EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: **Ms B**

Respondent 1: **Mersey and West Lancashire Teaching Hospitals NHS Trust**

Respondent 2: **NHS England**

Respondent 3: **No longer a party to the proceedings**

Respondent 4: **Birmingham City Council (Claims against this Respondent had settled).**

Heard at: **Birmingham (Midlands West) Tribunal (Hybrid hearing)**

- The Judge and Mr. Liburd were in person.
- Mr. Woodall was present via CVP.
- The parties were, including their counsel, in person as were most witnesses for the days giving evidence.
- There were a number of observers both via CVP and in person on and off throughout the hearing.
- When making submissions, Mr. Downey attended via CVP, Ms Gould attended in person.

On: **12 – 16, 19 – 23 and 26 – 28 February 2024 (13 days)**

15 May 2024 (submissions am)

15 May 2024 pm – 17, 20 – 24 and 27 – 28 May 2024 (in chambers) and

1 – 5, 8 and 9 July 2024 (in chambers)

Before: **Employment Judge G Smart**

Mr. T Liburd

Mr. S Woodall (via CVP)

Appearances:

For the Claimant: Mr. Raoul Downey (Counsel)

For Respondents 1 & 2: Ms Laura Gould (Counsel)

RESERVED JUDGMENT

On hearing Mr. R Downey (Counsel) for the Claimant and Ms L Gould (Counsel) for both remaining Respondents:

1. The Claimant's claims for breaches of s39, 40, and 55 Equality Act 2010 are not well founded because:

    1.1. The Claimant's allegations of direct disability Discrimination in breach of s13 Equality Act 2010 are not well founded;

    1.2. The Claimant's allegations of discrimination because of something arising in consequence of her disabilities in breach of s15 Equality Act 2010 are not well founded;

    1.3. The Claimant's allegations that the Respondents failed to make reasonable adjustments in breach of s20 and 21 Equality Act 2010 are not well founded;

    1.4. The Claimant's allegations that the Respondents subjected the Claimant to harassment in breach of s26 Equality Act 2010 are not well founded;

    1.5. The Claimant's allegations that the Respondents victimised the Claimant in breach of s27 Equality Act 2010 are not well founded;

    Consequently, all discrimination allegations against both Respondents fail and are dismissed.

2. The Claimant's claim for constructive unfair dismissal, is not well founded and is dismissed.

3. The Claimant's claim that her constructive dismissal was a discriminatory dismissal in breach of s39 Equality Act 2010 is not well founded and is dismissed.

REASONS

The issues to be decided

1. The issues to be decided were discussed at case management stage and at the start of the final hearing. The updated final list of issues is annexed to this Judgment as Annex 1.

2. All complaints about breaches of data protection were agreed by the Claimant for the purposes of the employment Tribunal proceedings to be references simply to breaches of confidentiality not specific data protection act breaches.

3. In evidence, the Claimant confirmed that she was not pursuing harassment claims against Mrs Amanda Farrell for failing to address certain parts of her

grievances. Instead, these were pursued under other heads.

4. All references to adjustments being removed in 2019 and any issues about adjustments put in place by Dr Wilkes pre-December 2019 were withdrawn by the Claimant.

5. For ease of reference, when a decision is being made about a specific allegation, we have expressed the decision with underlined type.

6. This has been a factually and legally complex case. When planning how best to approach the judgment, we bore in mind the fact that if any of the factual allegations survived to have the law applied to them, we needed to apply the law considering the entire factual background rather than allegations in isolation.

7. We approached the judgment by considering jurisdictional issues and any concessions made by the parties as far as possible, then knowledge for the disability claims.

8. When considering knowledge, we considered that issue for all alleged perpetrators of the discrimination before considering he factual allegations in detail. In our judgment, it was then easier to cross refer any allegations that survived our findings of fact, to check that the requisite knowledge was present for the relevant type of claim, at the date the allegation was said to have taken place.

9. We then made findings of fact and, where any factual allegations went against the Claimant, we have given out judgment about the allegations as we have gone along, finding it helpful to use subheadings to try to break the judgment up in an attempt to make the Judgment easier to follow, easier to find the decisions made and easier to understand the reasons for those decisions.

10. Consequently, given the withdrawals by the Claimant at the hearing mentioned above, the allegations at paragraphs 5.2.12, 6.1.5, 6.4.5, 7.1.9 and 7.1.11 referring to Amanda Farrell as the perpetrator from R1 are dismissed upon withdrawal.

Nomenclature

11. In this Judgment, the following codes are used:

    11.1. R1 – First Respondent
    11.2. R2 – Second Respondent
    11.3. R3 – Third Respondent
    11.4. R4 – Fourth Respondent
    11.5. C – Claimant
    11.6. A glossary of further terms prepared by the Respondents is annexed to this judgment at Annex 2

Preliminary issues at the hearing

12. The preliminary issues and any additional issues were discussed at the final hearing. These were described in the outcome of hearing sent to the parties after the hearing went part heard. This is attached to this Judgment as Annex 3.

Background, the correct Respondents, Effective Date of Termination of and the issue of disability

13. The Claimant claims multiple issues of direct disability discrimination, discrimination arising in consequence of disability, disability related harassment, failures to make reasonable adjustments, victimisation and constructive unfair dismissal with the breaches of contract alleged being acts of discrimination.

Conciliation for R1

14. For R1:

    14.1. Date A for the purposes of early conciliation was 21 April 2020.

    14.2. Date B for the purposes of early conciliation was 14 May 2020.

    14.3. The conciliation period is to be calculated from the day after date A namely 22 April 2020 up to and including date B. This makes a conciliation period of 23 days.

15. Alternatively, the time limit is one month after the day after Date B, namely 15 June 2020.

16. The Claimant presented her claim about the First Respondent to the Tribunal on 6 July 2020.

17. This means that by counting back 3 calendar months (6 April 2020) plus counting back a further 23 days takes the date of the last possible unlawful act or omission triggering time to start running as 14 March 2020, unless there was a continuing course of discriminatory conduct or time could be extended for earlier issues.

18. The Claimant presented her claim about R1 to the Tribunal on 6 July 2020.

19. The Claimant is entitled to the benefit of the most generous time extension for her. 14 March 2020 would mean an ordinary expiration of time on 13 June 2020 and 6 July 2020 is 23 days after 13 June 2020.

Conciliation for R2

20. On 12 June 2020, the Claimant commenced early conciliation for R2.

21. For R2:

    21.1. Date A for the purposes of early conciliation was 12 June 2020.

21.2. Date B for the purposes of early conciliation was 7 July 2020.

21.3. The conciliation period is to be calculated from the day after date A namely 13 June 2020 up to and including date B. This makes a conciliation period of 25 days.

22. Alternatively, the time limit is one month after the day after Date B, namely 8 August 2020.

23. On 11 August 2020, the Tribunal granted an application to add R2 to the proceedings. In amendments, the presentation date for the complaints is the date the amendment is granted.

24. This means that by counting back 3 calendar months (11 May 2020) plus counting back a further 25 days takes the date of the last possible unlawful act or omission triggering time to start running as 18 April 2020, unless there was a continuing course of discriminatory conduct or time could be extended for earlier issues.

25. The Claimant is entitled to the benefit of the most generous time extension for her. 18 April 2020 would mean an ordinary expiration of time on 17 July 2020 and 11 August 2020 is 25 days after 17 July 2020.

R3 and R4

26. Subsequent claims were then brought against Birmingham City Council and Public Health England, both of which later became absorbed into the department of the Secretary of State for Health and Social Care.

27. By the time of the final hearing, these claims had fallen away from the proceedings before us, and we needed to determine the case against R1 and R2 only.

Effective Date of Termination

28. On 11 November 2021, the Claimant resigned with immediate effect, which was common ground amongst the parties.

29. The Claimant's effective date of termination of employment was therefore 11 November 2021.

Conciliation with R1 for the unfair dismissal complaint

30. On 16 November 2021, the Claimant commenced a further period of early conciliation for her constructive unfair dismissal complaint.

31. For unfair dismissal involving R1:

31.1. Date A for the purposes of early conciliation was 16 November 2021.

31.2. Date B for the purposes of early conciliation was 17 November 2021.

31.3. The conciliation period is to be calculated from the day after date A namely 17 November 2021 up to and including date B. This makes a conciliation period of 1 day.

32. Alternatively, the time limit is one month after the day after Date B, namely 18 December 2021.

33. With an EDT of 11 November 2021, her claim should have been presented by 11 February 2022 at the latest.

34. The Claimant presented her claim about the R1 to the Tribunal on 7 September 2022.

35. At a preliminary hearing before Judge Battisby, on 23 February 2023, R1 and R2 admitted that at all material times the Claimant was disabled with depression but did not concede PTSD as a disability.

36. Both Respondents conceded the amendment application to include constructive unfair dismissal in an email dated 22 May 2023 @ 14:22 page 402 in the bundle. In addition, in the same email, they also conceded the second impairment relied upon namely the effects of PTSD. Both disabilities were conceded from November 2019 onwards.

37. In the same email, the Respondents did not object to the Claimant's claims of disability discrimination contained in her Scott Schedule at pages 478 – 493 in the bundle.

38. Consequently, the constructive unfair dismissal complaint is in time because time was not left to be considered at the final hearing.

39. In addition, the Claimant was a disabled person within the meaning of s6 of the Equality Act 2010 at all material times in this case for both depression and PTSD both impairments having been conceded as fitting he statutory test at all times by both Respondents.

40. On 11 July 2023, at a Preliminary Hearing before Judge Platt, the Respondent's names were changed following various NHS reorganisations. R1 changed to Mersey and West Lancashire Teaching Hospitals NHS Trust. R2 changed to NHS England.

41. Consequently, the Claimant make claims of disability discrimination and victimisation against both Respondents.

42. There is a claim of constructive unfair dismissal as a result of discrimination made against R1 only.

43. The Claimant claims that she was subjected to extensive and repeated acts of

disability discrimination from December 2019 until her resignation on 11 November 2021.

The cause of action against each Respondent

First Respondent

44. The Claimant makes all claims of discrimination against R1 under sections 39 and 40 of the Equality Act 2010 ("EQA").

Second Respondent

45. The Claimant makes her claims against R2 under sections 55 and 56 as interpreted in the case of **Blackwood v Birmingham and Solihull Mental Health NHS Foundation Trust [2016] EWCA Civ 607.**

46. No other causes of action or ancillary provisions are relied upon.

Was the Second Respondent an Employment Service Provider?

47. This has been made straightforward by both Respondents. As per the Respondents' joint written closing submissions at paragraph 28, both Respondents concede that:

    47.1. R2 was an Employment Service Provider under sections 55 and 56 EQA; and

    47.2. The Employment Tribunal has jurisdiction to hear the complaints brought by the Claimant against R2 in accordance with the **Blackwood** case.

48. Of course, whether the Tribunal has jurisdiction to hear a claim is a matter of law and a decision for the Tribunal. Having reviewed **Blackwood**, we are content that the Respondents' concession has been made correctly and helpfully. Consequently, we are content we have the necessary jurisdiction to hear these complaints.

KNOWLEDGE GENERALLY

49. It is then sensible to see what scope there is for the Claimant to argue whether either Respondent had a duty to make reasonable adjustments or was fixed with knowledge of disability for the purposes of the following claims:

    49.1. Direct disability discrimination;
    49.2. Discrimination arising in consequence of disability; and
    49.3. Failures to make reasonable adjustments.

50. As will be seen in the summary of the applicable law below a person cannot directly discriminate against a person because of their disability, if they do not know that the person is disabled. It cannot affect their mental processes and therefore cannot amount to discrimination. This is not mentioned in the statute

but is in our view a matter of common sense as has been found in the case law.

51. For the reasonable adjustment and discrimination arising in consequence of disability claims, there are specific provisions in the EQA making it a mandatory requirement that before a claim under sections 15 and 20/21 can be successful, the Respondent must be fixed with knowledge of disability.

52. As for the reasonable adjustment claims, not only must there be knowledge of the disability, but there must also be knowledge of the disadvantage the Claimant says her disability caused in accordance with the first, second and/or third requirements of sections 20/21 EQA. In this case, the Claimant relies on the First requirement only, namely that a provision, criterion or practice was applied.

THE LAW ABOUT KNOWLEDGE

53. In section 15 of the Equality Act 2010, section 15 describes:

"(2) …does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

54. Paragraph 20 of Schedule 8 to the Act provides, in wording akin to section 15(2) as far as is relevant:

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

…

(b) … that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement".

55. The burden is on the Respondent to show that it did not have the knowledge in question.

Knowledge of disability

56. The EAT held in **Wilcox v Birmingham CAB Services Ltd UKEAT/0293/10** that what this provision requires, is that the employer knew (or could reasonably be expected to know) that an employee was suffering from an impairment, the adverse effects of which on their ability to carry out normal day-to-day activities were substantial and long-term, that is the various constituent elements of the definition of disability in section 6 of the Act.

57. It is also made clear in **Gallop v Newport CC 2013 EWCA Civ 1583** that it is knowledge of the fact of the various elements of the statutory test that is required, not an understanding by the Respondent that those facts mean a person is labelled by the state as being disabled. This case was decided under the old Disability Discrimination Act 1995 but is still good law. The relevant paragraph from **Gallop** is below but formatted differently for ease of reference:

"36 ……. Ms Monaghan and Ms Grennan were agreed as to the law, namely that:

(i) before an employer can be answerable for disability discrimination against an employee, the employer must have actual or constructive knowledge that the employee was a disabled person; and

(ii) that for that purpose the required knowledge, whether actual or constructive, is of the facts constituting the employee's disability as identified in s.1(1) of the DDA.

Those facts can be regarded as having three elements to them, namely:

(a) a physical or mental impairment, which has
(b) a substantial and long-term adverse effect on
(c) his ability to carry out normal day-to-day duties; and whether those elements are satisfied in any case depends also on the clarification as to their sense provided by Schedule 1.

Counsel were further agreed that, provided the employer has actual or constructive knowledge of the facts constituting the employee's disability, the employer does not also need to know that, as a matter of law, the consequence of such facts is that the employee is a 'disabled person' as defined in s.1(2). I agree with counsel that this is the correct legal position."

58. Similarly, the employer will be taken to have knowledge of the disability if they know of the impairment and its consequences. There is no need for specific knowledge of the diagnosis **Jennings v Barts and the London NHS Trust [2011] All ER (d) 73 (Aug) EAT.**

59. If the employer did not know and could not reasonably be expected to know the Claimant was disabled, knowledge of disadvantage does not arise.

60. What is reasonable for the Respondent to have known is for the Tribunal to determine. It will depend on all the circumstances of the case. The question is, what the Respondent would have found out if it had made reasonable enquiries. In other words, there should be an assessment of what the Respondent should reasonably have done, but also of what it would reasonably have found out as a result **(A Ltd v Z EAT 0273/18 reflecting paragraph 5.15 of the EHRC Code on Employment (2011)).**

61. In **A Ltd v Z [2019] IRLR 952** it was stated by Eady HHJ:

"(1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment, see ***City of York Council v Grosset [2018] EWCA Civ 1105, [2018] IRLR746, [2018] ICR 1492 CA*** *at para 39.*

(2) The Respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of s 15(2); it is, however, for the employer

to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect, see ***Donelien v Liberata UK Ltd (2014) UKEAT/0297/14, [2014] All ER (D) 253 at para 5, per Langstaff P, and also see Pnaiser v NHS England (2016) UKEAT/0137/15/LA, [2016] IRLR 170 EAT*** *at para 69 per Simler J.*

(3) The question of reasonableness is one of fact and evaluation, see ***[Donelian]*** *at para [27]; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.*

(4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability related symptoms can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for EqA purposes (see ***Herry v Dudley Metropolitan Council (2016) UKEAT/0100/16, [2017] ICR 610****, per His Honour Judge Richardson, citing* ***J v DLA Piper UK LP (2010) UKEAT/0263/09, [2010] IRLR 936, [2010] ICR 1052****), and (ii) because, without knowing the likely cause of a given impairment, 'it becomes much more difficult to know whether it may well last for more than 12 months, if it is not [already done so]', per Langstaff P in* ***Donelien*** *EAT at para 31.*

(5) The approach adopted to answering the question thus posed by s15(2) is to be informed by the Code, which (relevantly) provides as follows:

> *'5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a "disabled person".*
>
> *5.15 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. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.'*

(6) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so ***(Ridout v TC Group (1998) EAT/137/97, [1998] IRLR 628; Alam v Secretary of State for the Department for Work and Pensions (2009) UKEAT/0242/09, [2010] IRLR 283, [2010] ICR 665****).*

(7) Reasonableness, for the purposes of s 15(2), must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code."

62. It is also clear from **Pnaiser** that it is only knowledge of the disability that is required for a section 15 case and not knowledge that the disability causes the something that led to the unfavourable treatment.

63. Following this, if the Respondent had knowledge of the disability, in a reasonable adjustments case, they must also have had actual or constructive knowledge of the disadvantage the Claimant was under, for the duty to make adjustments to have been triggered.

Knowledge of disadvantage

64. Similar tests apply to knowledge of disadvantage either constructive or actual.

65. In **Secretary of State for the Department of Work and Pensions v Alam [2010] IRLR 283, [2010] ICR 665**, the EAT held that the correct statutory construction of what is now EqA 2010 Sch 8, Pt 3, para 20 involved asking two questions:

    65.1. Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in [EqA 2010 s 20(2)-(4)]? If the answer to that question is: 'no' then there is a second question, namely:

    65.2. Ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in [EqA 2010 s 20(2)-(4)]?

66. If the answer to that question was also negative, then there was no duty to make reasonable adjustments. Thus, the employer qualified for the exemption if both of the questions were answered in the negative, **Ridout** was applied. Knowledge of a disability did not therefore, in itself, prevent an employer from being able to rely on what is now EqA 2010 Sch 8, Pt 3, para 20.

67. In **AECOM Ltd v Mallon [2023] EAT 104 (10 August 2023, unreported)** the EAT upheld a finding of an employment Tribunal in a case where an applicant for employment had indicated that a disability meant that he would face difficulty with an online application and had asked for the process to be continued by telephone. The employer asked several times by email what the applicant's specific difficulties were with an online application but he failed to provide such information in his responses. The Tribunal held that the employer should have telephoned the applicant to ask him and its failure to do so meant that the employer had failed to establish that it could not reasonably have known about the substantial disadvantage which the Claimant experienced.

68. It is important to distinguish, however, that a different test applies where the question is about what reasonable adjustments ought to have been made. An employer can be in breach of the duty to make adjustments even though it is not aware that steps were available that could have addressed the disadvantage after **Camden London Borough v Price-Job UKEAT/0507/06, [2007] All ER**

(D) 259 (Dec), EAT. Here, it was confirmed that there is nothing in the DDA 1995 s 4A to suggest that the duty to make reasonable adjustments only arises where an employer knew or ought to have known that such steps were available. In that case Burke J held that:

'a conclusion that the duty was dependent on the employer's knowledge would substantially restrict the nature of the duty and could not be derived from the statutory words'.

69. Equally, an employer that is unaware of the duty to make a reasonable adjustment may still be able to show that a step it could have taken, but did not take, would not have been one reasonable in the circumstances; thus it may argue that its failure to take that step did not place it in breach of its duty under DDA 1995 s 3A(2) after **British Gas Services Ltd v McCaull [2001] IRLR 60, EAT**. Here, Keene J held that a Tribunal had fallen into error in concluding that an employer's lack of awareness of the relevance of the DDA 1995 to the facts of the case meant that he was prevented from later seeking to show he had complied with the duty because the adjustment he was unaware of wouldn't have been a reasonable one to make anyway.

70. **Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664**, the EAT concurred with **McCaull** and went on to say that:

*'the only question is, objectively, whether the employer has complied with his obligations or not. That seems to us to be entirely in accordance with the decision of the House of Lords in **Archibald v Fife Council [2004] UKHL 32, [2004] IRLR 651**. If he does what is required of him, then the fact that he failed to consult about it or did not know that the obligation existed is irrelevant. It may be an entirely fortuitous and unconsidered compliance: but that is enough. Conversely, if he fails to do what is reasonably required, it avails him nothing that he has consulted the employee'.*

71. Consequently, knowledge of whether an adjustment was available or knowledge of the existence of a duty to make adjustments is irrelevant to whether a Respondent is fixed with the duty to make adjustments or whether a Respondent has complied with the duty to make reasonable adjustments.

