the working time directive to carry it over to the following year is legally correct.

The Tribunal determined that the claimant's complaint of not being able to carry over more than 20 days leave to the next leave year (contrary to the respondent's managing attendance policy and the working time directive) is a claim for not being treated more favourably by reason of her disability and this claim fails. In reaching this conclusion the tribunal takes into account the case of **Trustees of Swansea University of Pension and Assurance scheme v Williams 2019 1 WLR 93** where it was found that if the relevant treatment involves confirming a benefit on a disabled person it is not unfavourable treatment to fail to treat them even more favourably in respect of that benefit. The tribunal concluded that the claimant was seeking an

additional benefit; she wanted in addition to the policy of 20 days leave to be carried over she wanted even more days to be carried over.

(l) On 16 January 2023 the respondent told the claimant she would not be given a pay rise due to her appraisal rating in 2021 and 2022 and on 2 January 2024 the respondent told the claimant that she had been notified on 20 December 2023 that she did not qualify for a pay rise because of her most recent appraisal rating was improvement required and she had been given a performance warning.

In accordance with the respondent's policy the claimant was informed about this in a letter at page 1637-1638; 1676. The respondent concedes that this amounted to a detriment. The Tribunal concluded this amounted to detrimental treatment.

The claimant's work performance (whilst at work) had been assessed as requiring improvement (page 1654 to 1676). This was in the context of having returned to work over a long period; made a number of reasonable adjustments to the claimant's working practices, work load and [REDACTED]. Furthermore the claimant had not been engaging with her manager about her work preferring to state she had nothing else to say and commenting "whatever" when [REDACTED] tried to make suggestions as to how she might approach [REDACTED].

The Tribunal has already made a finding of fact that the claimant was not fully engaging with her workload being more preoccupied and focused on achieving an adjustment of no contact with X or preparing for a grievance about this decision. In the circumstances it concluded that the claimant's poor performance [REDACTED] was not related to the claimant's disability.

Further and in the alternative, the Tribunal concluded that it was entirely reasonable and justified in this context for a respondent not to provide for salary increases for underperformers (see page 549). In respect of the issue of proportionality, the respondent did make significant efforts to the claimant return to work in November 2020. The claimant's performance was not assessed as requiring improvement until June 2021 when she had been back at work for 7.5 months and the performance improvement process did not start until a month later. It is reasonable not to pay underperformers a salary increase.

Failure to make reasonable adjustments

384. Did the respondent know or ought the respondent to have known that the claimant was disabled by virtue of the impairments.

The respondent accepts that it had knowledge about the claimant's anxiety and depression at all material times.

The Tribunal finds that the claimant did not have PTSD.

Failure to make reasonable adjustments

385. Did the respondent apply the following provisions criteria and or practises(PCP) :

(a)From around April 2021 requiring staff to take on and complete an appropriate share of [REDACTED] as directed by the group leader [REDACTED]

From the evidence heard by the Tribunal and in particular the evidence of [REDACTED] (which the Tribunal found to be reliable and cogent), [REDACTED] [REDACTED]. The Tribunal concluded that the contended PCP was not established on the evidence.

(b)From around April 2021 requiring staff or [REDACTED] to take on [REDACTED] as directed by the group leader

The Respondent has always required [REDACTED] generally to do [REDACTED] [REDACTED]. The Tribunal determined that this PCP was in place at all material times and not just from April 2021 (as pleaded).

(c)From around April 2021 not giving undertakings that staff would not have contact with other members of staff

The Tribunal did not find this PCP was established on the evidence. The Tribunal accepted the respondent's submission that the claimant was attempting to relabel her complaint about "one off "decisions made in October 2020; February 2021; June 2021; April 2022; June 2022 and July 2022 and the absence of the PCP was evidenced by the fact management were made to reduce the claimant's contact with [REDACTED] when he joined the claimant's [REDACTED] group (see pages 748 to 751). The respondent did make arrangements to limit contact where appropriate and feasible. In respect of X, the claimant sought a wider arrangement including requiring a guarantee of no contact with X with no finding against X that he had actually done anything along and not telling X why (see pages 1419 to 1422 and pages 1513 to 1531). The Tribunal determined that the respondent reasonably concluded that this was impracticable and extremely unfair to a co-worker who was being accused of a very serious incident. The claimant also lodged a sexual harassment grievance on 11 January 2021; approximately 6 to 7 years after the alleged incident but refusing disclosure to Mr. X about personal information (see page 1031-9). Further the claimant raised a complaint formally on 5 August 2020 (page 927-937) alleging that the respondent had failed to stand by an alleged promise to prevent contact between the claimant and X.