Knowledge of the something

72. Whilst we know from **Pnaiser** that it is no defence to discrimination arising in consequence of disability to argue that you did not know the 'something' relied upon by the Claimant had arisen in consequence of the disability. The 'something' on its own, however, does need to be known by the alleged discriminator for it to influence their mental processes either consciously or subconsciously making the decision "because of" the "something" after **IPC Media Limited v Miller [2013] IRLR 707** and **T-Systems Limited v Lewis UKEAT/0042/15/JOJ.**

Knowledge that the person had a particular disability for direct discrimination purposes

73. Similarly, for a person to commit direct discrimination, they need to have knowledge of the particular protected characteristic for it to have any impact on their mental processes and therefore be because of the prohibited ground.

74. For a person to commit direct discrimination, they must have actual knowledge of the disability in question. Imputed or constructive knowledge is not enough **Urso v Department for Work and Pensions UKEAT/0045/16/DA** following **Gallop** above.

75. Consequently, the Tribunal must find out whether each alleged individual discriminator actually knew of all the section 6 factors necessary to actually know of the disability. If they don't have actual knowledge the claim fails and the current state of the law is that knowledge won't be imputed even if there is an improper motive from more senior management or other colleagues unknown to the decision makers at the time **CLFIS (UK) Limited v Reynolds [2015] EWCA Civ 439.**

76. In the case of some characteristics like skin colour for example, it will usually be obvious if a person is black or white and therefore if a manager makes a decision about a worker they have never met and they did not know was black, then the fact the worker is black could not have influenced the decision of the manager meaning the decision was because of his skin colour.

77. However, for disability, the fact that someone knows a person has a diagnosis of, for example, dyslexia, that is not enough, on its own, to be deemed to affect the mind of the alleged discriminator. For there to be direct discrimination either perceived or actually because of a disability, the alleged discriminator must have knowledge of all the factors needed to fulfil the section 6 EQA test for disability, and not just the name of the diagnosis or simply knowledge that a person is described as being 'disabled'. They must have knowledge of the impairment and the fact that it causes a substantial and long term adverse effect on the person's ability to carry out normal day to day activities after **The Chief Constable of Norfolk v Coffey [2019] EWCA Civ 1061.**

78. The following paragraph sums up the point as well giving the reason why knowledge of disability should be interpreted in this way. Underhill J said this at paragraph 35:

"35. The starting-point for the issues raised by these grounds is that it was common ground before us that in a claim of perceived disability discrimination the putative discriminator must believe that all the elements in the statutory definition of disability are present – though it is not necessary that he or she should attach the label "disability" to them. As Judge Richardson put it succinctly, at para. 51 of his judgment:

"The answer will not depend on whether the putative discriminator A perceives B

to be disabled as a matter of law; in other words, it will not depend on A's knowledge of disability law. It will depend on whether A perceived B to have an impairment with the features which are set out in the legislation."

That distinction between knowing the facts that constitute the disability and knowing that they amount to a disability within the meaning of the Act had already been drawn, albeit in a different context, by Lady Hale in her speech in Malcolm: see para. 86 (p. 1430 F-G). Again, although it was common ground that this was the right approach, I should say that I agree that it is correct. In a case of perception discrimination what is perceived must, as a simple matter of logic, have all the features of the protected characteristic as defined in the statute.[4]

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[4] *We were referred to the fact that at the committee stage in the House of Commons an amendment was moved providing that A could be liable for perception disability even if he or she did not believe that the perceived impairment would have a substantial and long-term adverse effect. The Solicitor-General contended that the amendment was logically faulty, in that "it would be most inequitable for somebody who did not have a disability to have a lighter test to gain protection than somebody who did". The member who had proposed the amendment acknowledged the force of that point and withdrew the amendment – see PBC Deb 16 June"*

79. It is also important to take into account the interaction between the impairments a Claimant puts forward when considering knowledge.

80. We have reminded ourselves that knowledge needs to be looked at through the lens of the statutory test in section 6 EQA. In this case, the impairments have not been tested under that section because they have been admitted. However, given that, in reviewing the evidence, the symptoms of both impairments relied upon by the Claimant seem to occur repeatedly together, we reminded ourselves of the following additional cases:

    80.1. **Ginn v Tesco Stores Limited [2005] All ER (D) 259 (Oct)** which gives guidance about considering more than one impairment together and decide the effects the combination of impairments has.

    80.2. Paragraph A3 of the Guidance, which says *"…The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness."* Therefore, it is not knowledge of the cause or diagnosed cause of the mental impairment that is relevant, but more the existence of the impairment and its effects. Of course many disabled people can be disabled for years before they get a diagnosis. Similarly, a person may be diagnosed with one condition only to find out later on that their true condition is a different diagnosis altogether.

Findings of fact – Knowledge of disability and knowledge of disadvantage

81. The Claimant commenced employment with R1 on 1 August 2018 as a Public Health Speciality Registrar.

82. It was common ground that the Claimant did not mention any health conditions as causing her a problem at the start of her employment.

83. In determining whether either of the Respondent organisations had knowledge, it is of course of paramount importance that we analyse what knowledge each key individual witness had at the various alleged times of discriminatory conduct.

Medical history and the Claimant's impairments

84. Between May and October 2012, the Claimant had numerous appointments with her GPs at pages 167 – 169 in the bundle.

85. In particular, was an appointment with a Dr Lauretta Hughes.

86. The Claimant was diagnosed with moderate depression with the impairments listed as being low mood, difficulty concentrating, mild anhedonia (inability to enjoy life and activities), difficulty in concentrating, oversleeping and tiredness at page 141 in the bundle.

87. There is no mention of PTSD at all or how this impairs the Claimant. However, the reaction to the past traumatic event of a relationship is logged here as being a trigger for the depression.

88. On 5 January 2017, there was a further episode of low mood as evidence at page 147 in the bundle. The Claimant described lacking energy as being the only real symptom apart from low mood.

89. On 17 February 2017, there is a further visit to the GP. The GP noted that the Claimant mentioned suicidal thoughts and that these had been discussed in a *"jovial way"* in their view possibly trying to shock or get attention.

90. There appears to have been a relapse in the Claimant's depression in November 2017, evidenced by a GP note at page 145 in the bundle. This is not related to any past relationship issues.

91. In a job questionnaire, which was said in oral evidence by the Claimant to have been before she started her job with R1 in August 2018, the Claimant logs that she has depression that can be caused or aggravated by work at page 148.

92. At page 149 in the bundle, there is a letter dated 19 May 2019 from an organisation called RSVP, Rape and Sexual Violence Project "to whom it may concern".

93. The Claimant says this is a specialist service for survivors of sexual abuse at

paragraph 17 in her statement. The Claimant's statement is silent about who she provided this letter to in the workplace. We therefore conclude she did not provide it to anyone at the time. If she had done, we are sure she would have said so.

94. The letter details the Claimant's symptoms as:

    94.1. Low mood;
    94.2. Flashbacks;
    94.3. Intrusive memories;
    94.4. Poor sleep;
    94.5. Poor concentration; and
    94.6. Heightened emotions.

95. Another letter addressed to whom it may concern is in the bundle at page 150. This is from the Claimant's GP Dr Ali. The Dr stated *"[Ms B] tells me that she has been experiencing symptoms of depression, on and off, for a number of years. She has had Cognitive Behavioural Therapy and counselling for this and will be under regular review. I would be grateful if you could take the above information into consideration."*

96. On 1 October 2019, the Claimant saw her GP Dr Chukwuneke logged at page 159 in the bundle. The Claimant had depressed mood and said her mental health had started to deteriorate again and that she had been ruminating about historic events that happened in a past relationship after physical and sexual abuse. This entry logs that the Claimant had spoken to the police about the past relationship, that the Claimant felt there might be an element of PTSD and that there were nil suicidal thoughts. The diagnosis was anxiety and depressive disorder. The Claimant declined anti-depressants.

97. On 9 October 2019, the Claimant completed an assessment questionnaire with a practitioner for a referral to Birmingham Healthy Minds. In this questionnaire she described her symptoms as:

    97.1. Flashbacks
    97.2. Nightmares about the abusive relationship
    97.3. symptoms of depression and anxiety
    97.4. preoccupation with thoughts about the past
    97.5. the Claimant feels she can't function at times
    97.6. tearful, upset, distress when she thinks about her situation, cannot find "peace"
    97.7. struggling to sleep
    97.8. past panic attacks
    97.9. Past self blame
    97.10. Threatening suicide to the police the week before the form was completed
    97.11. The Claimant has felt suicidal in the past about three to four years ago, but has never acted upon suicidal thoughts.

98. On 15 October 2019, there is selective evidence about a call or visit to the GP at

page 158. Here it is recorded that this was a depression interim review and that the Claimant reported being suicidal last week, but was much better now. Sleep was listed as poor and appetite was variable.

99. On 22 October 2020, there is a letter in the bundle from a Dr Gozho to whom it may concern. The letter mentions generally about traumatic past evets and that the Claimant at that time felt she was being treated unfairly at work at page 3754.

100. On 16 November 2020, there is a letter in the bundle to whom it may concern from a Dr E Grant. It stated the Claimant was not fit for work due to ongoing grievance proceedings and recommended the Claimant undergo voluntary work. Dr Grant is a GP, not a psychiatrist or an Occupational Health doctor. We are therefore not persuaded that Dr Grant is qualified to make such a recommendation, even though it no doubt has a professional basis. We have given it sufficient weight in that context.

101. On 26 November 2019, following a referral from R2 to Phoenix Psychology, there is a report from Dr Thomas Goodall. Here the Claimant's symptoms are listed as being:

    101.1. Low mood;
    101.2. Anger;
    101.3. Problems with sleep;
    101.4. Poor motivation;
    101.5. Tearfulness;
    101.6. Feeling sad;
    101.7. Loss of interest in activities the Claimant used to enjoy;
    101.8. Loss of appetite;
    101.9. Nightmares were experienced weekly;
    101.10. Past experience of suicidal thoughts that have never been acted upon;
    101.11. That after completing questionnaires, the Claimant was experiencing moderate symptoms of depression and these were markedly impacting the Claimant's work, home management and social leisure activities.

102. The emotional symptoms were described by the Clamant to Dr Goodall as being linked to memories or reminders of past traumatic events.

103. At this time, there is no diagnosis of PTSD or any reference to these symptoms being related to a different diagnosis of PTSD.

104. When considering the evidence as a whole so far, the evidence suggests that the flashbacks and emotional disturbances are symptoms of the Claimant's depressive episodes and are therefore part and parcel of the same thing, although the evidence does not expressly describe the symptoms in that way.

105. On page 157 it is recorded that the Claimant spoke to her GP on 27 November 2019 at 13:51. It also logs two ambulance calls on the same day. In addition, the paramedic who attended the Claimant called the surgery and spoke to Dr Chukwuneke. The paramedic reported that whilst the Claimant stated she was struggling with her mood. Significantly, whilst the Claimant is reported to have

threatened to take an overdose, it also reports that the Claimant has insight and has capacity and all physical observations were normal.

106. GP notes then record visits on 22 December 2019 and 8 January 2020. These both record low mood and do not mention any issues with suicidal thoughts on those occasions at page 156 in the bundle.

107. At page 153 - 155 in the bundle, there is an occupational health ("OH") report and is dated 14 January 2020. However, significantly, no suicidal ideation is reported and the symptoms in this report are fewer in number and are described in a less serious way generally.

108. On 6 July 2020, Birmingham Healthy Minds wrote a letter to the Claimant in response to her request for information. This is at page 160 in the bundle. The letter stated:

"I am responding to your request for information on your contact with Birmingham Healthy Minds (BHM). Your first contact with BHM was a self-referral on 01/04/2019.You were assessed on 23/05/2019 and signposted to Birmingham counselling services and discharged.

You self-referred again on 08/10/2019 and were offered Eye movement desensitisation reprocessing therapy (EMDR) for trauma related symptoms. You attended all 6 therapy sessions offered, which focused on the preparatory phases of EMDR and it was clear that your intention in attending the sessions was to reduce your symptoms and move towards recovery; however, due to on-going issues related to a Police case and work stress, of which you believe work stress to be the main contributing factor, it was not possible to proceed to the processing phase of the intervention. We therefore agreed that you would be discharged and I welcomed you to re-refer yourself, or be referred via your GP, once these on-going issues have abated. You were discharged on 17.06.2020."

109. On 2 August 2020, the Claimant contacted RSVP and asked them to write a letter to the Respondent about the way she perceived she was being treated at work. The counsellor, Siobhan Blair, stated that in their view, an employee focussed approach was essential and should be based on the Claimant's overall work efforts and conduct rather than *"those previously impacted by natural trauma responses".*

110. Whilst we have considered the letter and the counsellor is entitled to their view, which they no doubt believe is correct and had a professional basis for being made, we are not persuaded that the counsellor is qualified to give the advice she has given about workplace approaches and adjustments, which are akin to OH advice. We have therefore applied appropriate weight to the letter in that context where necessary.

111. On 27 January 2021, the Claimant received a letter confirming the outcome of a recent consultation with a psychological therapist, Sharon Bhatti. This letter was the first clinical evidence of PTSD we could see in the bundle where it states that the questionnaire scores submitted per-consultation show severe depression,

moderate anxiety and *"the presence of symptoms of post traumatic stress"* at page 163 in the bundle.

112. On 15 April 2021, there is a further OH report at pages 164 - 166. This describes the history to date and similar symptoms to previous reports. It also describes how the Claimant felt that she had been treated poorly by the Deanery at R2. Significantly, the report suggests the Equality Act would likely apply, it describes her condition as being present because of both past trauma and work-related concerns.

Depression or PTSD?

113. Having considered all the relevant medical evidence, it appears to us the symptoms of both the impairments the Claimant relies upon, are inextricably linked. They occur at the same time and are described together throughout the medical timeline.

114. We have seen no definitive diagnosis of PTSD, but there are PTSD symptoms documented. It therefore appears to us that, for the Claimant, the two alleged impairments are effectively the same mental impairment, namely depression and PTSD caused by past traumatic experiences. That is the impairment.

115. In our view, it does not make any difference whether some symptoms are labelled as PTSD type symptoms or not. Throughout the medical history of this case, all of the symptoms have been associated with depression whether or not there was then a later diagnosis of PTSD. Consequently, if there was knowledge of one alleged impairment, that would give rise to knowledge of the other and vice versa.

Knowledge of Dr Wilkes, Dr Varney and Ms Griffiths (Respondent 4)

116. We first turn to what the people working with the Claimant knew at her work placement at the Public Health Department of Birmingham City University. This is necessary because all the Respondents at various times interacted with each other about the Claimant's situation and therefore cannot be viewed in isolation. Information undoubtedly flowed between them to varying extents at various times on and off throughout the timeline of events.

117. R4 was the first placement provider and had day to day contact with the Claimant which both R1 and R2 did not.

118. Whilst R4 was not a Respondent by the time of the final hearing, what it and its employees knew at the relevant times is important in the timeline and backdrop to how the Claimant's situation developed resulting in the claims before us.

119. In March 2019, there are a few relevant email exchanges between the Director of Public Health, Dr. Justin Varney, at Birmingham City Council, Dr Dennis Wilkes, Assistant Director of Public Health at the Council and Elizabeth Griffiths Acting Assistant Director of Public Health at pages 564a – 564c. These explain some issues with clashing projects and Ms B's capacity at that time. They are not an indicator of any issues with the Claimants health at that time, in our view.

However, what they do indicate is that the department was busy and had numerous projects and research tasks underway at that time.

120. There is then a GP letter at page 565 in the bundle mentioned at paragraph 565 in the Claimant's statement. This says as follows:

"To Whom It May Concern

…

[Ms B] is a registered patient at Hockley Medical Practice.

[She] tells me that she has been experiencing symptoms of depression, on and off, for a number of years. She has had Cognitive Behavioural Therapy and counselling for this and will be under regular review.

I would be grateful if you could take the above information into consideration."

121. If this was then provided to any of the Respondents this would, in our view, have given them knowledge of the mental impairment, the long term issue, because of reference to depression affecting the Claimant on and off for years (and therefore likely to recur) and the fact that she has needed treatment for this. However, what is doesn't do is state precisely how the depression affects the Claimant's normal day to day activities.

122. Additionally, there is no evidence this letter was provided to anyone by the Claimant. She does not state who she provided the letter to, only that she sought help from her GP at paragraph 27 of her statement. We believe if she had provided this letter to anyone at any of the Respondents she would have said so.

123. Indeed, it would have been the perception of R4, certainly by July 2019, that the Claimant was succeeding in her training because she thanked them for the support and reported a distinction grade for her health protection exams obtaining a score of 79 out of 86 at page 567 in the bundle. This wasn't challenged.

124. Dr Wilkes was part of Respondent 4, Public Health England department of Birmingham City Council, who was not present at the hearing as the case against them was no longer before the Tribunal.

125. It was common ground that Dr Wilkes was the Claimant's Educational Supervisor ("ES") from February 2019 until he left R4 in November 2019 as per his statement at paragraph 3.

126. At paragraph 49 – 51, the Claimant confirms that she discussed with him her suicidal feelings as well as steps to access support in October 2019. She also says that she explained the impact her symptoms had on her ability to attend on time or at all.

127. This is corroborated by Dr. Wilkes' statement at paragraph 4, albeit at the period

of February 2019 – July 2019, where he said: *"I remained [Ms B's] educational supervisor until November 2019 when I left Birmingham City Council. During that time, we met to discuss her progress and the context of her work plan. From October 2018 to June 2019 she was undertaking her masters in public health (MPH) PH. At Easter 2019 she sought extensions too some of her university deadlines which extended the timetable of her studies until July 2019. I supported this because it was clear to me that the pressure of the MPH and the underpinning turmoil of her past trauma was disturbing her enough to make her less efficient in her studies and she needed extra time to deal with this. Other than this, there was nothing unusual about her contribution during ST1. She was transparent with me about her difficulties to the extent that was appropriate. I also authorised some time out of the office for external support (counselling and peer support)".*

128. He confirms that he didn't perceive this to be a major struggle with her work, given that the Claimant had passed her MPH in August 2019.

129. Clearly, Dr Wilkes was a general practitioner given his MRCGP qualification at the signature of his witness statement.

130. The Claimant was suffering the effects of a past trauma making her less efficient at her studies and requiring supportive intervention. In our view, Dr Wilkes would have known that one potential red flag here, was PTSD. Of course, Dr Wilkes was not the Claimant's doctor and it would not have been appropriate for him to have taken on that role. However, we believe he was on notice about the possibility of PTSD for those reasons.

131. At the end of September 2019, he says that the Claimant was reporting into Elizabeth Griffiths, working on a different project who was a colleague at R4 supervising the Claimant at paragraph 5 in his statement.

132. Elizabeth Griffiths was a senior individual within the department, but was also a trainee herself, albeit a second year trainee near to the end of the course, compared to Ms B who was nearly halfway through.

133. At paragraph 6, Dr Wilkes says that the Claimant had contacted Ms Griffiths to discuss personal difficulties she was having and the impact this was having on her work. He knew that Ms Griffiths had, as a result of what the Claimant had said, made a referral to R2's professional support unit (PSU). Ms Griffiths was not a witness in these proceedings. He says he knew this because he was copied into emails about it.

134. He corroborates that he had a conversation with the Claimant in October 2019. This was also discussed with him by Diana Lewis a HR Business Partner for R1 at pages 2187 – 2192.

135. Dr Wilkes says, in answer to the questions put to him, the following key things:

    135.1. That from Easter 2019 – July 2019, the Claimant was seeking help from Psychology, the formal NHS and the charity sector for her mental health.

135.2. There were delays in her work because of the turmoil to her emotional, physical and sexual health past trauma was having in her.

135.3. He knew nothing about absenteeism because formal timesheets weren't kept at that time and so long as the work was getting done, they didn't see any absence as a problem. The Claimant had two weeks of sickness absence around Easter 2019.

135.4. He also discussed that there wasn't really anything to hand over to Ms Griffiths when she took on the Claimant's supervisor status. He explained that Ms Griffiths had been involved with the assistance provided to the Claimant previously, knew of the traumas and the work that Dr Wilkes had done to assist the Claimant.

135.5. In addition, and significantly, he says that the Training programme Director or "TPD" would not have known anything at all about this in his view because they had no day-to-day supervisor involvement, planning or delivery. They only get to know what is in any reviews and have general oversight.

136. Consequently, we find that Ms Griffiths knew or ought reasonably to have known what Dr Wilkes knew as of September 2019.

137. In places, Dr Wilkes evidence appears to be contradictory because he says on the one hand there were no problems with the Claimant's performance, but on the other, he confirms things were being delayed because of the Claimant's mental health concerns and her ability to cope with her workload.

138. On balance, we believe what Dr Wilkes meant was that whilst Ms B was having some difficulties with her work because of the trauma and mental health issues at the time, with appropriate support, she was still producing good quality work and succeeding in what she did. There were just a few exams or deadlines that needed to be delayed. This explains why at some points he says there was no problem with her work, but on the other says the Claimant was struggling.

139. Clearly, in our judgment, R4 as a placement provider, was fixed with knowledge of the Claimant's mental impairments, their effects and the impact the effects were having on her namely, at the very least, the normal daily activity of sleeping properly and the impact it was having on her attendance and slowing her work down.

140. Dr Wilkes also accepted, in cross examination, that he believed Ms Griffiths made a referral to the PSU in R2 in October 2019 because the Claimant's mental health was having a 'significant' impact on her completing the course.

141. The Respondents have put forward no evidence to challenge that Dr. Wilkes knew these factual matters.

142. The Claimant was fully open with Dr Wilkes about her depression. This would

have included the fact that she had suffered with it on and off for years. Consequently, R4, Dr. Wilkes, Dr Varney and Ms Griffiths all had actual knowledge of the Claimant's depression.

143. Of course, R4 by this point was not a Respondent who could be liable in these proceedings. However, given that, later, we found that R4 made a report directly to R2, we think it important to analyse what the people involved, and R4 itself knew, because that will inevitably feed into what R2 knew or ought reasonably to have known.

144. The evidence available at this time, is a GP record from 1 October 2019 at page 1147 in the bundle. Here the GP notes:

"stated that her mental health has started deteriorating again.
has had periods of ruminating on the historic events that happened in her last [relationship].
S[ta]ted that she has been abused physically and sexually,
has [referred] self to RSVP and BHM.
currently not sleeping, isolating self,
has reported events to the police,
feels may have an element of PTSD
nil thoughts of suicide or DSH"

145. Consequently Dr. Wilkes, Dr Varney and Ms Griffiths, had actual knowledge of the Claimant's disabilities by September 2019.

The referral to the PSU – 1 October 2019, Mrs Davis and Professor Russell Smith

146. This is where one of the witnesses for R2 became involved with the Claimant.

147. Mrs Davis at paragraph 18 of her statement says that the referral to her was made on 1 October 2019 by Ms Griffiths. This is corroborated by the email at page 581 in the bundle.

148. The referral followed a disclosure by the Claimant to Ms Griffiths, that the Claimant had gone to the police about her past relationship. This had not gone well and she had threatened to commit suicide to the police. The Claimant also informed Ms Griffiths about the lack of progress on her case with the police. Ms Griffiths raises the concerns she has with Dr Wilkes and Dr Varney and asks how she can support the Claimant more than she was already doing, at page 580 in the bundle.

149. This is why Ms Griffiths then refers the Claimant to R2's PSU.

150. The significant part of the referral form is at page 583. Here Ms Griffiths stated:

"[Ms B] is currently working through a significant past trauma.

Recent access to counselling has meant she is now processing a past experience which is causing her considerable stress and anxiety. She is in

contact with the police who are investigating her situation, earlier dissatisfaction with how the police have dealt with her case has been a trigger for [Ms B] and has had a significant detrimental impact on her mental health. She is currently finding it difficult to concentrate on her work and is having obsessive thoughts.

I have serious concerns over [Ms B.] mental distress at this time and of her ability to manage this situation without significant support. This is an acute situation and as such needs to be escalated swiftly.

N.B. [Ms B] is not in a patient facing role."

151. From the referral form alone, it is clear that Ms Griffiths was informing Mrs Davis that there is a mental impairment.

152. Ms Griffiths refers to stress and anxiety, but these labels are often used in everyday language as interchangeable or happening in common with depression.

153. It is clearly discussing trauma resulting in an inability to concentrate with obsessive thoughts which are affecting the Claimant's ability to work.

154. The mention of stress and trauma together with the other information, taken as a whole in our judgment, identifies both impairments and the impact this is having on Ms B. Being able to concentrate on work is a normal day to day activity.

155. The only thing that would seem to be missing here is information about the long-term issue.

156. Clearly, Mrs Davis was on notice that Ms B was potentially disabled with a mental impairment about trauma, to trigger her to make further enquires of Ms Griffiths and the Claimant about how long these issues have been going on for, or if there was any formal diagnosis.

157. In our view, at this stage, the Claimant felt supported, was being open and providing full information.

158. Ms Griffiths had also, by this point, got knowledge of all the various aspects of what the Claimant was saying were her symptoms, the triggers for them, their effects on her and in our view would have explained that she had depression on and off for some time.

159. In his statement at paragraph 8, Professor Smith stated that he held regular weekly meetings with Mrs Davis and others to discuss pastoral, academic and disciplinary issues. It is therefore likely that Professor Smith had constructive knowledge of the Claimant's knowledge as of 8 October 2019 at the very latest.

160. <u>Consequently, Mrs Davis had constructive knowledge about the Claimant's disabilities from 1 October 2019 onwards and Professor Smith had constructive knowledge of the disability from 8 October 2019 onwards.</u>

161. On 22 October 2019, Mrs Davis met with the Claimant to discuss things further. She describes the reasons the Claimant gave for why she believed her mental health had deteriorated. Mrs Davis was supportive during the meeting and was considering referring the Claimant to a company called Phoenix Psychology who are a specialist trauma centre for people who have suffered sexual violence as per the Claimant's email at page 617 in the bundle.

162. At this meeting, we believe the Claimant provided full information about her history, symptoms, triggers, the past sexual assault trauma, how long she had the symptoms of her conditions etc. She specifically discussed suicidal ideation with Mrs Davis because this is mentioned in the follow up email Mrs Davis sent to the Claimant at page 628 in the bundle.

163. Consequently, we find that Mrs Davis had actual knowledge of the disabilities from 22 October 2019 onwards.

164. Unless the Respondent provided evidence to the contrary, given that regular weekly meetings took place with Professor Smith as Dean about these issues, we believe that the broad background to the Claimant's situation would have been legitimately discussed between Mrs Davis and Professor Smith within a week of the meeting on 22 October 2019.

165. Consequently, we find that Professor Smith had actual knowledge of the Claimant's disabilities from 29 October 2019 onwards.

166. On 29 October 2019, Mrs Davis sent a follow up email to Ms Griffiths confirming what had been agreed with the Claimant at page 586 in the bundle.

167. Given that the Dean is a senior officer of R2 and would have been a strategic decision maker for his department, R2 would have been fixed with knowledge of the Claimant's depression, when Professor Smith knew about it.

168. Consequently, R2 had constructive knowledge of the Claimant's disabilities as of 8 October 2019 and actual knowledge of the Claimant's disabilities as at 29 October 2019 when the knowledge flowed out of the PSU and Mrs Davis into the wider faculty via the Dean.

The First Respondent and Anne Potter

169. We then come onto R1.

170. Given the Claimant mentioned on her job questionnaire that she had depression. This put R1 on notice to make further enquiries.

171. We were provided with no evidence that it had made further enquiries at the time. Had it done so it, the Claimant would have told R1 that she has had depression on and off for years and, when she has a depressive episode, it can cause her to lack motivation to do daily tasks, lack concentration to work or study and have trouble sleeping. All of these are difficulties to undertake normal daily activities.

172. Consequently, R1 had constructive knowledge of the Claimant's depression from 1 August 2018.

173. Also of importance here, is the email in the bundle at page 569 between the Claimant and Anne Potter Assistant HR Business Partner.

174. The backdrop to this email is the Claimant having an ongoing grievance about her pay. Mrs Potter had become involved during the appeal or stage 2 of the grievance procedure, as per Mrs Potter's statement at paragraph 8.

175. The Claimant requested an extension to the appeal deadline first by phone and then by email on 3 September 2019. In the email she says at page 569:

"Hi Anne,

We spoke on the phone just now and I explained to you that the reason for my extension request is due to ongoing mental health issues relating to a previous abusive relationship. I also have a police interview tomorrow with regards to this.

I have attached a letter that was provided to me by a specialist counselling service that I provided to the University of Birmingham. Please let me know if anything further is required.

Best wishes,
[Ms B]"

176. Clearly, the Claimant has indicated the reason for the appeal extension is because of her mental health issues.

177. The Claimant mentions that she is in receipt of specialist counselling services and also attached a letter to that email from that service.

178. The letter attached to that email does not appear in the bundle. This may have been because it did not attach properly. We say this because error messages appear later on in the email at pages 569d.

179. It is therefore clear to us that Mrs Potter was on notice about the Claimant's mental health issues from 3 September 2019 onwards, and that correspondence should have triggered her to make further enquiries of both the Claimant, R2 and R4.

180. We say this because R2 is the training provider and therefore would be an obvious place to contact to see if they were aware of any day to day issues with the Claimant that might need discussing, managing or a welfare check being completed.

181. A more obvious candidate for contact would have been the placement where Ms B was at that time doing her day to day work and training. We are not sure

whether such enquiries took place at that time and we have not been taken to any evidence to suggest they were. We can therefore only conclude that there is no evidence of such enquiries.

182. Had such conversations taken place, there is no doubt that the Claimant was, at that time being open with people about her health conditions and would have provided full information if the right questions were asked. She would have undoubtedly described the trauma she was experiencing, why the trauma existed, the effects of it on her daily mood, behaviour and activities, the fact she already had a number of health conditions such as having depressive episodes on and off for years and other physical ailments that are not relevant to what we need to decide.

183. Consequently, Anne Potter had constructive knowledge of the Claimant's disability from 3 September 2019 onwards.

Clare Walker and Gordana Djuric

184. The Claimant first made contact with Dr Djuric about her situation on 13 November 2019 @ 17.45 by email at page 594 in the bundle. We believe this was because the Claimant was aware that Dr Djuric was the lead TPD for her course. Here the Claimant says as follows:

"RE. Personal Issues and Referral to PSU

Hi Gordana,

I just wanted to flag with you in case you weren't aware that I have been having some personal issues and have been referred to the PSU.

I had an assessment with them a couple of weeks ago and have subsequently been referred to the associated psychology service. I have an appointment with them on Monday.

Everything is a bit up in the air for me training wise. I decided yesterday it was better not to do Part A in January. I'm not really sure what to do in the short-term but hoping to start working things out after seeing the psychologist.

R4 have been really supportive and flexible with me and are happy for me to stay or move on depending.

Thanks,

[Ms B]"

185. This email mentions personal difficulties. It does not mention mental health or any of the effects of the personal issues or any potential condition.

186. The only information that might have indicated a mental health condition is a referral to psychology. However, psychology is not psychiatry and focusses

mainly on behaviour not on diagnosing mental health conditions.

187. The Claimant describes that her training is being affected and she has deferred taking her part A exam, but that is all. We do not believe this would have fixed Dr Djuric with either constructive or actual knowledge of the Claimant's impairment at that time.

188. Dr Djuric also wanted to involve Dr Walker, and this was discussed within the same email chain at pages 592 – 594.

189. At this time, there is no evidence that Mrs Davis has discussed the Claimant's situation with any TPD yet. Consequently, we believe that neither Dr Djuric nor Dr Walker had any knowledge of either disability at this time.

190. On 22 November 2019, the Claimant and Dr Walker had a meeting as per Dr Walker's statement at paragraph 30.

191. In paragraph 31 of her statement, Dr Walker stated that *"[Ms B] was very open about what had been going on. She described that she had been in an abusive relationship, the police had been involved and she was waiting for specialist counselling for people who had suffered sexual abuse."*

192. In our view, it is inconceivable that the Claimant would not have mentioned her long history with depressive episodes on and off during this conversation.

193. Consequently, Dr Walker had actual knowledge of the Claimant's disabilities as of 22 November 2019. She had full knowledge of the impairment, the diagnosis and the effects on the Claimant especially as she was also a medical practitioner herself.

194. By 25 November 2019, Dr Walker had spoken with Elizabeth Griffiths, with the Claimant's consent, about the situation as logged in the email chain at pages 612 – 613.

195. On 27 November 2019, the Claimant had a phone call with Mrs Davis, which we will consider in more detail later on in this judgment.

196. The crux of the call, was the Claimant had threatened to commit suicide to Mrs Davis. Mrs Davis then, naturally, sought assistance with how to support the Claimant.

197. This event triggered direct contact between Mrs Davis and a number of different people about the situation, including Dr Djuric and Dr Walker in R2's Training Programme Team and Anne Potter.

198. By this time, R1, R2 and R4 were joined up and working together to try to resolve the difficulties the Claimant's behaviour was presenting them with. This is proven by, as an example, the email at page 643 in the bundle of 6 December 2019 @11.16 when Dr Walker copied in Mrs Davis, Mrs Potter, Dr Varney and Ms Griffiths about whether the Clamant was fit to attend work.

199. We do not believe the Claimant's situation would have been discussed between these parties purely by email. We think it likely, and as a matter of common sense, that there would have been both ongoing telephone and email contact about the situation given its urgency and the potential consequences if Ms B followed through with her threat of suicide and then attempted to take or indeed then took her own life.

200. Consequently, we believe that all knowledge between these parties as at that time, had been legitimately shared about the Claimant's health condition of depression, its effects, its longevity and the surrounding circumstances.

201. Consequently, on or after 6 December 2019, Mrs Potter and Dr Djuric had actual knowledge of the Claimant's disabilities.

Dr Ankush Mittal and Dr Robert Cooper

202. Dr. Mittal was one of the Co-TPDs working with Dr Walker and Dr Djuric during his time at R2.

203. Dr Cooper was Director of Public Health & Training at R2 working one day a week, usually on a Tuesday, as per paragraph 1 of his statement.

204. In Dr. Cooper's statement, at paragraph 7, he stated he had regular catch up meetings with each TPD on a weekly basis.

205. He also says he became aware, in early December 2019, the Claimant was having difficulty.

206. In our view, this information must have come from either Dr Walker or Dr Djuric, most likely Dr Walker because she was leading in supporting the Claimant at that time.

207. Dr Walker had actual knowledge of the Claimant's depression on 22 November 2019. The telephone call with Mrs Davis about suicide happened on 27 November 2019. The email exchanges with Mrs Davis about the escalation of the Claimant's behaviour was on 6 December 2019 and the Tuesday after that was on 10 December 2019.

208. We therefore find that Dr Cooper had actual knowledge of the Claimant's disabilities from 10 December 2019 onwards because by that date Dr. Walker would have given him a full update about the Claimant and her situation at the next TPD meeting with Dr Cooper on the next Tuesday.

209. We did not have any direct evidence about such a meeting taking place. However given the evidence about his work pattern and the timeline of events, 3 December 2019 seems the most likely date Dr Cooper had actual knowledge of the Claimant's depression on balance.

210. Dr Mittal was in correspondence with Dr Walker, Dr Djuric and Dr Robert Cooper.

211. This is evidence by a detailed email from Dr Walker, of 17 January 2020 @13.42, to Drs Djuric, Mittal and Cooper at page 789 in the bundle.

212. Consequently, given this email talks about the possibility of precipitating a mental health crisis, Dr Mittal had constructive knowledge of the Claimant's disabilities as of 17 January 2020. There was no evidence that he had called Dr Walker directly following receipt of this email. However, we believe on balance he did call Dr Walker because that would have made sense in the circumstances and Dr Walker gave him the full facts of the situation as she knew them.

213. At paragraph 4 in his statement, Dr Mittal stated he did not recall any further correspondence with Dr Walker after this email exchange at that time.

214. There might not have been any further correspondence or a direct discussion with Dr Walker at that time. However, there was a scheduled TPD meeting with Dr Cooper on 21 January 2020. Dr Mittal stated in his statement at paragraph 4, that the 17 January 2020 email from Dr Walker was sent in advance of the regular TPD meeting. We have been provided with no evidence that this meeting took place or didn't take place.

215. In the absence of evidence from the Respondent that the meeting didn't take place and given that Dr Djuric and Dr Cooper both had actual knowledge of the Claimant's disabilities from 6 December 2019 and 10 December 2019, it is likely that the Claimant's situation was discussed in detail between all TPDs and Dr Mittal then had actual knowledge of the Claimant's disabilities from 20 January 2020 onwards.

Professor Andy Whallett

216. At all material times, Prof. Whallett was the Deputy Post Graduate Dean reporting into Professor Smith.

217. Prof. Whallett said, in his statement at paragraph 4, that he had no prior knowledge or involvement with the Claimant until 30 January 2020 when he received an email at 07.37 that day, and several attachments from Mrs Davis about the situation involving the Claimant at page 811 in the bundle.

218. The attachments sent with the email from Mrs Davis, clearly discuss the fact that the Claimant is experiencing a depressive episode. It does not discuss how long this has been affecting the Claimant and the emails are all dating from December 2019 and January 2020.

219. Professor Whallett would therefore be lacking any actual knowledge at this point about the long term issue for the Claimant's disability.

220. However, Dr Walker is heavily involved in these emails and, had he spoken to Dr walker, Prof. Whallett would have been put fully in the picture.

221. Similarly, had he discussed this with Professor Smith, he would have been given

the full picture too, because Professor Smith had actual knowledge of the Claimant's depression as of 29 October 2019.

222. At paragraph 6 in his statement, Prof. Whallett stated that he had discussed the situation with Professor Smith and Ms King that day and he then asked Mrs Davis to respond to Dr Walker providing his view of the situation.

223. This email was sent at 08:57 that same day and is at page 813 in the bundle. In the email, Mrs Davis says *"I have discussed this with Andy this morning at our weekly meeting. In these circumstances, the expectation would be for the Head of School to take on the role of Training Programme Director for the trainee. Therefore, Andy has asked if you can ensure handover of information to Rob and then for Rob to contact the trainee to advise given that there has been a breakdown in the relationship between trainee and TPD, he will be taken on the role of TPD going forward.*"

224. It is therefore very clear to us that Mrs Davis provided Prof Whallett with full knowledge of the Claimant's depression, its effects, how long it had affected the Claimant and the impact it was having on her behaviour and studies during that conversation.

225. Consequently, Prof. Whallett had actual knowledge of the Claimant's disabilities as of 30 January 2020 onwards.

Debbie Livesey, Malise Szpakowska and Hayley Proudlove from R1

226. Turning back to 3 September 2019, Mrs Potter eventually emailed her then line manager, Miss Livesey, at page 569. This says as follows:

"Dear [Ms B]

I have spoken to my line manager and Head of HR to ask for an extension in order for you to appeal, they have agreed to extend the window until 9th September.

Kind regards
Anne"

227. It is therefore clear that Mrs Potter spoke to the Head of HR, who was at that time Debbie Livesey, as per Miss Livesey's statement at paragraph 2.

228. For Miss Livesey to have made the decision to extend the appeal on 3 September 2019, Mrs Potter would have needed to have explained the situation to her in full, including all details around the mental health issues the Claimant had stated were the reasons for the appeal deadline extension.

229. Consequently, Ms Livesey was also on notice at this point about the Claimant's mental health status to prompt investigations into what was happening with her mental health and why. She had constructive knowledge of the Claimant's disabilities from this date onwards.

230. Again, had such enquiries been made, we believe Miss Livesey would have been provided with the full picture by the Claimant, Mrs Potter, R2 and R4. This is without contacting any medical advisors.

231. Miss Livesey was a senior individual in R1 and senior within the HR team. We therefore find that as soon as she became constructively aware of the Claimant's disability from 3 September 2019 onwards as did these members of the HR team involved in this including the following individuals:

    231.1. Anne Potter
    231.2. Debbie Livesey
    231.3. Hayley Proudlove
    231.4. Maria Szpakowska.

232. We say this because for those witnesses who gave evidence, whilst the higher up the hierarchy in HR, the less day to day case work contact happened, all HR witnesses indicated there were regular catch ups and case work meetings with their teams and between them and their line managers. The Respondent has failed to prove that these issues would not have been discussed in these normal everyday meetings.

233. In paragraph 5 of her statement, Mrs Szpakowska says that she will have had regular 1-2-1 conversations with Miss Livesey about problem cases including managing the Claimant's situation.

234. Consequently, we find that what Miss Livesey knew, Mrs Szpakowska knew.

235. In paragraph 3 of her statement, Ms Proudlove stated that she directly line managed Mrs Potter at all material times in the claim. In addition to this she reported into Miss Livesey. Consequently, We believe that whatever Mrs Potter and Miss Livesey knew, Ms Proudlove was also likely to know.

236. Consequently, we believe Mrs Szpakowska and Ms Proudlove had constructive knowledge of the Claimant's disabilities on the same dates as Mrs Potter and Miss Livesey namely 3 September 2019.

237. Following the same information flow, given that we have found Mrs Potter had actual knowledge of the Claimant's disabilities as of 6 December 2019, and all the HR team's evidence was that they regularly discussed matters with each other, we find that the unusual nature of the Claimant's situation combined with the seriousness of the recent suicide threats meant that Miss Livesey, Mrs Szpakowska and Ms Proudlove all had actual knowledge of the Claimant's disabilities as at that date.