(d)From around April 2021 requiring staff to work with any other member of staff as directed

The Tribunal did not find that this was a PCP applied by the respondent. The Tribunal accepted the respondent's submission that the claimant was

attempting to relabel her complaint about “one off “decisions made in October 2020; February 2021; June 2021; April 2022; June 2022 and July 2022 and the absence of the PCP was evidenced by the fact management were made to reduce the claimant’s contact with ■ when he joined the claimant’s ■ group (see pages 748 to 751). The respondent did make arrangements to limit contact where appropriate and feasible. In respect of X, the claimant sought a wider arrangement including requiring a guarantee of no contact with X with no finding against X that he had actually done anything along and not telling X why (see pages 1419 to 1422 and pages 1513 to 1531). The Tribunal determined that the respondent reasonably concluded that this was impracticable and extremely unfair to a co-worker who was being accused of a very serious incident. The claimant also lodged a sexual harassment grievance on 11 January 2021; approximately 6 to 7 years after the alleged incident but refusing disclosure to Mr. X about personal information (see page 1031-9). Further the claimant raised a complaint formally on 5 August 2020 (page 927-937) alleging that the respondent had failed to stand by an alleged promise to prevent contact between the claimant and X.

(e)From around June 2022 the respondents contractual sick pay provisions that entitle employees to full pay for six months and half pay for six months subject to an overall maximum of 365 calendar days (or 260 working days) in any four year period.

The respondent accepts this is a PCP. This PCP was applied pursuant to the claimant’s contract of employment (see page 634).

(f)From July 2022 the respondent’s managing attendance policy provision that provides (i) if there is a period of long term absence continuing beyond three months or there has been a series of absences over a period of time and it appears that the absence is likely to continue or if the level of short term absence continues to be of concern and there has been no improvement in their sickness absence record the employer will be invited to attend a meeting with the manager and HR and (ii) if there is no indication of a sustained return to work or the Bradford factor is not reduced to an acceptable level the employee will be issued with a written warning.

The respondent accepts that this was a PCP. The management attendance policy provides for this (see page 562 -563).

386. If the respondent did apply the PCP or PCPs set out above did such application put the claimant at a substantial disadvantage in relation to a relevant matter (her employment) in comparison with persons who are not disabled. The claimant alleges the following substantial disadvantages:

(a)In relation to the PCPS at paragraphs (a) and (b) above did the claimant’s inability to keep up with the workload assigned to her increased her anxiety levels and caused her to feel overwhelmed;

The Tribunal rejected that the claimant was placed at a substantial disadvantage. There was an expectation for [REDACTED] with the general acceptable performance [REDACTED]. However following the claimant's return to work she was not required to reach this level of performance. In fact the respondent did not require the claimant [REDACTED] (see the documents referred to page 1046-8; 1068 to 1071 and 1092 and 1096). The reasonable adjustments put in place meant that the claimant [REDACTED]. She was not set objectives at her appraisal in June 2021 (see page 1134) or in the 2022 appraisal (see page 1548-9). The PIP dated 12 August 2021 required the claimant to [REDACTED] (see page 1200).

In terms of allocation of work, from the claimant's return to work in November 2020 to April 2021, [REDACTED] (see pages 1092-6). For the period April 2021 to December 2021 [REDACTED] (see page 1353 to 6). From 12 January 2022 the claimant has been off work and not returned.

The Tribunal notes its findings that the claimant was likely to be able to keep up with her workload had she not focused her energy on pursuing her grievance and/or demanding an adjustment for no contact with X and/or engaged with her manager, [REDACTED].

Taking all these matters into account the tribunal concluded that the claimant was not put at a disadvantage relating to the type of [REDACTED] or the quantity required of her by the respondent.

(b) in relation to the PCPS above at (a) (b) & (f) the claimant receiving low appraisal ratings in 2021 and 2022

The Tribunal concluded that the claimant was not put at a substantial disadvantage by the application at any alleged PCPS relating to [REDACTED]. The claimant received improvement required ratings in both 2021 and 2022 as a result of the claimant's fair to participate with her manager; preoccupied with pursuing A grievance about X focusing on her issue with X instead of engaging with her work and appeared to have a complete lack of trust in the respondent as her employer.