238. Given that all the HR case workers to Director level within R1 had actual knowledge of the Claimant's disability on or after 6 December 2019, that fixed R1 with actual knowledge on the same date.

Amanda Farrell, Nicola Bunce and Nikhil Khashu

239. Amanda Farrell was the stage one grievance manager for the Claimant's grievances into how she had been treated. She received an email from Diana Lewis, HR Business Partner at R1, on 19 May 2020 stating that Ms Farrell was to be the case manager for amongst other things, the Claimant's allegations of disability discrimination at page 1312 in the bundle.

240. The reference to disability discrimination would have put Ms Farrell on notice that there was potentially a disability here and would have prompted further enquiries.

241. At paragraph 8 in Ms Farrell's statement, she stated that she had no prior knowledge of or involvement with any of the people from R1, R2 or the Claimant involved in the grievance situation until the email of 19 May 2020 was received. This evidence was not challenged.

242. Consequently, Ms Farrell had constructive knowledge of the Claimant's disabilities from 19 May 2020 onwards.

243. On 31 July 2020, Ms Farrell says the grievance investigation pack was completed and given to her. The pack is vast and contains detailed references to the Claimant's health status, views and the history of her time at R4.

244. Consequently, Ms Farrell had actual knowledge of the Claimant's disabilities from 31 July 2020 onwards.

245. The Claimant appealed against the decision of Ms Farrell in correspondence addressed to Gill Ellis Head of HR Operations.

246. There is no evidence that anything detailing the Claimant's situation and indicating a health condition was sent to Ms Bunce until she was sent a copy of the outcome letter on 25 November 2020, discussing disability discrimination at page 2495 in the bundle. This placed Ms Bunce on notice of the Claimant's potential disabilities.

247. 5 days later was the appeal meeting led by Ms Bunce.

248. At that meeting, we believe the Claimant discussed her situation at length and this would have fixed Ms Bunce with actual knowledge from that date. Indeed, at paragraph 23 in her statement Ms Bunce says the meeting was difficult because the Claimant wanted to go through everything again that was part of her stage 1 grievance.

249. Consequently, Ms Bunce had constructive knowledge of the Claimant's disabilities from 25 November 2020 and actual knowledge of the Claimant's disabilities from 30 November 2020 onwards.

250. On 18 January 2021, the Claimant appealed against the stage 2 grievance outcome. Nikhil Khashu had already been pencilled in a s a potential appeal

manager by this stage.

251. There are emails at page 2664 that state that Mr Khashu already had the papers from both stage one and stage two at that stage namely by 17 February 2021. In his statement at paragraph 7, Mr. Khashu confirms that he had the papers including the outcomes and all associated evidence prior to the stage 3 appeal meeting.

252. Consequently, we believe that Mr Khashu had actual knowledge of the Claimant's disabilities from 17 February 2021 onwards.

Conclusion

253. The burden of proving no knowledge rests with the Respondent.

254. That does not mean that we simply assume knowledge. However, if there is a positive lack of knowledge argument put forward, it is for the Respondents to prove and the Respondents have not persuaded us they lacked knowledge of disability.

255. The Respondents have, therefore, not met their burden of proving that the Respondents had no knowledge of the disabilities the Claimant had. All individuals accused of discriminating against the Claimant had knowledge of the Claimant's disabilities as per the summary table below.

Name	**Constructive knowledge**	**Actual knowledge**
R1	1 August 2018	6 December 2019
R2	8 October 2019	29 October 2019
Doreen Davis	1 October 2019	22 October 2019
Clare Walker	N/A	22 November 2019
Gordana Djuric	N/A	6 December 2019
Ankush Mittal	17 January 2020	20 January 2020
Rob Cooper	N/A	10 December 2019
Andrew Smith	8 October 2019	29 October 2019
Andy Whallett	N/A	30 January 2020
Anne Potter	3 September 2019	6 December 2019
Hayley Proudlove	3 September 2019	6 December 2019
Debbie Livesey	3 September 2019	6 December 2019

Malise Szpakowska	3 September 2019	6 December 2019
Amanda Farrell	19 May 2020	31 July 2020
Nicola Bunce	25 November 2020	30 November 2020
Nikhil Khashu	N/A	17 February 2021

256. It follows that for direct discrimination purposes, each alleged perpetrator, had knowledge of the disability affecting their minds as at the actual knowledge dates in the table above.

257. To decide the issue of knowledge of disadvantage for reasonable adjustments, we first need to decide whether PCPs were applied to the Claimant and if so, what disadvantage then resulted. We can only do that when we have considered the entire factual background.

258. We also consider knowledge of the somethings later in the judgment for the same reasons.

General findings of fact

259. We now consider the findings of fact in the timeline of events as the relevant backdrop to all the Claimant's other claims.

260. On 4 May 2018, the Claimant was employed on agenda for change band 8D terms and conditions of employment for a five year fixed term contract commencing 1 August 2018.

261. Her job title was Speciality Registrar ST1 in Public Health (non-medic).

262. The purpose of the job was to provide a combination of on the job training as well as contact study time at various placements within various linked departments or organisations.

263. The course itself was led and organised by R2.

264. R1 employed the Claimant, and there were then various placement providers such as the University of Birmingham, Public Health England as it then was and other placements.

265. Starting at page 3080a is a document called the Gold Guide. It was common ground amongst the parties that this document set out the policies, procedures and arrangements agreed amongst the four UK health departments for speciality training programmes.

266. At page 3080e namely paragraph 1.3, the Gold Guide states that it is applicable to all trainees in General Medical Council approved programmes. It was common ground that the Claimants programme was subject to the gold guide.

267. At paragraph 1.11 (page 3080f) it expressly states that the guide is not a contractual document and will not cover every eventuality. The guide makes express provision for there being occasions where it may be necessary to derogate from the guidance defined in the guide.

268. The role of R2 is found within paragraph 2.26 of the gold guide at page 3080j. Here it is stated:

*"**The management of foundation and specialty training***

2.26 HEE, … are responsible for implementing foundation and specialty training in accordance with the GMC-approved curricula.

2.27 The day-to-day management (including responsibility for the quality management of training programmes) rests with the Postgraduate Deans, who are accountable to HEE…

2.28 The responsible agencies above require Postgraduate Deans to have in place an educational contract (often referred to as a Learning and Development Agreement) with all providers of postgraduate medical education that sets out the standards to which postgraduate medical education must be delivered in accordance with GMC requirements and the monitoring arrangements. This includes providers of postgraduate training both in and outside of the NHS.

2.29 A range of issues will be covered in the educational contract with the responsible agencies, which has a different purpose to the education contract/agreement between the trainee and the training organisation responsible for training programme management."

269. Standards for the courses were set by the General Medical Council or GMC. The course providers needed to adhere to those standards.

270. The guidance about post graduate training programmes starts at paragraph 2.45. Here it says:

*"**Postgraduate medical training programmes***

2.45 A programme is a formal alignment or rotation of posts that together comprise a programme of training in a given specialty or sub-specialty. Approval of training programmes and locations rests with the GMC. Postgraduate Deans submit their proposed training programmes and locations with supporting evidence. Locations within a programme must be approved before a trainee trains there in order for the time to count towards a Foundation Programme Certificate of Completion (FPCC) or CCT. A programme is not a personal programme undertaken by a particular trainee. Further guidance is available at GMC | Programme and Site Approvals.

2.46 All trainees must accept and move through suitable placements or training posts that have been designated as parts of the specialty training programme prospectively approved by the GMC. When placing trainees, Postgraduate

Deans or their nominated deputies will take into account (wherever possible) the trainees' specific health needs or disabilities that impact on their training. Placement providers are responsible for assessing and making reasonable adjustments if trainees require these. The need to do so should not be a reason for not offering an otherwise suitable placement to a trainee. The GMC has published advisory guidance to postgraduate training organisations on supporting doctors in training with long-term health conditions and disabilities. The guidance is available at GMC | Welcomed and Valued; it has a chapter dedicated to postgraduate training and there are also accompanying supporting resources."

271. Consequently, the Gold Guide suggests that the ultimate decision maker for where a Trainee is placed is the Post Graduate dean of the organisation the trainee is enrolled.

Training programme Directors or TPDs

272. The role of TPDs is described at paragraphs 2.53-2.54. Their role is to manage the assigned speciality training programmes and it is a GMC requirement that all training programmes are led by TPDs, foundation school directors and heads of school or their equivalents.

273. The crucial responsibilities for TPDs included enabling trainees to gain the relevant competences and experience, two support educational supervisors in the programme, to help the postgraduate Dean managed trainees who are running into difficulties, to report on individual trainee's progress and to provide career advice to trainees in their programme at page 3080p.

274. Whilst the Claimant was undertaking her course, she should have also been allocated and Educational Supervisor.

275. The role of an Educational Supervisor is described at paragraphs 2.55 – 2.56. These paragraphs state:

*"**Educational and clinical supervision (foundation and specialty)***

2.55 An educational supervisor is a named trainer who is selected and appropriately trained to be responsible for the overall supervision and management of a specified trainee's educational progress during a training placement or series of placements. (Some training schemes appoint an educational supervisor for each placement.) The educational supervisor is jointly responsible with the trainee for the trainee's educational agreement.

2.56 The educational supervisor is responsible for collating evidence of the performance of a trainee in a training placement, providing feedback to the trainee and agreeing action plans to ameliorate any concerns or issues identified (paragraphs 4.35 and 4.52–4.58)."

276. Paragraphs 5.7 and 5.8 describe the nature of the interrelationship between the various organisations when delivering the course. These stated at page 3080t:

"5.7 Trainees have an employment relationship with their employer, and issues such as misconduct and ill heath are subject to their employing organisation's policies, procedures and nationally agreed standards such as Maintaining High Professional Standards in the Modern NHS (in England) or the equivalent documents/processes in the other jurisdictions of the UK.

5.8 In the first instance where there are issues around conduct, poor performance and professional competence, employers and host organisations should advise the Postgraduate Dean of any trainee who is experiencing difficulties as well as the action being taken, including steps to support and remedy any deficiencies. Where appropriate, the Postgraduate Dean, employers and host organisations will work closely together to identify the most effective means of helping/supporting the trainee while ensuring that patient safety is maintained at all times. There may also be a need for early involvement of services such as the Professional Support Unit provision in HEE, NES, HEIW and NIMDTA or NHS Resolution (formerly the National Clinical Assessment Service) to provide advice about how best to support the process."

277. If any trainee was absent from training other than because of annual leave, paragraph 5.24 (i) at page 3080w, required the trainee to inform their employing organisation and the Post Graduate Dean if they were absent because of ill health.

The start of the Claimant's difficulties on the programme

278. The Claimant's difficulties with the course began in around October 2019. The Claimant had, by this time, reported a past sexual assault involving an ex-boyfriend to the police and did not believe this was being dealt with properly.

279. This prompted the Claimant to discuss matters with her supervisor Ms Griffiths and this prompted the referral of the Claimant to the PSU mentioned earlier in this Judgment.

The medical suspension plan and OH reports

280. The backdrop to the OH referral process began in November 2019, after Phoenix Psychology had confirmed it would not be providing support to the Claimant and when R1's HR office received a telephone call from Mrs Davis at R2.

281. At this stage, those attempting to manage the Claimant's situation were Mrs Davis at PSU, Dr Walker as the Claimant's TPD and Ms Griffiths as the Claimant direct placement supervisor.

282. By this time, Dr Walker had provided her personal mobile number to Ms Griffiths because Dr Walker was not only concerned about the Claimant's well-being but also the well-being of Ms Griffiths in having to deal with such a challenging situation directly as per para 35 of Dr Walker's statement. Dr Walker felt there was a duty of care to Ms Griffiths as well, which we agree was a sensible view, and that Ms Griffiths gave the impression to Dr Walker that she felt out of her

depth.

283. Dr Walker kept the Claimant updated with what she was discussing with Ms Griffiths, and asked the Claimant's permission to discuss possible alternative placements with Carol Chatt at PHE as per her statement at paragraph 39 and her email to the Claimant of 25 November 2019 at page 613 in the bundle.

284. The Claimant gave her permission to discuss possible alternative placements saying by email *"Yes that's all fine with me."* At page 612.

285. On 26 November 2019, the Claimant forwarded the Phoenix Psychology letter to Dr Walker as shown by the Claimant's email at page 614 in the bundle.

286. The next day, Ms Griffiths had texted Dr Walker and said as follows:

"Morning Clare, I have received a message from [Ms B] this morning that has gotten me worried for her safety. Is it possible to give you a call? I'm currently on a train but should be able to talk in about 10 minutes. Elizabeth"

287. Dr Walker responded positively to the request for a call, and also informed Ms Griffiths that she had heard that PSU had advised for a crisis assessment, accessing community mental health care and also to contact the lead employer. Dr Walker then confirmed she had spoken to the lead employer and could give Ms Griffiths an update on what they can offer. These text messages are at pages 619 and 620 in the bundle.

288. Ms Griffiths also updated Dr Varney by text as at page 621 in the bundle.

289. What precipitated the overnight escalation in the Claimant's situation appears to be the rejection of support by Phoenix Psychology. In response to this, the Claimant emailed Phoenix Psychology on 26 November 2019 at 23:05 and stated at page 624a in the bundle *"Do I get support if I actually make an attempt on my life? Cos I'm happy to if that's what it takes".*

290. The PSU informed Dr Walker of the R1's contact details by email at page 622. This was prompted following an urgent email sent from Dr Walker, asking for an urgent call given the overnight escalation in the Claimant's situation. This email is at pages 622 – 623 in the bundle.

291. At the same time, the Claimant had emailed Mrs Davis about the result of the Phoenix Psychology referral. That email arrived at 07.09 on 27 November 2019 at page 626 in the bundle.

292. Mrs Davis had also received feedback from the Admin team at Phoenix via Jackie Chambers, that the Claimant had sent words via email threatening to take her own life, as per Mrs Davis statement at paragraph 23 and as per page 636 in the bundle.

293. In response to the reaction to events from the Claimant, Ms Griffiths fairly and reasonably suggested to the Claimant that she contact the GP or A&E to try to

get assessed as confirmed by her email update to Dr. Varney of 27 November 2019 @ 17.20 (page 625 in the bundle.)

294. In response to the events, Dr Walker fairly and reasonably wanted to try to contact the lead employer and coordinate efforts to try to manage this situation between the PSU, R1, the placement and R2.

The call to Mrs Davis on 27 November 2019

295. It was now the afternoon of 27 November 2019. It was not in dispute that, around that time of day, the Claimant called Mrs Davis to speak to her about how she was feeling.

296. The Claimant and Mrs Davis have different recollections of the words used during that call.

297. Mrs Davis says as follows at paragraph 24 in her statement:

"I had a conversation with [Ms B] on the phone that afternoon, I cannot recall the precise time but it was at the end of the day. This conversation was very traumatic and I find the phone call very difficult to talk about. She threatened to take her own life, told me she was about to go to a bridge, and that it would be my fault. She then 'hung up' the phone. I was in the office when I received this call and was upset having listened to what [Ms B] had said to me. I think I tried to telephone [Ms B] back to check-in with her, but I do not think she answered. Dr Philip Bright ("Phil"), the Head of the School of Medicine was about to leave the office and he saw that I was visibly upset, he came over to me and asked me if I was okay, although I cannot remember the precise details of my conversation with Phil, I would have almost certainly told him that I had just received a very distressing telephone call from a trainee threatening to harm themselves by taking their own life. Phil went to see if Russell was in his office, but he wasn't. I recall Phil noting that Katharine, Primary Care Dean and Deputy Dean, was in her office. She took me into her office and asked me to talk her through what had happened, I recall Dr Bright also came into her office with me. I told her that [Ms B] had threated suicide and that it would be my fault, told me that she had made previous attempts and that ambulances had previously attended to her at these times. [Ms B] had also said that she was attending her own GP and that they were aware of her situation, and that she had called 999. Katharine reassured me that I had done everything I could have done, and that once someone has been escalated to the emergency services and the GP, you must have assurance that they are in the system and will be managed by their GP and the wider healthcare system.

25. [Ms B] emailed me again that afternoon at 4:36 and 4:45pm [626], In the 4:45pm email [Ms B] suggested that the purpose of the assessments was not to offer support but "just to cover everyone's back in the case of an inquest" [626], This was not correct at all. I found it upsetting to think that someone thought the reason for my involvement was for anything other than providing a trainee with support."

298. However, if we look at the note Mrs Davis wrote nearer to the time of the call, at page 3623 in the bundle, it is not as graphic. It says in handwriting:

“At times she feels suicidal but hasn't followed through.

Received the letter from phoenix was disappointed.

I rang the ambulance last night several times (between 11:00 PM and 1:00 AM)

Ambulance arrived at 6:30 AM. She did not let them in and she had wanted to take an overdose and they hadn't come when she needed them.

She rang 111 to complain, was told to speak to her GP.

GP phoned her today and reiterated healthy minds author of CPN but she does not feel this will help.

Advised Again to go and see GP does not think this will help as she knows what they will say.

Advised to go to A&E does not think this will help as she knows what they will say.

Thinks nothing will be done until she kills herself.

Asked trainee to accept that we're offering support through a psychiatric review.

She told me I was being no help and did I want her to kill herself, she may as well do it.

Trainee hung up.

Telephoned trainee back, she did not answer.

Try it again and she answered and said I was no help she thought no one was helping and that there wouldn't be an inquest if she did kill herself and no one would be accountable.

She asked did I want her to kill herself, I said we wanted to help was concerned about well-being she put the phone down.

Called her back-no answer but left a message for her to get back in touch but I wanted to discuss the psychiatric review.

No reply.

Spoke to Phil Bright and Katherine King.

Agreed to let lead employer know: ask them to contact next of kin and consider welfare check.

Trainee then emailed-see correspondence on file.

Telephone discussion with lead employer and deputy medical [unknown word]

- *OH*
- *consider if she should be at work"*

299. Clearly, there was no mention of a bridge or the suicide being Mrs Davis' fault if it happened in the handwritten note.

300. When it was put to Mrs Davis in cross examination that her witness statement amounted to an embellishment, Mrs Davis was adamant that what she said in her witness statement is what was said at the time, but offered no explanation as to why the bridge was not mentioned in the handwritten note.

301. Given the circumstances, we find that it was reasonable and proper for Mrs Davis to have referred this issue to the lead employer, her superiors and anyone else who was directly involved in supporting the Claimant with her placement, training or more generally. We believe Mrs Davis genuinely thought the Claimant's life was at risk and that was a natural and reasonable view to have in the circumstances.

302. The Claimant's version of events was similar to that of Mrs Davis. However, the Claimant said that she had not threatened to jump off a bridge because there weren't any bridges in Birmingham that you could jump off. The Claimant denied under cross examination saying that she would jump off a bridge and it would be Mrs Davis' fault. However, she did accept in cross examination that it was unreasonable for her to have alleged that the offers of support from Mrs Davis and others, were only attempts to cover their backs if there was an inquest.

303. In her witness statement at paragraphs 90 – 93, the Claimant criticises Mrs Davis for her attempts to support the Claimant. She describes Mrs Davis as being unhelpful and insensitive and following a tick box exercise to show that she was offering support, rather than actually offering any. In addition, she criticises Mrs Davis for offering a psychiatric review if one could be organised, explaining that she did not know what clinical indication the review was based on and claims that psychiatrists offer medication and psychologists, in her view, take a trauma based approach.

304. When considering the evidence of the conversations and the handwritten note, we find as follows:

    304.1. Whilst we accept that it is a little odd that the handwritten note does not mention the comment about the bridge, the note is clearly not a verbatim note.

    304.2. In the documentary evidence, some of which we will come onto, there are multiple comments by the Claimant to multiple people that if she does not get the answer or result that she wants, the Claimant will threaten to

harm herself and blame the person who has not given the result she wants for any attempts at suicide she might make.

304.3. The answer given by the Claimant that there are no bridges for her to jump off in Birmingham is simply not correct. The Aston Expressway is an example of where people could jump off the pavement onto the A38 and there are multiple other raised walkways that straddle the A38 that someone could also jump off. We have taken this as well-known common knowledge and therefore judicial note.

304.4. The Claimant's criticisms of Mrs Davis and others that their genuine attempts to try to support the Claimant when they were faced with a sudden, extreme and rare event of a trainee threatening to commit suicide by phone are not reasonable.

304.5. The Claimant's acceptance that her saying that those involved were simply trying to cover their backs for an inquest was unreasonable, strongly suggests to us that there is a difference between the suicidal ideation the Claimant has and how she communicates that. We do not doubt she has the suicidal ideation. However, the communications that follow seem to be examples of venting as a result of frustration not because of suicidal ideation itself.

304.6. The Claimant's attempts to blame those trying to support her as best they could with what limited options they had as "re-traumatising" her were consequently unreasonable. Mrs Davis' evidence that the Claimant had threatened to blame her for any suicide she attempted therefore fitted with the general theme of the Claimant's reaction to the phoenix psychology assessment and later on in the timeline of events. She has done this to Mrs Davis and Dr Cooper to name but two examples.

304.7. Consequently, we have noticed a pattern of behaviour from the Claimant that when she does not get the answer she wants she will send emails alleging that she is going to kill herself and blame it on those who are trying to help her, as a way of trying to get the result she wants or as a way of venting frustration.

304.8. We therefore prefer the evidence of Mrs Davis and believe the Claimant did threaten to throw herself off a bridge and say it would be Mrs Davis' fault. This fits with the general and repeated behaviour of the Claimant throughout the backdrop to this case and also fits with the unreasonable allegations levelled at the direction of those doing their best to assist the Claimant in unexpected, emotive and unpredictable circumstances.

305. Mrs Davis then called R1 to see if they could offer support. Mrs Potter took the call and Mrs Davis explained to her that the Claimant had been threatening to kill herself, had called the ambulance service multiple times and was distressed, at paragraph 9 of AP's statement.

306. By 29 November 2019, the Claimant appeared to have regained her composure

somewhat and, in an email to Dr Walker, said *"Thanks for putting up with me this week - I know I have been a bit of a nightmare... I'm not normally like this, I promise. I just reached the end of my tether after coming up against so many brick walls after trying to be patient and persistent and do the right thing for so long..."* She also confirmed that she had been offered a session with RSVP on 10 December 2019 at pages 638 and 639.

307. Now that all the organisations involved are working together, are sharing information to try to support the Claimant and come up with a plan of action for managing her, a decision was taken to allow the Claimant to attend work with the support of Dr. Walker as TPD as per paragraph 10 of Mrs Potter's statement.

308. Mrs Potter explained this decision was taken at that time, because she was informed by Mrs Davis that the Claimant had been requesting to attend work to provide structure for her.

309. Mrs Potter also decided there should be a referral to occupational health at that time and she explained that Ms Lasikiewicz an HR Officer, made the application on 2 December 2019 on her behalf.

310. On 6 December 2019, there was an email exchange involving all the organisations relevant to the Claimant's current situation. It was an email between Dr Walker and Ms Griffiths and is in the bundle at page 644. This email discusses the following:

    310.1. It logs that an urgent occupational health referral had been made by Mrs Potter's team;

    310.2. It notes that PSU have escalated the situation to the Post Graduate Dean at R2.

    310.3. That the Claimant had an appointment with RSVP who were offering support to her in the interim and this appointment was taking place the following week.

    310.4. It logs that there seems to be a consensus from all involved that if the Claimant was not able to engage in training, she should take sick leave, but this may risk her suicidal thoughts getting worse.

    310.5. A psychiatric review was offered by the PSU but the Claimant had declined this; and

    310.6. The plan between all involved at that time was to meet with the Claimant on 17 December 2019 to speak with the Claimant about her sick leave and, if the Claimant refused to go on sick leave, then she may have to be informed that it was the group's opinion that she may not be fit for work until a medical practitioner declared that she was.

311. Dr Walker described the email as a plan and sought Ms Griffiths' views on it.

312. Ms Griffiths responded the same day, at page 643 in the bundle, and offered another possible option, namely that a health protection placement be considered because it is, amongst other reasons, more of a 9 to 5 job.

313. The Claimant was informed there was an occupational health appointment available for her to attend on 12 December 2019 at 11.45, and that a welfare meeting would be held with the Claimant by teleconference on 17 December 2019 at 10.30 with Dr Walker and Mrs Potter. This was communicated by email also dated 6 December 2019 at page 647 in the bundle.

314. The OH referral appointment is confirmed in writing to the Claimant by letter from Sandwell Hospital dated 5 December 2019 at page 649 in the bundle.

315. There is no doubt in our minds that, at this stage, everyone involved in making the decisions to offer OH and other support are doing so to comply with their duty of care and also in response to the Claimant's reported suicidal thoughts and difficulties with her course as a result. They were trying to juggle helping the Claimant as best they could with their legal and professional responsibilities.

316. On 16 December 2019, further discussions about the situation occurred between Mrs Potter and Dr Walker as per Mrs Potter's statement at para 15.

317. Dr Walker also checked to see what the Claimant's current work output was.

318. Ms Griffiths explained that she thought attendance was down to about 50 – 60%, but the Claimant would not always stay the whole day if she did attend work. She also confirmed she had not received any work output from the Claimant for a while, at page 669 in the bundle.

319. In response, Dr Walker suggested that the Claimant should be on some kind of special leave, until the OH referral and report had been completed at page 670.

320. None of the concerns Dr Walker had at this time were unreasonable given the suicidal ideation the Claimant had, her attendance was poor and she was not producing work.

321. At R1, Mrs Potter was also seeking guidance about a possible medical suspension and the proposed plan from Dr Walker. Dr Walker had fed back to Mrs Potter her concerns about the Claimant's lack of work output and the difficulties that were present in trying to find the Claimant a new placement at paragraph 14 in Mrs Potter's witness statement.

322. Consequently, now there was a plan to potentially place the Claimant on leave whilst OH guidance was sought, Mrs Potter spoke to her line manager Ms Proudlove about the plan as per Mrs Potter's statement at paragraph 15 and Ms Proudlove at paragraph 7.

323. By now the OH appointment had been put back until January 2020 due the appointment and the Claimant's availability.

324. Both Mrs Potter and Ms Proudlove were unsure about who needed to make the decision to medically suspend because it was unusual for a trainee to be medically suspended.

325. Consequently, by email of 16 December 2019 @ 12.31, Ms Proudlove emailed her line manager Miss Livesey to discuss the medical suspension and what the different outcomes might be if the Claimant lacked any insight into her health concerns. Ms Proudlove says at page 673:

"Hi Debbie,

Have reviewed the AM policy with Anne in relation to medical suspension - it does not give any guidance as to who makes such a decision. I guess over at the Trust it would be the Matron in conjunction with the HRBP / Head of HR.

In this case are you happy to agree that if Dr A does not have any insight into her health concerns at the meeting tomorrow then we medically suspend her pending outcome of OH review in Jan? the TPD has already given agreement to this however we will put on the radar of the Head of School and PG Dean.

Thanks

Kind Regards,

Hayley"

326. The Claimant complains, at paragraph 4.11 (a) in the list of issues, that this email exchange has labelled the Claimant as lacking insight at paragraph 94 in her statement. However, that is not what the email says or what Ms Proudlove meant. It is not accusing the Claimant of lacking insight. It is Ms Proudlove asking Miss Livesey what she should do *if* the Claimant lacked insight.

327. Consequently, the claim at paragraph 4.11 (a) in the list of issues fails and is dismissed.

328. Ms Livesey responds in a reasonable way, asking if advice has been sought from Diana Lewis about the usual decision making process (also at page 673).

329. Ms Proudlove asked Mrs Potter to contact Diana Lewis. The answer they get is that they liaise with the line manager and the Head of HR signs it off, at page 672.

330. Consequently, Miss Livesey advises that, given the Head of School and Dr Walker feel this approach continues to be appropriate, then Miss Livesey was content to approve the decision to medically suspend the Claimant on the basis that the Claimant herself has advised that her mental health has taken a turn for the worse and was impacting her work. She advises that it would be more appropriate to discuss this openly with the Claimant and seek to medically suspend only if it was needed and alternatives had been explored. Miss Livesey ideally hoped the medical suspension could be agreed, at page 672.

331. In our view, that was a perfectly reasonable, balanced and professional response akin to saying that medical suspension should be a last resort.

332. In our view, it is clear that Mrs Potter, Dr Walker and Ms Proudlove were considering a medical suspension to comply with their obligations to keep the Claimant safe from harm and to comply with their duty of care.

333. Mrs Potter emailed Professor Smith, Dr Cooper and Mrs Davis to explain what they hoped to achieve at the meeting with the Claimant and that, hopefully, the Claimant would agree to go on sick leave, at page 675 in the bundle.

The meeting of 17 December 2019

334. On 17 December 2019 the meeting to discuss the Claimant's welfare took place and what R1 and R2 suggested was the best way forward was discussed.

335. The meeting was attended by the Claimant with Dr Walker, Mrs Potter and Ms Griffiths in attendance.

336. Before this meeting was planned, the Respondents were seeking OH advice. However, the OH appointment would not take place until after the meeting had happened. All decisions made at the 17 December 2019 meeting were therefore made without the benefit of OH advice.

337. The Claimant alleges that Miss Livesey and Ms Proudlove made decisions to plan to medically suspend the Claimant, without seeking OH advice and that Dr Cooper and Dr Walker influenced R1 to plan to place the Claimant on medical suspension.

338. It is clear that the people who planned to medically suspend the Claimant were Dr Walker and Mrs Potter, not those accused in the list of issues, namely Miss Livesey and Ms Proudlove. Miss Livesey and Ms Proudlove simply looked into how Dr Walker's and Mrs Potter's plan could be implemented.

339. Similarly, there was insufficient evidence to suggest that Dr Cooper was in any way involved in these decisions to plan a suspension in 2019 as the Claimant alleged.

340. In any case, no one involved in planning the medical suspension, did so without seeking OH advice. They sought the advice. However, a convenient appointment could not be made until January 2020.

341. Consequently, claims 4.2.1, 4.2.3 (a) and 4.16.2 with regard to planning to medically suspend the Claimant fail and are dismissed. We consider the actual medical suspension on 8 April 2020 later on in this judgment.

342. Mrs Potter attended the meeting by video, but the Claimant, Dr Walker and Ms Griffiths attended in person, as per Mrs Potter's statement at paragraph 18.

343. The meeting did not go well.

344. Mrs Potter says in her statement, at paragraph 18, that the Claimant and Dr Walker clearly had tension between them and, at one point, the Claimant left the meeting. The Claimant requested a new educational supervisor and would not let Dr Walker speak.

345. Dr Walker says in her statement at paragraphs 65 – 67, that she asked a series of questions and made some suggestions. These included suggesting the Claimant be on sick leave to focus on getting better rather than training because she was not producing any work and the Claimant's training was not progressing. Dr Walker says she asked the Claimant whether she was phoning in to inform people whether she was coming into work or not and mentioned that her behaviour was having an adverse impact on R4 staff.

346. Dr Walker states the Claimant reacted angrily. Dr Walker says she did not accuse the Claimant of anything, but asked questions and made suggestions the Claimant did not appreciate or like.

347. In summary, the Claimant says the meeting was basically akin to a performance review meeting and, whilst she did not know this at the time, when she received information back from her subject access request in 2020, the Claimant says she discovered the true intention was to remove her from the workplace because she had been deemed to be unsafe and lacking in insight at paragraphs 125 – 129 of her witness statement. She also said that the meeting was handled badly when she was already emotionally low and had been failed by a number of different organisations such as health service, the police and that she was unprepared for a confrontational meeting.

348. In text messages to a friend at page 3687, the Claimant described the meeting as patronising and said she *"only got a bit cross."* In cross examination the Claimant said she didn't yell at anyone at the meeting.

349. We heard no evidence from Ms Griffiths. However, there is evidence from Dr Varney of R4, who documents his view after receiving feedback from Ms Griffiths about the meeting.

350. Dr Varney said as follows about the meeting, at pages 676 and 677:

"Hi Clare,

I'd welcome your reflections on today's meeting with [Ms B].

My feeling after the feedback from Elizabeth is that Birmingham cannot offer her the structured support she needs and she is not delivering either competency or service work for the division, and hasn't been for a while now.

My suggestion is that she moves to a very structured placement either with one of the TPDs or with an experienced trainer in Health Protection where she can

rebalance her personal challenges within a closely monitored and structured work environment which we are no longer able to offer in Birmingham.

I feel that we have exhausted the support within the division for her and have been raising concerns since the summer and I feel that continuing her placement for much longer with the PH team will be damaging for their wellbeing and disrupt the team dynamic significantly.

I appreciate this isn't an easy situation and not an ideal position from me but as the only substantive ES in the authority I do not have capacity to take on supporting a trainee with such significant challenge at the moment and Elizabeth is going well above and beyond the call of duty with the level of support she is providing to a fellow registrar.

I would welcome a clear forward plan that relocates her at pace for the new year.

Best wishes
Justin"

351. We have no reason to doubt what Dr Varney said in his contemporaneous email after the meeting following feedback from Ms Griffiths. Consequently, it is clear that by lunchtime on 17 December 2019, the following is evident:

    351.1. The meeting was very difficult. There is no criticism levelled at either Mrs Potter or Dr Walker in this feedback. Of Course, Dr Varney is corresponding with Dr Walker, but if there had been any unprofessionalism, then on balance we believe it would have been mentioned here, even in soft language. After all, Dr Walker and Dr Varney work at different organisations.

    351.2. The Claimant is only producing a minimal amount of work in Ms Griffiths view and also Dr Varney's view;

    351.3. The Claimant is not completing any of her training, described as "competency work" by Dr Varney;

    351.4. There is no further support that R4 can offer the Claimant. They have done everything they can and Ms Griffiths is already making a big sacrifice to support a fellow registrar;

    351.5. The challenges the Claimant poses is described as a "significant challenge" that Dr Varney does not have the capacity to give it the appropriate time and input the Claimant needed;

    351.6. A change of placement was necessary.

352. When considering what actually happened at the meeting, after taking all the evidence into account, we find the meeting happened as described by Dr Walker and Mrs Potter. They put forward suggestions to the Claimant to try to assist her with getting better, bearing in mind the job is a training placement, minimal work

or training was being completed and consequently to continue the status quo would mean the workplace was effectively a therapy for the Claimant. That meant that neither R1 nor R2 would get any benefit from the Claimant attending work and being paid in circumstances where the workplace could be harming the Claimant.

353. Employers and training bodies are not there to be a therapy service for employees struggling with their mental health. In addition, the risk of harm to both R1 and R2 was very high. They had a suicidal employee who, for all the Respondent's knew, could commit suicide at any time and, if she survived, communicated that she would seek to blame them for it.

354. It was therefore in our view, entirely understandable that the Respondents were attempting to obtain the Claimant's agreement to be on sick leave until specialist advice could be obtained from occupational health.

355. The reason the meeting became confrontational was because of the Claimant's reaction to the suggestions being put forward.

356. In a later email, at page 696 in the bundle, Dr Walker discusses the appropriate placement and what R4 could do to limit any further detriment to the team. She says *"Also, if you feel that having her in the department is detrimental to the team, a further option is to ask her not to go into R4 and to work on her dissertation at home. I unsuccessfully argued for this today. Sorry, I wasn't fully prepared for the depth of anger talking about removing her from R4 engendered."*

357. It is clear that the Claimant did not remain calm at this meeting, and that caused the meeting to become confrontational. Dr Walker said in her evidence that she was surprised the Claimant had gotten so angry so quickly at the suggestion of sick leave/medical suspension and a placement change, so much so that she felt she had no choice but to soften on that idea to avoid exacerbating the Claimant's mental health further and risking a suicide attempt.

358. If Dr Walker was taken by surprise in the way described, we think it likely that she would have become defensive and, if the Claimant raised her voice, which is likely given that she said she got "cross" and felt patronised, then human nature would be for Dr Walker to raise her voice in response. That is so especially as we believe Mrs Potter when she says the Claimant would not let Dr Walker speak.

359. We do not think this would have been for the whole meeting but, certainly, when the issues of sick leave and placement change were being discussed, the Claimant got very angry.

360. We also believe Mrs Potter when she says the Claimant left the meeting at one point. This is supported by Dr Walker at paragraph 68 in her statement who said that the Claimant was so angry they had to stop the meeting to take a break.

361. We also believe this because the eventual outcome of the meeting was that an action plan had been discussed and agreed with the Claimant. In our view, that

agreement could only have been successfully obtained if the meeting had at one point been "reset" so that a more sensible conversation then took place.

362. We believe Dr Walker when she said that at the end of the meeting, she offered and the Claimant accepted a hug from Dr Walker.

363. At Paragraph 4.27 in the list of issues, the Claimant makes a number of allegations about Dr Walker.

364. We are not persuaded the meeting was hostile form the outset or that Dr Walker or Mrs Potter were in any way hostile or aggressive towards the Claimant.

365. If they were, the Claimant would not have described them as patronising to her friends in the text message we referred to earlier or to another registrar at page 3674 in the bundle. We have no doubt the Claimant would have said Mrs Potter and Dr Walker were hostile or aggressive or words to that effect to her friends in the text messages, not that they were simply patronising.

366. The text messages to her friends are short, lack detail and are not emotive. There is no sense of severe unfairness or hurt from any of the feedback the Claimant texts to her friends, which is in stark contrast to the way the meeting is alleged to have happened in the list of issues. The closest the Claimant gets to emotion is describing that she might be having another "*mini meltdown*" but that was said in the context of the Claimant being anxious about how many people she has been open with about her mental health, rather than the Respondents causing her to become suicidal.

367. The Claimant viewed Dr Walker and Mrs Potter as patronising, which made her angry and that is how the meeting escalated and became difficult as Ms Griffiths described to Dr Varney.

368. We are not persuaded that Dr Walker or Mrs Potter behaved aggressively at the meeting. We find that the meeting was led by Dr Walker and that Mrs Potter very much took a backseat role in the meeting. We say this because Dr Walker's statement is clear that virtually all the proposals made at that meeting came from her, not Mrs Potter.

369. We are not persuaded with the Claimant's assertions that Dr Walker lacked empathy, was contemptuous or cynical, tried to pull apart what the Claimant was saying or dismissed the Claimant's opinions as invalid.

370. We are also not convinced that, at this meeting, the Claimant was heavily criticised by Mrs Potter. If any of this happened, we would have expected to see that in the feedback provided by Ms Griffiths via Dr Varney and in text messages between the Claimant and her friend. These criticisms are absent.

371. We are not persuaded that Dr Walker made any of the comments the Claimant alleges at paragraphs 4.27 in her list of issues either, or in the way she alleges. The Claimant has put forward insufficient evidence that these remarks were in fact said or that Dr walker was hostile or aggressive. If she was and had said these things, then we would have expected the Claimant to have mentioned

these in text messages to her friend. She failed to and that is because the meeting did not happen in that way as she now alleges.

372. We are also not persuaded that the meeting can be reasonably described as a performance management meeting. It was not such a meeting. Performance and training progress would naturally be a factor in the conversation, but that doesn't make it a performance management meeting.

373. If, despite the challenges the Claimant faced in her personal life and with her health, she was still providing work and completing training to a reasonable standard and output, then the conversation and suggested ways forward would probably have been different. However, we do not criticise the Respondents for factoring these issues into their thoughts and plans. The Claimant was employed to do work and employed on a training programme. If she was completing neither training nor work, then that would obviously be a legitimate concern for the Respondents, especially as the Claimant would then be being paid a not insignificant wage with little to no benefit to R1 and no progress in training for R2.

374. At paragraph 4.10 of the list of issues, the Claimant also alleges Mrs Potter said and did a number of things aggressively towards the Claimant.

375. Given our finding that Mrs Potter was largely an observer during this meeting, we are not persuaded that Mrs Potter did or said anything aggressively as alleged either.

376. Consequently, when considering the 17 December 2019 meeting the claims in paragraphs 4.10.1 – 12, 4.27.1 – 9 and 5.2.17 of the list of issues fail on the facts and are dismissed.

377. Dr Walker responded to Dr Varney's email saying that she completely agreed with his interpretation of how the meeting went, what the possible solutions were and R4's view of the whether it could provide any further support to the Claimant at page 678 in the bundle.

378. The ultimate outcome of the meeting was the Claimant was not medically suspended. Temporary adjustments were made including the Claimant agreeing to focus on her dissertation. There would be a further meeting in January 2020 to discuss progress and the next steps as described by Mrs Potter in her update email to Mrs Davis and all other managers who needed to know what the outcome was at R2, on 19 December 2019 at page 689.

The action plan December 2019 – January 2020

379. The temporary adjustments covered the period from 17 December 2019 – 15 January 2020.

380. A review meeting was organised on 15 January 2020. The Claimant would have regular non-working days once or twice a week. The OH assessment would take place on 6 January 2020. This plan was written down and appears in the bundle at pages 692 and 693.

381. The fact the Claimant was not medically suspended therefore adds credence to the view of Mrs Potter, Miss Livesey and Ms Proudlove that medical suspension should only be a last resort and it was being considered as a last resort, for example at paragraphs 16 and 17 in Mrs Potter's statement.

382. The plan was emailed to all involved in the Claimant's dissertation and current work, including Dr Walker, Dr Varney, Ms Griffiths and Ms Peymane Adab, the Claimant's dissertation supervisor, at page 695 in the bundle.