Furthermore the respondent's application of the management attendance policy was unrelated to the claimant's appraisal scores. The improvement required ratings given to the claimant in her appraisals in 2021 and 2022 were not because the respondent required employees on long term sickness absence to attend stage 1 attendance meetings or give a warning in respect of attendance if there is no indication of a sustained return to work.

(c) in relation to the PCPS of paragraphs (a) and (b) above the claimant being given a first written improvement warning and placed on a performance improvement plan on 12 August 2021

The tribunal concluded the claimant was not put at a substantial disadvantage by the application of any PCPs relating [REDACTED]. The claimant was given a first improvement warning and placed on a PIP because she underperformed by reason of failing to engage with her work; focusing her time on her grievance about X and no longer appeared to trust the respondent.

(d) in relation to the PCPS at paragraph (e) above the claimant not being paid full pay from June to November 2022 and from 11 January 2023

The respondent accepts that the reduction in sick pay puts the claimant at a substantial disadvantage as a disabled person.

(e) in relation to the PCPS at paragraph (c) and (d) above the claimant's inability to complete her mental health treatment whilst at risk of relapse from contact with X and her increased anxiety levels and causing her to feel overwhelmed

The claimant's case before the tribunal is that she required treatment for PTSD. Her case is that the treatment for PTSD could not happen without a guarantee of no contact with X because of the risk of re-traumatisation. This is set out in numerous pages within the main bundle. The difficulty with this allegation is that the tribunal has found that the claimant did not in fact have PTSD at the material time so that she does not need treatment for PTSD. Furthermore, the claimant's allegation is unsupported by any medical evidence; there is no evidence that the claimant needs treatment for PTSD and all that it is conditional on the claimant being guaranteed no contact with Mr X. The tribunal has already expressed its dissatisfaction with the medical report of Dr. De Waal. There is no OH advice which supports the need for the claimant and X not to have contact for any medical reason. On the claimant's return to work and thereafter, the claimant's GP has not provided advice the claimant [REDACTED] should have no contact. In December 2020, the claimant's counsellor described a barrier to therapeutic support as being the unresolved perceived work-related issue which is not saying the same thing as the claimant needs treatment for PTSD or that she needs to be guaranteed no contact with Mr X before treatment takes place. At the stage 2 attendance meeting on 30 June 2022, the claimant stated she had been asked by her doctors where she was with her treatment and had been reminded that she could self-refer for treatment (page 1598) which appears inconsistent with the claimant's case that she could not have treatment without a guarantee of no contact with X.

From January 2022, the claimant has been signed off as unfit to work. There is no suggestion that the claimant could return to work with any adjustments either. From this time, the tribunal considers there can be no failure to make reasonable adjustments where the claimant was unfit to return to work.

(f) in relation to the PCP at paragraph (f) above the claimant being issued with a written warning for non-attendance under stage two of the managing attendance policy on 25 July 2022.

The respondent accepts that the claimant was put to substantial disadvantage as a disabled person by being given a written warning and the respondent accepts it had the knowledge in respect of the alleged substantial disadvantage.

387. Did the respondent take such steps as were reasonable to avoid the disadvantage? The adjustments the claimant alleges would have been reasonable or as follows :-

(a)reducing the claimant's workload to the level the claimant last felt comfortable with;

The tribunal found following the claimant's return to work in November 2020 her workload was reduced significantly from [REDACTED]

[REDACTED] In setting an expected level of work, it is not for an employee to dictate to the employer the level of work she wishes to complete. The respondent in making an adjustment is under a duty only to make a reasonable one which has to take into account the needs of the respondents business factoring in the support offered to the employee. The claimant cannot be permitted to do whatever work she chooses to do [REDACTED]

Further the tribunal accepted the respondent's submission that no step taken by this respondent to reduce the claimant's workload would or could have resulted in more effective working from the claimant because in the absence of a guarantee by the respondent that the claimant would not be required to have any contact with X it is fanciful to conclude that the situation would be any different. This allegation fails.