383. In the email, Mrs Potter says the following:

"Hi All

Thank you for your emails regarding this trainee, I have put together a provisional timetable for the coming weeks until [Ms B] is reviewed by OH and we meet further to discuss the next steps.

If you can review in the plan [Ms B] should be doing, due to it being so close to Christmas I have put annual leave down for her to utilise as this will help with the planning of work. We need to keep to this schedule as much as we can to stop [Ms B] coming and going as she pleases and we have documentation at our next meeting to demonstrate that she is not undertaking the requirements set out for her.

I do appreciate this may throw up some further challenges from [Ms B], however we will need to deal with this. I do also appreciate the additional time and support Birmingham Council will continue to offer until a further placement is found. Clare and I have arranged to meet with her on 15th January 2020 to review the work she has undertaken as per attached along with discussing her placement move (Which at the moment she is not aware of this impending move) until January when Clare and I will discuss this further with her.

If everyone is happy with the attached I will send this out today to [Ms B] so she can be working on this."

384. The email is interesting in a couple of ways. First it is clear that Mrs Potter doesn't believe that the Claimant's attendance is being appropriately monitored or that the Claimant has legitimate reasons for being off work on some days and not on others, hence the phrase about coming and going as the Claimant pleases.

385. Secondly, the email is worded as needing to demonstrate that the Claimant is not meeting her placement requirements.

386. The Claimant interpreted this as Mrs Potter wanting her out of her job. However, having considered the evidence, it is clear to us that Mrs Potter did not agree with the Claimant's stance in continuing to be at work because Mrs Potter thought she was unfit for work and not completing her training. She also did not agree that it was appropriate for the Claimant to be allowed to attend work in an unstructured and unmonitored way and effectively have a free choice as to

whether she attended work or not, without the need to call in sick to R1. We read nothing more into the email than that. Mrs Potter did not want the Claimant out of her job in our judgment.

387. However, we accept that subjectively this may have appeared hostile or offensive to the Claimant when she read this email as part of her subject access request responses from May 2020 onwards.

388. When considering the meeting in January 2020, Dr Djuric who was the Claimant's "Zone Coordinator" and lead TPD thought it would be a good idea if Mrs Davis was involved in that review meeting too at page 714 in the bundle.

389. The plan did not go well for the Claimant. In private texts to Ms Griffiths, she says as follows on 20 December 2019 at page 727 - 728:

"20/12/2019, 8:16 am – [Ms B]: I'm not sure about going in today. The day at home yesterday wasn't very good for me. I'm not sure what to do. I can't seem to give them the certainty and structure they want and, try as I might, I can't get the support to help me work out how to manage things. I know how Occ Health works - they will just say I need what I say I need but I don't know. My GP isn't helpful. They only go off what I say and I don't know. Feel a bit confused and lost on how to get out of this. The heavy handedness of TPD and LE doesn't help but I'm stuck with it now. Was doing much better until they got involved. I'll see how I feel in an hour or so.

20/12/2019, 8:20 am - Elizabeth Griffiths: I urge you to go in today [Ms B]. Try your best to stick with the plan. Elizabeth

20/12/2019, 8:24 am – [Ms B]: I'm trying but I don't know I'm fit to. I just want to hide."

390. On 27 December 2019, the Claimant had a catch up 1-2-1 with Dr Varney.

391. He reported by email to Dr Walker that the Claimant had reflected on things and was in a better place as a result and that she acknowledged the meeting did not go as well as people had hoped. He reported the Claimant now seemed to accept that she should move placement so the next question was what a suitable placement would look like.

392. Dr Varney also communicated that his preference would be a Health Protection placement, but this had made the Claimant anxious because she had heard from other trainees that the workload was high.

393. Dr Varney had also discussed a proposed Kidderminster placement with the Claimant, but the Claimant was not keen on this because she said she would have a 1.3 hour commute. He accepted this was a reasonable objection because of the interference it may cause with work life balance and he predicted the OH report would suggest the work life balance for the Claimant was important (at page 737 in the bundle.)

394. The Claimant then saw her GP and they advised her to take some time off work.

395. There was an attempt at some kind of reconciliation with Dr Walker about how the meeting went on 17 December 2019. Here the Claimant said at page 730 *"Thanks Clare. I realise things were fraught last time and I apologise for my part in that, and if I didn't come across as professionally as I might have liked. I hope we all feel confident that things are moving forward in the right direction."*

396. It is therefore clear that by 27 December 2019, the effects of the anything said or done at the meeting on 17 December 2019 had largely dissipated.

397. The Claimant was signed off work until 7 January 2020 and this date coincided with the Claimant's first planned counselling session as per her email at page 731 in the bundle. The Claimant being signed off, also meant that there would be a delay in the Respondents being able to obtain occupational health reports for the Claimant.

398. The Claimant alleges at paragraph 4.26 in the list of issues, that Dr Walker misleadingly claimed the Claimant lacked insight and was not taking appropriate steps to access support about her health concerns. She relies on the documents at pages 670, 672 – 674, 676 and 681 as well as paragraph 126 in her witness statement to support this allegation.

399. Having read those emails, nowhere do they confirm that Dr Walker claimed these things. This allegation appears to be the Claimant's interpretation or perception of the factual information Dr Walker provided.

400. In our judgment, these allegations factually did not happen according to the information we have been referred to.

401. What the Claimant has done in several of her allegations, is to mislabel factual information with her take on why that factual information was submitted and then allege that her take on the situation is what factually happened.

402. We have found no evidence that the Claimant was ever described as lacking insight other than how the Claimant would have others interpret those communications.

403. Consequently, the allegation at paragraph 4.26 in the list of issues fails factually and is dismissed.

The Claimant's return to work in January 2020

404. On 6 January 2020, the day before the Claimant was due to return, she emailed Dr walker at page 734 in the bundle. She informed Dr walker that she would like a long vacation to spend time with friends, recharge and to attend a wedding as well as spend time with a friend with terminal cancer who had been supportive of her. The Claimant had spoken to Dr Varney about it and wanted to get Dr Walker's views on it and effectively sought permission to take the period of mid-February 2020 – end of March 2020 off and then return to work in a Health

Protection placement. The Claimant was mindful in the email of the pending OH referral appointment.

405. Dr Walker clarified what the Claimant was asking for in her response email at page 735 in the bundle. In her view, this was a decision that was best taken by R1, namely, Mrs Potter and suggested that this be discussed at the review meeting on 15 January 2020.

406. Throughout the period of December 2019 and January 2020, the Respondents were both keeping the Claimant's attendance and work under review.

407. The Claimant alleges that this was akin to a formal investigation and performance plan. In the Claimant's circumstances, we do not agree that keeping the Claimant's attendance, wellbeing, work output and general day to day workplace actions under review following the meeting of 17 December 2019, as agreed with the Claimant, can be a formal performance plan. Similarly, we are not persuaded that it was, in any way, some kind of formal investigation akin to a disciplinary process.

408. We therefore do not agree that the Claimant was subject to a performance plan or an absence management plan triggering formal procedures. Instead, her performance and absence levels were monitored simply to keep a watching brief about her wellbeing and safety.

409. We also do not agree that attempts were made, by Dr Walker or anyone else at this time, to gather evidence against the Claimant. They were gathering information, yes, but only with a view to getting a clear picture so they were fully informed about how the Claimant was doing with a view to assessing what adjustments were needed or keeping her wellbeing under review.

410. We are not persuaded the Claimant was excessively scrutinised in any way, or that she was set up to fail at any point in December 2019 or onwards before the Claimant returned from Australia in April 2020 (see below).

411. Consequently, all claims at 4.3, 4.18.1 – 4.18.3, 5.2.7 (a – e) and 7.1.4 (a – e) fail and are dismissed.

412. The Claimant returned to work on 7 January 2020.

413. By 9 January 2020, the Claimant had been in touch with Mrs Davis to consent to a psychiatric assessment with Dr England, as per Mrs Davis' email at page 746 in the bundle.

The letter Dr Walker wanted the OH physician to read before producing a report

414. In various claims made, the Claimant takes issue with the letter that Dr Walker wrote for the benefit of the OH physician.

415. In the letter at pages 748 – 749 in the bundle, Dr Walker makes the following points:

415.1. She provides a background to the OH referral including the training programme and job role said to be from Dr Walker's perspective as TPD.

415.2. She details the support provided by the PSU team.

415.3. The fact that the Claimant is producing no work for the placement she is currently working at and that progress towards her learning outcomes has ceased is also discussed.

415.4. Dr Walker mentioned the postponement of the Claimant's Part A exam and the fact she is behind on her dissertation.

415.5. Dr Walker outlines her concerns, namely, the Claimant's difficult but stable situation whilst awaiting several appropriate health interventions, that her upbeat and confident presentation is misleading and that she is actually in a more fragile state than she appears.

415.6. Dr Walker further states that she is concerned actual absence from work has been confused with working from home because absences have not been managed or logged appropriately. She also mentions the Claimant's suicidal ideation and the incident and reaction involving Phoenix Psychology turning the Claimant down for support.

415.7. The letter further details the incident with the PSU and mentions of blame and inquests because of the perceived lack of support.

415.8. Dr Walker mentions the 17 December 2019 meeting, the plans that had taken place and the eventual result, namely them backing down on a medical suspension and instead putting in place a work plan. Dr Walker mentioned how angry the Claimant was at the suggestion of medical suspension.

415.9. Dr Walker describes how they provided the Claimant with an opportunity to show how she could manage with the workplan, which unfortunately the Claimant was unable to keep to.

415.10. The situation involving Dr Varney and the R4 placement is described, namely that they cannot support her any further and that Dr Varney had reported that the Claimant coming into work had caused distress amongst her colleagues also working at R4.

415.11. The suggestion of the 6 week holiday was mentioned and Dr Walker is explicit in stating that she does not want to lose the Claimant from the scheme.

415.12. Dr Walker then states that she would value the OH physician's opinion as to what a good working environment would look like for the Claimant and how they can accommodate her health and well-being needs.

415.13. Dr Walker also asked if it would be possible for some immediate advice

in advance of a report so that she could start making plans, that would be appreciated.

416. Rather than send the letter directly to occupational health, Dr walker emails the letter to Mrs Potter and asks that it be forwarded to the OH physician at page 747 in the bundle.

417. The Claimant takes issue with the letter. She alleges it was inaccurate and labelled her as lacking insight. She said at paragraph 213 h) of her statement that it was written with the sole purpose of getting the OH doctor to assess her as unfit for work and in need of psychological or psychiatric assessment.

418. Dr Walker says that the reason she sent the letter to Mrs Potter at paragraph 83 in her statement was:

"86. My understanding of referrals to OH was that if you are the manager making the referral, you usually put in some background information, and then give some questions that you want OH to answer. I did not know whether the Lead Employer were going to be in a position to do that, so I sent the information to them, hoping that OH would be able to advise on my questions about what the best place for [Ms B] to go was, and what the best way to move forward might be. I had asked to speak to the clinician directly, but Anne advised me to put my concerns in writing [950]. My intention was to start making plans to find somewhere suitable for [Ms B] to go if she was fit to work in some capacity before her trip, and I note this in my letter [749]. I asked for immediate advice in advance of a formal support, not so that I could request an unauthorised discussion, as [Ms B] alleges, but so I could start making plans for a placement if she was fit to work in some capacity. My intention in writing the letter was [not] to influence the OH assessor to conclude that [Ms B] was unfit for work and required further assessment."

419. There is a missing word in the witness statement which has come out as a blank along with other formatting errors such as the number 1 instead of the letter I. Given the Respondent's case was, that this letter had not been written to influence the OH doctor to say the Claimant was unfit for work. We believe this is clearly an error and Dr walker's statement is missing the word "not" hence why we included it in the quote above.

420. Having considered the evidence, we are not persuaded that the letter Dr Walker wrote did anything more than try to put forward a balanced, accurate and honest statement of affairs, to assist the OH physician in having the best information available to them before they provided any advice. The letter is balanced. It states Dr Walker's point of view in a professional and thoughtful way, which she is entitled to do. The intention behind the letter is made clear within it. Dr. Walker wants to make adjustments for the Claimant to continue in the course if those are possible. Nothing else.

421. The Claimant has put forward insufficient evidence that anything in the letter is misleading. Other witnesses supported the fact that absences were not recorded properly, namely, Dr Wilkes and Dr Cooper amongst others.

422. Dr Walker's view of there being minimal work output or training progress is supported by the documentary evidence and emails from Ms Griffiths and Dr Varney.

423. Dr Walker has not just written a letter when there were no grounds for doing so. Clearly, the circumstances of the Claimant's difficulties required very careful thought, everyone to be fully informed before advice was given and for people to be honest and direct about what had actually happened, was happening and how things really were. For all the Respondent's knew, if they got this situation wrong, the Claimant could end up killing herself. It is in that context the letter must be viewed.

424. It is our view that the Claimant has taken exception to this letter because it accurately describes the situation and challenges affecting the Respondents and how they can support the Claimant, which may well have led to the OH doctor advising that the Claimant was unfit to attend work or training, and that was not what the Claimant wanted.

425. In any case, the letter did not get sent to the OH physician before the Claimant's appointment, and the Claimant was not made aware of the letter until she submitted her Subject Access request and was sent a copy in May 2020 as per the Claimant's statement at paragraph 287.

426. Consequently, we find that the Claimant's criticism of Dr Walker's letter is entirely unfounded. The letter was produced professionally, distributed professionally and contained accurate information. It was not produced with the intention the Claimant alleges in the list of issues and the comments made in the letter did not portray the Claimant as disingenuous, difficult or untrustworthy.

427. Consequently, claims at paragraphs 4.25, 4.28 (a – i), 4.29 (a), 5.2.18 (a – i), 7.1.12, 7.1.15 (a – i) and 7.1.17 fail and are dismissed.

The Occupational Health report of 14 January 2020

428. This Occupational Health report is in the bundle at pages 779 – 781. The report gives the following by way of general background:

    428.1. It logs that the Claimant is going through a stressful and distressing time about the impact of a previously abusive relationship and that since 2018 there has been a recurrence of symptoms.

    428.2. It logs her approach to the police and that she is undertaking therapy with RSVP.

    428.3. It describes the Claimant's status as being of low mood and motivation, variable concentration and decreased appetite with disrupted sleep.

    428.4. It notes the Claimant's desired outcome that she is keen to work as she feels it provides her structure. The OH physician agreed.

428.5. It notes the Claimant will need support and adjustments for some time.

428.6. The recommendations were for the Claimant to remain at work and that she was fit for work.

428.7. There were suggested adjustments, namely, to work consecutive days, agree to the holiday for 6 weeks, a stress risk assessment should be undertaken, time off for therapy appointments, working from home on the days of therapy appointments.

428.8. The report also says to avoid long commutes.

429. However, what is concerning about this report is not necessarily what it says. It is what it does not say. For example, we find it is missing the following crucial bits of information:

429.1. It mentions no diagnoses of PTSD and Depression in the background section;

429.2. It makes no mention of suicidal ideation, which is what triggered the referral.

429.3. It makes no mention that there has been virtually no work or training progress for months.

429.4. It mentions nothing about the Claimant attempting to, but failing to, adhere to the first action plan.

430. Consequently, we find on balance, the Claimant has withheld vital information from the OH physician in her assessment appointment. We also find that the referral from R1 must have also been inadequate, otherwise these items could and should have been flagged to the OH physician. They weren't and, in addition, Dr Walker's letter giving the most accurate background of events also did not make its way to the OH doctor.

431. We are therefore of the view that the OH conclusions in this report are not well founded, not because of any fault of the OH doctor, but because they did not have the full information and context for that advice. Either way, it appears the Respondents followed the advice, despite having misgivings about how relevant or sound that advice actually was.

The review meeting of 15 January 2020

432. Prior to the preplanned review meeting, Dr Walker enquired of Ms Adab whether the Claimant had produced any work towards her dissertation. Ms Adab's response was that there was no work yet as of 15 January 2020 at page 751 in the bundle.

433. Dr Walker also asked R4 if the Claimant had been attending work regularly on

Mondays, Wednesdays and Fridays at page 752 in the bundle.

434. The meeting took place on 15 January 2020 as planned late morning. Those in attendance were Mrs Potter, Dr Walker and the Claimant.

435. Dr Walker reports about how the meeting went and the outcomes of it to Dr Varney by email of 15 January 2020 at pages 754 – 755 in the bundle.

436. The important points from the update were:

    436.1. The Claimant's GP had said she was fit for work on a phased return to work.

    436.2. On 17 February 2020, the Claimant would be on annual leave for 6 weeks and HR were sorting out how this would be accommodated.

    436.3. Attendance would be monitored.

    436.4. There is a requirement to do work and do the dissertation. The dissertation would be for 50% of the time. The rest should be normal day to day work that the placement will need to find for the Claimant to do.

    436.5. There will be a further meeting in two weeks to look at placement planning with Dr Walker taking the lead.

    436.6. The Claimant would stay with R4 until the OH assessment has been completed. There was a query whether R4 would keep the Claimant until the start of her holiday.

    436.7. Consequently, given R4's position earlier that it could not support the Claimant, the plan was made on the proviso that R4 agreed to accommodate the Claimant until she went on annual leave and that had been agreed and was possible.

    436.8. What is also noteworthy is there is little mention of the actual OH report document itself from 14 January 2020.

437. Dr Varney then subsequently agreed to support the Claimant in her return to work on a phased basis and this was confirmed to the Claimant in an email from Dr Walker to her at page 756 in the bundle also of 15 January 2020. In response to this email, the Claimant simply said that that was all fine with her at page 760.

438. Despite Dr Walker's view that the meeting seemed to have gone well, a reasonable plan had been agreed and things seemed to be moving in the right direction, the Claimant then sent an email to Mrs Potter and Dr Walker at pages 759 – 760 in the bundle. The Claimant made the following allegations:

    438.1. That she was defensive at both meetings with Dr Walker and Mrs Potter so far because she felt under attack.

438.2. She perceived Dr Walker and Mrs Potter to be irritated at her for not fitting neatly into sickness management policies.

438.3. She confirmed that she was not trying to "skive off" work and still get paid for it. She wanted to maintain routine to help her with the situation.

438.4. The Claimant clearly felt that Dr Walker and Mrs Potter didn't think she was doing her best to try to keep her training going and attend work and the message from the email was that she felt Dr Walker and Mrs Potter had been overbearing.

439. Mrs Potter responded at page 796. She apologised if this was how the Claimant felt and that they were simply doing their best to try to make adjustments for the Claimant in a complex situation.

440. In her evidence, the Claimant said at paragraph 180 that she did not understand procedurally what the meeting was. We do not understand why the Claimant would not understand what the meeting was. It was agreed at the last meeting and the Claimant knew this, that the next meeting on 15 January 2020 would be a review meeting to check progress and see what further support could be offered.

441. We are also unsure why this is being queried in a procedural way, when it is simply a catch up meeting to review how things were going. It wasn't part of any formal procedure.

442. The Claimant says at paragraph 181 in her statement that instantly upon entering the room the tone was hostile. The Claimant accused both Mrs Potter and Dr Walker of failing to say hello or to ask how she was. She described both Dr Walker and Mrs Potter as being condescending, lacking compassion and this resulted in her taking deep breaths to try to calm herself down at paragraphs 182 – 183 in her statement.

443. Dr Walker describes the meeting differently at paragraphs 94 – 97 in her statement. She said the meeting was very different from the December one and it was less emotional and more transactional. A plan was agreed and the tasks set were in Dr Walker's view achievable.

444. Mrs Potter described the meeting at paragraphs 32 – 34 in her statement. One issue that repeated itself was that Mrs Potter again raised that the Claimant couldn't keep coming and going.

445. We are not convinced these precise words were used. We believe Mrs Potter said come and go as she pleases to match the wording in her earlier email.

446. We agree that this may have come across to the Claimant, that Mrs Potter was not understanding that the Claimant was coming into work when she felt well enough and staying off work when she didn't feel well enough to attend. That is not the same as coming and going as you please and we find this appeared to be subjectively offensive to the Claimant.

447. We also believe that Mrs Potter at this meeting stated to the Claimant that she could not come into work simply to socialise. Again, we can see why this view was interpreted in the Claimant's subjective view as being offensive.

448. Mrs Potter confirms the Claimant alleged that she had used an aggressive tone was treating the Claimant like a child. Mrs Potter said she apologised but she was not appreciating being spoken to in an unprofessional tone by the Claimant.

449. Given how the December meeting occurred, we believe that there were still some elements of the meeting that may have been tense and we are of the view that this is a case of both parties being equally responsible for these exchanges.

450. Mrs Potter described the meeting as proceeding on an even keel after this exchange and she believed at the end of the meeting there was no remaining tension between anyone at paragraph 34 in her statement. This was also corroborated by the Claimant in cross examination when she said that after this initial issue, the rest of the meeting went ok.

451. We believe that the meeting started similar to the December meeting with the Claimant perceiving that she was being treated like a child and did not agree with some of what was being said. Mrs Potter did not help matters with some of the turns of phrase she used, which made things worse. It then started to become heated, but not to such a level as the December meeting. Mrs Potter and the Claimant resolved their differences professionally by talking, and the rest of the meeting then went relatively well, hence the agreed plan resulting from it.

452. When considering the tone of the meeting, we are not persuaded that Mrs Potter behaved aggressively towards the Claimant. In any heated exchanges, we are entirely convinced that both Mrs Potter and the Claimant were equally abrupt with each other until they spoke about it, reset and continued.

453. We are persuaded that Mrs Potter would also have said that you are either fit for work and therefore should be working or that you are unfit for work and should be signed off. That was a reasonable observation in our view. However, we do not believe Mrs Potter said the Claimant should be doing her full role.

454. Consequently, the comment in paragraph 4.10.4 and most of the comment in 4.10.8 in the list of issues were, in our view, said and we consider these in light of the legal claims made later in the judgment.

455. We are not persuaded that any of the other comments were said or said in the way alleged by the Claimant in the remainder of paragraph 4.10 of the issues.

456. Consequently, for the 15 January 2020 meeting, the claims in paragraphs 4.10.1 – 4.10.3, 4.10.5 – 4.10.7 and 4.10.9 – 4.10.12 fail on the facts and are dismissed.

457. We are similarly not persuaded that Dr Walker was aggressive at this meeting or made any of the comments alleged at paragraphs 4.27.1 – 4.27.10.

458. We accept that Dr Walker was part of the discussion and that she no doubt would have discussed the need for the Claimant to produce work if she was deemed fit for work. However, we believe this comment about producing work came from Mrs Potter rather than Dr Walker. If any of these things had been said, we would have expected the Claimant to have said so in the texts to her friends. She failed to mention any of these allegations at the time.

459. Consequently, the claims at paragraph 4.27, 5.2.17 and 7.1.14 fail in their entirety on the facts and are dismissed.

460. However, we believe that despite the professional outcome of the meeting, the Claimant was still annoyed as she stated at paragraphs 186 – 188 in her statement. This is why the Claimant then sent the further email having had time to think about how things had gone.

461. The phased return to work plan was then committed to writing and is in the bundle at pages 765 – 766. It implements all of the recommendations from occupational health with the exception of the stress risk assessment suggested.

The aftermath of the January 2020 meeting and mediation request

462. The Claimant also consented to a psychiatry assessment to be performed at page 768.

463. On 16 January 2020, Dr Walker received the requested report into how many days the Claimant attended work between 8 November 2019 and 10 January 2020. There were only 15 occasions in that report at page 775.

464. On 17 January 2020, the Claimant requested directly to Dr Walker that a mediation be arranged by email at page 772 in the bundle.

465. As part of the TPD regular meetings, Dr walker shared an update about the Claimant's situation with Dr Djuric, Dr Mittal and Dr Cooper at pages 776 and 777 in the bundle.

466. In response to the update, Dr Mittal responded about having worked with a similar situation in the past with a male student at page 788.

467. On 21 January 2020, Dr Walker and Mrs Potter both jointly approved the Claimant's annual leave request for her trip to Australia in Mid-February 2020 at pages 777a – 777b.

468. By 23 January 2020, R1, R2 and R4 were all in agreement that a mediation would be a sensible next step. Mrs Potter was at that time attempting to find out what they could offer in R1 as per the email at page 782 in the bundle.

469. On 24 January 2020, Dr Walker sent an email to the Claimant to try to start the discussion with the Claimant about potential placement moves. At page 792 in the bundle. She suggested some dates that she and the Claimant could meet up to discuss the options.

470. On the same date the Claimant responded, but she explained that she wanted to have a mediated conversation first before discussing the placements and asked the Dr Walker speed this up with Mrs Potter first. Dr Walker said in response she did not want to hold up organising the Claimant's placement so suggested that maybe Dr Djuric take up the conversation if the Claimant felt the relationship with Dr walker was compromised.

471. In response to this, the Claimant said that she felt the way in which she was being communicated with by Dr Walker and Mrs Potter was more distressing than being interviewed by the police. We find the Claimant was referring to her experience in reporting her previous abusive relationship to the police.

472. We do not believe the Claimant really felt as she was describing and to say as much was unpleasant, especially as Dr Walker knew the police had triggered suicidal ideation in the Claimant. We are supported in this view when Dr Walker apologised is she had upset the Claimant by email of 24 January 2020 at 14.40 (page 798). The Claimant responded with two emails one of which said:

"Also I just want to be clear that I am not at all upset.

I just want to ensure that we take steps to move forward constructively in a way that all parties are happy with.

Best wishes"

473. We think it is most likely at this point that the Claimant is simply a little annoyed at the conversation. We are not persuaded the Claimant really thought the previous two meetings with Dr walker and Mrs Potter were as distressing as reporting things to the police, or that the Claimant was as upset as her previous comments may have suggested.

474. As can be seen from the email chain, all Dr Walker was attempting to do was to try to expedite the placement discussions to assist the Claimant at page 792 in the bundle.

475. In addition, the Claimant said she felt that a different TPD would make no difference and she felt that she would not be treated fairly.

476. In Response Dr Walker suggested the Claimant involve her Union representative at page 799. The Claimant the stated that she would only meet with a TPD after mediation had been arranged.

477. Dr Walker then updated Mrs Potter about the situation at pages 797 and Mrs Potter, Dr Djuric and Dr Cooper at 804 in the bundle. At page 804, she said this:

"Dear Gordana and Rob,

Sorry, I need help here.

[Ms B] won't meet me or another TPD for a meeting to plan her next training placement without a mediated discussion first. I'm happy to have this discussion and Anne is looking at what this might entail. However, I'm not sure how quickly this would be accommodated.

There is no point moving her until after she returns from her 6 week holiday finishing at the end of March. Jayne Parry has offered to have her at HSMC and we've had a long talk today about what might be needed in terms of level of supervision and support for other staff members. Jayne and I also discussed that she would need to work on other pieces of work, not only her dissertation. I have spoken to Carol Chatt in the past about a placement - she would take [Ms B] at Kidderminster, but thinks she wouldn't get the level of supervision and support she needs placed at Birmingham. [Ms B] has declined to travel to Kidderminster. I don't think she would thrive at Birmingham at the moment and I don't want to set her up to fail.

Please let me know your thoughts,
Clare"

478. Even despite the unpleasantness being levelled at her, Dr Walker is still thinking about what might be best for the Clamant. Mrs Potter was still trying to source a mediator as per her email response at page 805.

479. The situation resolved itself by Dr Walker suggesting that a date with a TPD be pencilled in to be cancelled if mediation had not happened by then. The Claimant agreed to this approach.

480. On 28 January 2020, Dr walker updated Mrs Davis about how the Claimant was getting on and mentioned that the last few exchanges of emails had left her feeling concerned about the Claimant's wellbeing at pages 811 – 812.

481. On 30 January 2020, Mrs Davis responded and said that she had discussed this with the Deputy Dean Professor Whallett and he had said that the Head of School Dr Cooper should take over as TPD and consequently asked Dr Walker to update Dr Cooper at page 813.

The Claimant's next placement at University of Birmingham and further suicidal ideation

482. By 4 February 2020, Dr Walker had suggested that the best placement for the Claimant to be able to flourish in would be with Professor Jayne Parry at the Public health department in University of Birmingham at page 823. This had not been communicated to the Claimant yet or dates provided to Professor Parry because Dr Walker wanted to discuss with Dr Cooper first.

483. On 5 February 2020, the Claimant again asked about mediation and that she was becoming concerned at how long this was taking at page 828 in the bundle. This was following earlier requests on 3 February 2020 to Mrs Potter.

484. Mrs Potter responded on the same day stating that she was still asking R2 if they

had a mediator who could undertake the mediation at page 829.

485. On 7 February 2020, Dr Cooper then made contact with the Claimant to try to organise a meeting with her as her new TPD at page 842 in the bundle. The Claimant responded positively and tried to sort a convenient time and place to meet at page 849.

486. The meeting was eventually arranged to take place with Dr Cooper on 11 February 2020 at 11.30am at page 858 in the bundle.

487. The meeting took place at 10.30 am. Those in attendance were the Claimant, Dr Cooper and Debbie Horley, Account Manager Faculty as a note taker. The notes of the meeting are at page 859.

488. The outcome of the meeting was that the Claimant didn't want to go to a placement at University of Birmingham and instead wanted to go to PHE in St Phillips Place. She felt the latter placement would be busier and more engaging. Dr Cooper agreed to liaise with the PSW team and R1 to confirm arrangements for when the Claimant returned from her period of extended leave.

489. The difficulty at this time was that all of Health protection was bracing itself for the arrival of the corona virus in full force in the UK. There had already been positive tests in the UK by this time and all health agencies were starting to plan how they would meet the first wave of infections that people were expecting to take place imminently.

490. On 11 February 2020, a TPD meeting had taken place between the TPDs of R2 namely Dr Walker, Dr Djuric and Dr Mittal. After being updated by Dr Cooper, Dr Walker wrote to Dr Djuric as follows at page 860 - 861:

"Dear Gordana,

I need your help.

Rob met with [Ms B] this morning. Also, Rob met with Jayne Parry and I today about [Ms B's] future placement. As we discussed at the previous meeting, I had recommended a placement at Birmingham Uni. From today's meeting with [Ms B], Rob says she wants to go to HP.

With the current Coronavirus situation, this is not a time for someone so junior to be going to HP, as we all discussed this morning at some length. Their needs are for trained staff. [Ms B] leaves next week returning at the end of March and Jayne would like to meet with her before she goes to talk about expectations for the placement.

Rob and I ask if you can please write to her as lead TPD giving her the following information and cc in Jayne Parry so Jayne can immediately offer her a meeting this week.

…

…

I've written an outline for you as I know you're crazy busy trying to catch up - Sorry, but I need this to come from you.

Dear [Ms B],

Following your discussion with Dr Cooper this morning, I write to confirm your placement at University of Birmingham with Professor Jayne Parry to commence on Tuesday 31st March, 2020 for an initial period of 6 months.

This will allow you time to complete your dissertation and prepare for Part A as well as working on other learning outcomes to be discussed with Professor Parry.

A placement at Health protection at Birmingham is not possible because of their operational needs in dealing with the Coronavirus outbreak.

Thanks very much,
Clare"

491. Dr Djuric sent the email the same afternoon as per her email at page 860.

492. We have no reason to doubt what Dr Walker was saying. Clearly, in a crisis such as the pandemic, the health protection team would need people on the ground who were trained and could "hit the ground running". We believe that junior trainees would not have been appropriate at the HP placement for the reasons Dr Walker outlined which were discussed amongst the TPD Team.

493. However, it became apparent that there had been a communication breakdown with PHE about this decision not to place people at PHE until they had passed their Part A exam. Certainly, even by late March 2020, those at PHE thought it was still ok to take the Claimant for a placement as shown by the emails at pages 3643 – 3647.

494. The Claimant argued that this meant she was still allowed to be placed at PHE and should have been. However, we do not agree.

495. The Gold Guide and the evidence from Dr Cooper, Professor Smith and Professor Whallett was clear, namely, that the TPDs usually made the decisions about placements, not the placement provider and if there was a problem the ultimate decision maker was the Dean for the School namely Professor Smith. Indeed, this view is supported by one of the Claimant's witnesses Seeta Reddy who said, under cross examination, that when she was a trainee in difficulty, she also had no choice in one of the placements she was sent to.

496. We accept that the arrangements about placements, if there was no reason why they couldn't take place, were informal and were usually just accepted and the trainee would liaise directly with the placement provider. However, that does not mean that trainees get to choose their placements. In fact, if they were allowed

to do so then the system of placements would quickly become difficult and unworkable.

497. The Claimant also seemed to be suggesting that all the people involved in the decision not to place her at PHE were somehow deliberately working against her. We have not seen sufficient evidence to come anywhere near proving that.

498. It was quite apparent, in a number of respects, that communication between the various organisations involved in the provision of the training the Clamant was employed to undertake at the times we reviewed was poor and unsatisfactory.

499. For example, at the time, we heard evidence about there being no well managed absence reporting system between the placement provider and R1 or R2. Absence was not really monitored.

500. There was a lack of effective communication about placements in general, as shown by the fact PHE still appeared to be unaware that a decision had been taken that R2 would not place junior trainees there because of the looming corona virus infection wave.

501. Further, the evidence of Dr Walker was that, even though she was a TPD, she said she did not know who the final decision maker ultimately was about where a person should be placed. We found that surprising but believe her. If Dr Walker didn't know who was responsible for what, that could only cause gaps in decision making, ownership and communication of decisions.

502. There was also a communication breakdown between Dr Walker and Mrs Potter when the highly relevant and important letter Dr walker wanted the OH doctor to see from 10 January 2020, was sent to Mrs Potter who then failed to action it.

503. Indeed, as we shall see later in the judgment, communication was so poor between PHE and R2, that the Claimant was able to start in a placement at PHE having emailed them over a period of weeks and R2 was none the wiser and only found out the Claimant had commenced a placement there when she was already in the PHE building.

504. Noone at PHE thought to copy anyone for R1 or R2 into that correspondence when to us, that would have been an obvious thing to do with all correspondence involving a trainee's placement decisions, arrangements and start dates.

505. We therefore do not conclude that there was any conspiracy type behaviour going on to single out the Claimant for poor treatment about her placement in April 2020. However, despite us not doubting that people were trying their best, there was a series of relevant failures involving significantly ineffective communication between all the relevant organisations in this case at times.

506. In response to the email Dr Djuric sent confirming the Claimant's placement at University of Birmingham, the Claimant stated that she wanted to raise a grievance as per her email at page 863.

507. On 11 February 2020, Dr Cooper emailed the Claimant and reiterated that HP was not going to be taking any trainees unless they have passed their Part A examination at page 868.

508. The Claimant alleges that decision were made about her placement without her input. This is clearly not proven. There was a meeting between Dr Cooper and the Claimant before the decision was made and there were also prior discussions with Dr Walker and Mrs Potter about the Claimant's training in general and the suggestion and rejection of a placement in Kidderminster.

509. Consequently, the claims at paragraphs 4.15.1, 5.2.1 and the first line of 7.1.1 fail and are dismissed.

510. In response, also on 11 February 2020, the Claimant sent three emails to Dr Cooper cc Dr Djuric and Mrs Davis. The email chain is as follows:

"On Tue, 11 Feb 2020, 6:31 pm [Ms B] wrote:

I am deeply unhappy with all aspects of how I am being dealt with. I raise as a serious concern the deeply triggering behaviour of my employer which I have repeatedly raised and the employer has refused to address.

I do not accept a placement at UoB. I would like to escalate my concerns about the behaviour of my employer and request procedures to be followed.

I first raised this issue 4 weeks ago and am disappointed that no action has been taken, and that the behaviour I have repeatedly complained about has continued.

I will be discussing the recurring suicidal ideation that are due to my employers behaviour with my GP.

Best wishes,
[Ms B]

On Tue, 11 Feb 2020, 6:35 pm [Ms B] wrote:

Please can you clarify if the situation re. PHE is the case for all trainees?

I believe a number of trainees have very recently begun their first post at PHE despite not being post part A.

I would like a written explanation of why I am being treated differently. I would also like to see in writing the process by which training placements are agreed and arranged.

Best wishes,
[Ms B]

On Tue, 11 Feb 2020, 6:40 pm [Ms B] wrote:

I do not wish to speak to another TPD. I want proper resolution. You make me want to kill myself and you refuse to listen.

I want resolution and I will explore my options given that you have repeatedly refused to respond to my requests for my resolution or my requests that you change your behaviour as you trigger in me suicidal thoughts.

From: [Ms B]
Sent: 11 February 2020 19:05
To: Rob Cooper
Cc: Gordana Djuric; Doreen Davis
Subject: Re: Confirmation of your next placement

And if you continue to back me into a corner and give me no way out, I will order a suicide kit for when I return from my trip. And I will make sure it is made clear that I repeatedly asked you for help and resolution, and you insisted on backing me into a corner and making me feel that there was no way out. And that I warned you of this and that you refused to adapt your behaviour."

511. We have thought very hard how to interpret these emails.

512. Whilst we accept the Claimant had mental health concerns and the emails need to be read in that context, we find these emails are highly manipulative behaviour in response to the Claimant not getting the result she wanted, namely, to be placed at PHE.

513. We find these emails were sent to try to get the decision makers to change their minds and place her where she wanted to go.

514. Dr Cooper had only been her TPD for a matter of days and he was almost immediately faced with very challenging behaviour from the Claimant.

515. Dr Cooper did not respond to these emails. He said under cross examination that that was because he was in shock at receiving them and that he didn't know what to say because what he did say, even if he thought he was being reasonable, might have made matters worse. In our view, we can see why Dr Cooper did not respond to the emails for the reasons he suggested and we believe him.

516. In response to the grievance email, Dr Djuric sought advice from Mrs Davis and she referred the issues to Dr Cooper, before receipt of the emails mentioning suicide as per her email sent on 11 February 2020 @18.48 page 871.

517. Dr Cooper then sought advice from Mrs Davis at 19:48 that evening as per the email chain at page 873 in the bundle copying in the Deputy Dean Professor Whallett.

518. Dr Cooper was then on annual leave hence why Mrs Davis was then trying her best to field the various correspondence that was coming from both her internal team and the Claimant.

519. On 12 February 2020 @08.17, following an urgent call with Professor Smith the Dean, Mrs Davis emailed all her team members to state that if any correspondence was received from the Claimant, they were not to open it but to forward anything to the PSU team alone at page 875.
520. On 12 February 2020 @ 08.26, the Claimant emailed Mrs Davis to ask for a further occupational health assessment. She explains that her health had in her view been improving, but now she was thinking about suicide again because of the acts of her employer at page 874 in the bundle.

521. In response, Mrs Davis offered the Claimant a call and suggested that if she did feel suicidal, she contact her GP, the Samaritans or dialled 999 at page 876 in the bundle. The Claimant then arranged to speak to Mrs Davis.

522. By the afternoon of the 12 February 2020, the Claimant had phoned in sick at work because of stress. Dr Varney was updated by text message and Dr Varney then emailed Dr Walker. He said in the email at 14.54: *"Had a text from [Ms B] saying she is signed off with stress and still no mediation and moving to uob?"*

523. Clearly, the mediation situation had not changed and neither had a final decision been made about the placement change in Dr Varney's view at page 880 in the bundle.

524. Dr Walker was working in the background to try to co-ordinate the support and response between Dr Varney's team and R2 as shown in emails at page 881. At the end of her correspondence, she stated that any queries needed to go to Dr Cooper directly rather than to her. She was effectively handing over the queries to Dr Cooper, whilst still appearing to try to be as helpful as she could. Dr Walker then updated Mrs Potter by email with the events at page 886.

525. In the meantime, by 16.52 that day, the Claimant had spoken to Mrs Davis and Mrs Davis sent her an email confirming the various escalation routes for her concerns. Mrs Davis wrote a concise but informative email about not only the teams that needed to be contacted but also gave specific email addresses and contact details for who she could raise concerns with at R1, R2 and the PSU team at page 882.

526. As an important piece of context, on 13 February 2020 by email at 19.11 to Mrs Davis' line manager, the Claimant said the following about how she had been supported by Mrs Davis at page 889 in the bundle:

    "Dear Amanda,

    I am an ST2 Public Health Specialty Registrar based in the West Midlands. I have recently been undergoing some personal difficulties that have brought me into contact with Doreen Davis.

    I believe you are her line manager and wanted to provide some feedback on how I have found her in her dealings with me.

I have found Doreen to be incredibly patient at dealing with me when I have been very distressed and not behaving particularly well! I have really appreciated her kind and patient approach at these times, and her determination to ensure a constructive discussion is had.

She is very skilled at de-escalating situations and at calming me down non-patronisingly, and yet assertively ensuring that the points she wants to make are heard. These advanced communication skills are rare, and not always appreciated.

I have felt very lonely at times in my current situation and Doreen has reassured me that the PSU is available to support me whenever needed. From her approach so far I have confidence that she is someone I can ask for help and expect a consistently mature and helpful response.

I am grateful to know that this support exists and I feel empowered by the support she has given to find a way out of my current situation, which has at times felt overwhelmingly bleak.

I wanted to pass on these comments to you -1 hope this is helpful feedback.