(b)providing the claimant with [REDACTED]:

As set out above the claimant's workload has been significantly reduced from the expected level of working. In February 2022 the claimant first mentioned [REDACTED] in her table of reasonable adjustments. The occupational health department saw the claimants table of reasonable adjustments and did not say that [REDACTED] clinically indicated in the claimant's case (see page 1616-8). The claimant has been absent from work since January 2022 and there is no indication that the claimant would be fit to return to work if the respondent agreed in advance [REDACTED] The respondent in June 2022 advised that the time frame and extent of any reduced workload would be considered once the claimant was able to return to work (page 1526). This allegation fails.

(c)Telling the claimant that she would not have to have contact with X;

The tribunal determined that this was not a reasonable adjustment. There is no medical evidence substantiating the claimant's case that she must be guaranteed no contact with X on an indefinite basis. The collaborative way of working is important within [REDACTED] and a part of the [REDACTED]

means [REDACTED] and learning from others expertise and experience. Promising no contact between the claimant and X could impact on the progress of the claimant and X in [REDACTED] because neither could have been in a position of seniority over the other. Furthermore it is impractical to guarantee that two individuals in [REDACTED] would never come into contact with one another (even electronic contact). This allegation fails.

(d)Transferring the claimant to a different role or department:

This is not a reasonable adjustment. The respondent is a [REDACTED]. The claimant first raised working elsewhere in June 22. In August 2022 the respondent became aware [REDACTED]
[REDACTED] On 6 September 2022 (page 1599) the respondent did send over the claimant's CV and job description. The claimant wanted to work from home. The claimant was asked to keep an eye on jobs. [REDACTED] on 2 December 2022 page 1643-4 requested further information from the claimant about her qualifications; whether she was happy to work home/office; she attached a [REDACTED]
[REDACTED] but the claimant said there was a problem with travelling. No suitable role has become available to offer to the claimant. The evidence of the claimant to the Tribunal is that she has not looked for anything because she said she wasn't able to. The respondent is under no duty to make a reasonable adjustment if the adjustment would not remove the disadvantage. The Tribunal accepted the respondent's submission in these circumstances the claim was not sustainable. This allegation fails.

(e)Offering the claimant a severage package that was at least as generous as its redundancy claimant scheme.

The first mention of accepting a severance package was made by the claimant in June 2022 as an alternative to the guarantee of no contact with X (see page 1427). In the cases of O'Hanlon and Mylott v Tameside The courts have emphasised that the duty to make reasonable adjustments is not concerned with paying disabled people to stay away from work or leaving the workplace but the purpose of reasonable adjustments is to enable disabled employees to remain at work. The tribunal concluded that this was not a reasonable adjustment in accordance with the case law and the allegation fails.

(f)Paying the claimant full sick pay

The tribunal determined it is not a reasonable adjustment for a respondent to pay full sick pay because the reason for absence is disability related see the case of **O'Hanlon**. The circumstances of this claimant is that she has been able to maintain an income of 85% of her normal salary through her [REDACTED] The contended adjustment is not reasonable and the allegation fails.

(g)Raising the order for the claimant's [REDACTED] so that it was paid to the claimant on 11 January 2023 or soon thereafter;

The tribunal determined there was no failure to make a reasonable adjustment. The respondent authorised the payment [REDACTED] to the claimant as soon as it was made aware by the [REDACTED] that it needed to do so or to challenge formally the decision to award the claimant the [REDACTED] (see pages 1502 to 1503. The [REDACTED] was paid to the claimant but when was not within the respondent's control (see page 1503 to 1509). The claimant has received a backdated benefit. award to the 11 of January 2023 The claimant rejected the respondent's offer of a loan for salary. This allegation fails.

(h)Withdrawing the warning given to the claimant for non-attendance under stage two of the managing attendance policy.

The tribunal determined there was no failure to make a reasonable adjustment. The claimant was given a right to appeal the decision and that appeal was refused on 8 September 2022 by [REDACTED] (page 1620 to 1623). The claimant was not fit to work and remains unfit to work. Even at the Tribunal hearing the claimant has been unable to state when she's likely to return to the respondent's employment. The claimant's position remains the same that she won't return to work unless and until the respondent guarantees no contact with X. The tribunal has already found that guaranteeing no contact is impractical.

In the circumstances all the claims fail and the claim is dismissed.

Employment Judge Wedderspoon
Date: 27 April 2025