Thanks once again to Doreen for her support."

527. Throughout this period, the Claimant was in text communication with a Paul Coleman, who was himself liaising with Sharon Gall at PHE.

528. These texts effectively show that despite the clear decision of R2 that the Claimant would not be going to PHE, the Claimant was bypassing the correct structure for how placement decisions were made regardless, by speaking directly with PHE to organise a placement there at pages 891 – 892.

529. The Claimant's case was that she could pick and choose which placements she went to and that she was simply following the usual procedure. We accept that sometimes placements where there were no difficulties could have been organised in this way. However, we find the Claimant was going against a clear and direct decision of her Training leads in behaving in this way, which was not a legitimate way for the Claimant to behave.

530. On 16 February 2020, the Claimant emails Mrs Davis as follows at page 894:

"Hi Doreen,

Thanks for your email below and your time on the phone the other day.

I've decided a plan of action that is a little bit different to what we discussed and which doesn't involve escalation, but which I am happy with.

Just wanted to let you know as I know you had asked the PG Dean's office to look out for my email.

Happy to speak on the phone if that's helpful. I'm around Monday after 3.30pm, or Tuesday and Wednesday most of the day.

Best wishes"

531. We now turn to the emails the Claimant mentions in her text messages to Paul Coleman.

532. These start in the bundle at page 3647 and commence 12 February 2020 @ 13.54, which need to be read in the context of the fact that, by now, the Claimant's lead TPD and Zone TPD have both confirmed separately that she is not to be placed at PHE but is instead to attend University of Birmingham on a different placement:

"Hi Sharon,

Sorry for any confusion. Paul Coleman advises that you are expecting me to start on Monday 17th February.

I am going on holiday but was expecting to start on Tuesday 31st March. Had this not been communicated to you by the TPD? Did they not mention anything about me at all?

Thanks"

533. The last paragraph is enlightening. We interpret the Claimant's question as querying whether Ms Gall knows that the Claimant has been rejected for being placed at PHE. She was trying to ascertain whether they knew the TPDs had rejected her placement request. Of course, the Claimant already knows the TPDs will not have informed Ms Gall she was going to PHE, but may not have communicated that to PHE.

534. Ms Gall responds on 12 February 2020 @ 14.05:

"Hi [Ms B] a, no, not that I am aware, have a nice hols and see you in March

Best wishes

Sharon"

535. Now of course, the Claimant knows that PHE and the TPD team have not been joined up and this is where the communication breakdown we mentioned earlier starts to cause strife. We say this because without PHE and R2 being joined up, this has allowed the Claimant to try to undermine the decision of R2. The chain continues on 15 February 2020:

"Thank you!

Look forward to meeting you then.

Best wishes"

536. The emails then jump to 22 March 2020, which is when the first national lockdown was announced:

"Hi Sharon,

Just wanted to check-in with you given the disruption caused by COVID-19.

Are you still expecting me on Tuesday 31st March? Should I come to St Philips Place?

Also, I've had to cut my holiday short and will be back earlier than expected so, if possible, can I come in on Monday 30th March?

Thanks"

537. Of course, the Claimant already knows both that a decision has already been made that she should not attend the placement at PHE and that R2 had made a decision not to place trainees at PHE during the pandemic unless they had passed their Part A examination already.

538. Ms Gall emails back to say she will need to check the position at page 3646. In the meantime, the Claimant becomes stranded in Australia because flights have been grounded and this is eventually escalated to Dr Carol Chatt a public health consultant.

539. On 26 March 2020 @ 14.00, Dr Chatt then emails Ms Gall to confirm permission for the Claimant to commence work when she gets back from Australia, so long as she was asymptomatic of corona virus at page 3644.

540. At this point the Claimant had succeeded in her attempt to completely bypass R2 in booking her placement with PHE and reconfirming the arrangements given the coronavirus pandemic commencing for the UK.

541. On 13 February 2020, an administrator from R2 emails the Claimant to ask what her current placement is and what her other programmes will be. It is a "Dear all" email, therefore was probably sent to all trainees.

542. The Claimant responds as follows: *"I am just about to finish at Birmingham City Council. Next placement to begin 1st April TBC. Best wishes".*

543. Of course, this response is very telling. By this point, the Claimant has already confirmed not only the placement with PHE but also the start date. On the Claimant's case, this was a perfectly legitimate thing to do by organising the placement directly with the placement provider, because her evidence was the trainee picks the placement. Therefore, if the Claimant believed there was no doubt and/or nothing wrong with what she was doing, the Claimant should have had no difficulty in saying to the administrator that her next placement was at PHE and she was due to start 31 March 2020. The Claimant failed to do that and

instead said her placement was “TBC” or to be confirmed. That was a lie.

544. Clearly, on the Claimant’s own case, the response to this administrator is dishonest. The Claimant knows where her next placement will be and also knows that what she has organised behind the scenes with Mr. Coleman and Ms Gall, goes directly opposite to what her senior course leaders at R2 have decided for her. This is why we find the Claimant has not informed the administrator of the placement, because the Claimant knew that as soon as she did, R2 would be alerted to the fact the Claimant had gone against their decision.

545. We therefore find that, not only did the Claimant know that she was not to attend the PHE placement in April 2020, she also knew that R2 had the power to decide where the placement was going to be and she knew that decision had already been made.

546. On 18 February 2020, the Claimant withdraws her self-referral to OH by email at page 897.

547. Also, on 18 February 2020 @ 10.31, the Claimant emails both Dr Varney and Ms Griffiths to say that she has left something in their desk drawers to say thank you for the support and patience over the last few months at page 899.

548. On 25 February 2020 @ 14.38, Dr Walker emailed Mrs Potter following further discussion about the Claimant and Dr walker asked if the OH doctor had received her letter of 10 January 2020.

549. By 26 February 2020, the Claimant’s ARCP needed to be completed, which was part of all Trainee’s regular professional and progress review. This was usually completed with input from the educational supervisor at the placement because they were the provider and monitor for all front line work given to the trainees at the placement provider. An ES report would be produced that would inform the ARCP when it was completed by the allocated TPD for the course.

550. At Paragraph 32 in his statement, Dr Cooper confirms that the reason why he asked for this appraisal to be done when he did, was because the placement at R4 had just finished and it was better to have a contemporaneous report on progress when the placement had just ended. We accept that evidence. It makes sense.

551. Dr Varney as the Claimant’s ES, completed his report at pages 932 – 934 in the bundle. He explained in factual terms the difficulties the Claimant had and said that he felt unable to sign off any of the competencies for the Claimant.

552. The Claimant alleges that this request for Dr Varney to prepare the appraisal report was outside the normal timetable and was done without her knowledge or consent with a view to implementing a PCP without making reasonable adjustments.

553. We reject that allegation. First, the alleged PCP or adjustment weren’t pleaded at all. Secondly, we accept Dr Cooper’s evidence about why he requested the

report when he did and we also do not accept that this was done without the Claimant's consent or for the purpose she alleges. She consented to this information being shared when she signed up for the training course and started her employment.

554. Consequently, the allegations at paragraphs 4.18.4, 5.2.7 (d) and 7.1.4 (d) fail on the facts and are dismissed.

555. On 3 March 2020, Dr Djuric became aware of 11 February 2020 emails containing he Claimant's suicidal ideation and she forwarded them on to Mrs Potter.

556. On 3 March Dr Walker chased a response to her previous email about the letter for the OH doctor.

557. On 4 March 2020, Mrs Potter responded to Dr Walker confirming that the letter had not gone to the OH doctor. This meant that Dr Walker and anyone else at R2 who thought the OH doctor had read Dr Walker's letter before confirming their advice, had been under the misapprehension that Dr Walker's letter had been taken into account at page 950 in the bundle.

558. About this, Dr Walker said as follows:

"Hi Anne,

Thanks for clarifying. I wish I had known this earlier. It would have made a huge difference and if something like this happens in the future I would like to know as soon as possible.

You may remember I did ask if I could speak directly to the clinician and you said to put my concerns in writing instead. The email was sent to you before she had her appointment and to some extent was expected. It is very disappointing that the clinician didn't get to see it, and also I was not informed that they hadn't seen it when we met with [Ms B] or in subsequent discussions.

Please talk directly to Rob in future- he is taking over and if I act as a go between, there is the chance of information being delayed, lost or misinterpreted.

Kind regards,
Clare"

559. On 4 March 2020, Mrs Potter updated the Claimant and asked for her to make contact when she was back in the country. Mrs Potter thought another referral to OH would be a good idea when the Claimant returned from leave. Mediation was still being looked into and this had been escalated to Ms Proudlove at page 953 in the bundle. Crucially, Mrs Potter said:

"I would like to arrange a further OH appointment to support your placement difficulties you have raised with Dr Cooper following your meeting with him prior to you commencing your period of leave. With the support from OH who will

advise on such adjustments regarding your placements and the distance they feel is reasonable to commute to a work place whilst supporting your ongoing health.

I appreciate that you are wishing to undertake mediation before any further meetings are held and i have escalated your concerns to my line manager to support a way forward. However please be assured i am wishing to support you following your return from leave."

560. On 23 March 2020, Dr Walker and Mrs Potter were corresponding to see if there was any news about whether Claimant would be able to return to the UK.

561. On 24 March 2020, Mrs Davis briefed Professor Smith about the situation with the Claimant, including a summary timeline of events at page 959 in the bundle.

562. Both Mrs Davis and Professor Smith stated in their evidence that in Mrs Davis' case, she was simply feeding back to her senior management what had happened so they could have oversight and kept a watching brief of what was going on.

563. For Professor Smith, he said that he wanted to personally make sure that the Claimant was getting appropriate support, which he was obliged to do as Dean being responsible for all the training outcomes and safety issues of trainees in his remit. We do not doubt the explanations provided by Mrs Davis or Professor Smith here.

564. Significantly, on 24 March 2020, at page 966 in the bundle, there is an email discussing another trainee who the Claimant confirmed in Examination in chief was called Antiope. This trainee was also not being placed at PHE because of the corona virus situation. We therefore find that this email too supports the fact that PHE were indeed turning away trainee placements for not only the Claimant but also others.

565. On 25 March 2020 UK time, Gemma Lasikiewicz HR Adviser, confirmed that an OH appointment had been arranged for the Claimant upon her return to the UK. The Claimant responded saying she had not consented to the appointment and she was stranded in Australia at page 970 in the bundle.

566. The next day Ms Lasikiewicz replied saying she had been asked to schedule an appointment upon the Claimant's return to work and asked that the Claimant keep her updated with how things went with being stranded in Australia. The Claimant was also asked whether an appointment could be organised at a more convenient time given the time difference in Australia.

567. Instead of responding to the questions posed, the Claimant replied asking how the mediation was coming along and whether her concerns mattered to R1 at page 968.

568. Ms Lasikiewicz responded saying that mediation would now be organised upon the Claimant's return to work and when the crisis because of corona virus was

settled at page 967.

569. In the meantime, nothing further of note happened other than the Claimant presenting a complaint to the Employment Tribunal about salary on 3 March 2020.

The incident on 8 April 2020 at PHE

570. On 7 April 2020 at 14.30, the Claimant responded to an email from Mrs Davis asking the Claimant to keep her updated about her progress on getting back to the UK at page 989 in the bundle.

571. In this email the Claimant said as follows:

"Hi Doreen,

Sorry for the slow response. It has been a bit hectic with all the recent disruption to international travel.

I came back to the UK last Saturday (4th) after some disruption to my travel plans which meant I was stranded for a few days.

On Monday I began a full-time placement at PHE in health protection. I decided not to have a further OH assessment or request any adjustments. I would prefer not to involve HR going forward as I have not found it helpful.

I think this is the best approach for me and my training and the best way to return to work full-time, which was always my goal.

I will keep this under review and if I think the situation needs reassessment, I will be in contact to discuss.

Thanks for your help and support. Let me know if you have any questions or would like to discuss.

Best wishes"

572. It turned out the Claimant had returned to the UK on 4 April 2020 and failed to inform R1 or R2 as they had reasonably requested her to do.

573. The Claimant also informed R1 of the same and also that she did not require an OH assessment or any support in terms of adjustments at page 990 in the bundle.

574. The timing of the Claimant informing the Respondents that she had returned is significant. She waited until after her first day at PHE had occurred. We find the Claimant did this deliberately, so the Respondents were not on notice that she had started a PHE placement until after it had commenced. In our judgment the Claimant did this, because she knew that she was not supposed to have started this placement and wanted to wait for it to have commenced, undoubtedly so it

would be seen to be more difficult to remove her from the placement once it had already started.

575. After these updates, Mrs Potter emailed Dr Cooper to confirm if R2 was aware that the Claimant had returned to the UK and started a placement at PHE. Dr Cooper replied that they were not aware at page 992a in the bundle. In the meantime, the relevant people in R2 are emailing each other to see if any one of them knew the Claimant had returned to the UK and started the PHE placement.

576. Dr Walker replied back to Dr Cooper on 7 April 2020 @ 19.00. She said as follows:

"Dear Rob,

I know nothing about this and I can't imagine how this has been arranged. Not by me.

The last thing I knew was that she was in Australia and not expected back. The plan was for OH assessment and that we didn't think PHE was a good training placement for her in the current circumstances.

It's probably best to contact her ES and ask her to go home until she's had OH assessment. I don't think she can just turn up at a placement without agreement, can she? This is a little unusual that she thinks this is ok.

Best wishes,
Clare"

577. Early on 8 April 2020 @08.48, Dr Cooper was attempting to find out who the correct person was for him to speak to, to get to the bottom of what had gone on with the PHE placement. He wrote as follows to Dr Walker at page 1013 who had started working at PHE from 7 April 2020:

"Dear Clare. I've emailed Soili -email come back that she is also away (till April 13th). As you are with PHE can you ASAP do whatever try to find out the circumstances i.e. which office it might be and what might be the supervisory arrangements - and who me/Gordana can then contact. Thanks Rob"

578. He also emailed another colleague at PHE to try to ascertain which office of PHE the Claimant was working at and what the arrangement was at page 1031 in the bundle.

579. By lunchtime on 8 April 2020, things had moved on and Dr Cooper sent the following email to Mrs Potter to update her at page 1032 in the bundle: *"Anne. Can we have an urgent Tel call today. [Ms B] has apparently arrived unannounced at PHE without authority sat at a desk and they don't wish her to be there. They are asking her to leave the premises."*

580. According to Mrs Potter at paragraph 65 of her statement, there was then a call between Dr Cooper and Mrs Potter. Mrs Davis was also requesting what R1's

view was about the Claimant's current status.

581. Dr Cooper's statement was enlightening about what happened during 7 and 8 April 2020. He said this about the situation:

"34. Later on 7 April 2020 I received an email from Anne asking if we knew that [Ms B] was back and doing a full-time placement at PHE [999]. I initially viewed this with disbelief as I knew the Lead TPD had e-mailed saying not to be at PHE. I wanted to check there hadn't been some sort of misunderstanding. I knew Clare was also a consultant working at PHE, and I asked her if she knew anything about this [999].

35. I next had a conversation with Dr Helen Carter, Deputy Director at PHE ("Helen") on 8 April 2020. I remember receiving this call when I was out of the house on a walk, during the one hour of exercise we were allowed during the first lockdown. I made a note of the call in my notebook shortly afterwards that day [986]. Helen was concerned about [Ms B's] behaviour at PHE. My note records that we discussed that [Ms B] had been in contact with PHE staff recently but not told them about the Lead TPD email (Gordana's email to [Ms B] at [869]), so PHE felt deceived. I asked Helen if [Ms B] could be of help at PHE, and Helen stated clearly that they did not want her there. Given that we were in the first covid lockdown, there was also a potential Covid risk ([Ms B] would have undertaken international flights just before). This was not a false or misleading claim. The Covid Lockdown regulations [3444 – 3455] were in place from 23rd March 20 (and my understanding they put into law on 26th March 20) [3444 – 3455]. From 23rd March 20 everyone was instructed to self isolate and stay at home. After discussion with ones' employer certain people could be permitted to be in a workplace. [Ms B] had not had such a discussion and hadn't even informed her employer that she was back in the UK. Also being in an unauthorised placement (3641) would mean she would not be indemnified by her employer."

582. We take a moment to pause here. We note that Dr Cooper says that PHE felt deceived. We have no hesitation in believing that. We say this because they were deceived. The Claimant was dishonest to PHE, dishonest to R1 and dishonest to R2 in the way she has sought to circumvent the decision by R2 that she should start a placement at University of Birmingham rather than PHE. The Claimant effectively deceived people by omission.

583. The contemporaneous note at page 986 in the bundle is also what we find to be an accurate note of the conversations Dr Cooper had with people at the time. There is no reason to disbelieve it.

584. We also note that Dr Carter is alleged to have said to Dr Cooper that because they felt deceived and because of the breach of the corona virus rules they thought the Claimant had committed.

585. Dr Cooper's note also logs that PHE wanted trainees who were already HP trained and no others. They were also concerned that these behaviours may also have been a result of her mental health. However, we are not convinced that the deception in organising this placement is because of the Claimant's mental

health. There is no evidence to support her mental health causing dishonest behaviour. We find the Claimant's behaviour here was done simply to get the placement she wanted.

586. Dr Cooper continues:

"36. I did not arrange for [Ms B] to be escorted from PHE premises; Helen and I agreed on our call that [Ms B] should be asked to leave the office. There would not have been time for [Ms B] to be reviewed by OH before being asked to leave PHE premises.

37. I advised Helen that two people should meet with [Ms B] when she was advised to leave the office as I recalled how angry [Ms B] had 'switched' and become when I talked to her at our meeting on 11 February 2020, and expected that being asked to leave PHE might prompt an angry or upset response, which could be hard for one person to deal with on their own, and where a second observer would be best practice.

38. I recorded in my note that PHE felt deceived because [Ms B] had apparently contacted them to say she was coming as if implying that HEE had approved this, when we had not. I did not make a distorted or misleading claim about [Ms B] that she had been dishonest to PHE in arranging her placement. My understanding from Helen's phone call was that [Ms B] had implied to PHE that she had permission to attend PHE for a Health Protection placement in April 2020, which she did not, and so PHE felt anything they said to her was not authorised because [Ms B] kept from them what Gordana had said in her email to [Ms B] (3641). I recorded in my note that PHE were under pressure re covid, and still only wanted speciality registrars who were health protection trained [987].

39. At the end of my note of the phone call I recorded that we would "follow up with PSW (Professional Support and Well-being) and HR to ensure help etc for this poor trainee." I was concerned about [Ms B's] wellbeing.

587. At 16.19 on 8 April 2020, Dr Walker emailed Dr Cooper with an update about what she had been informed happened with the Claimant. The email said at page 1039:

"Dear Rob,

Just to let you know that Helen Carter and Carol Chatt saw [Ms B] this afternoon with the result of her leaving the premises and being asked to contact you. I disclosed her pattern of behaviour regarding distressing emails so that a plan could be put in place to mitigate the effects on staff members.

Staff are being asked to forward emails unopened onto Helen and she will pass onto you. Helen will also pass on her notes from the meeting to Carol to agree before sending onto you. Apparently, it was a difficult meeting with [Ms B] reportedly refusing to leave at one point.

It seems that [Ms B] was expected as she had contacted them to arrange a placement sometime last year, but their usual process hadn't been followed. They wouldn't have accepted her on the basis of her portfolio had they known, regardless of any other issues. In addition, because I'd not told them her name when I'd discussed a placement previously, they hadn't realised who it was. Also she hadn't disclosed that we had told her not to go. Furthermore, they don't have the capacity to supervise her.

I hope this is satisfactory. More than ever we must have a training allocation policy. I'll get cracking on it - it got put to the bottom of the pile whilst I was ill!

Best wishes,
Clare"

588. This email, in our view, genuinely explains what has happened that day and the reasons for it as Dr Walker understood it, having received feedback from Drs Carter and Chatt.

589. There is also an investigation report and file note which shed light on what happened that day at pages 1077 and 1128 – 1132 in the bundle, and evidence from Angela Cartwright who was a public health registrar.

590. Ms Cartwright describes what she witnessed as follows:

"2. [Ms B] has asked me to describe my observations of events between 6 and 8 April 2020 relating to her claim and to provide some observations on other aspects of the training scheme. I am writing this in retrospect, although I have referenced personal journal notes taken at the time.

3. I was based at the office on 6 April 2020 when [Ms B] arrived for her health protection placement. This was at the start of the Covid pandemic. [Ms B] was not expected, but this was not unusual at this time, as there was episodic oversight of when trainees were due to arrive on health protection placement. Trainees would contact one of the administration team to state when they wished to start their health protection placement, and this individual would make arrangements for the placement. Other trainees were also starting during this period. I arranged for IT equipment for [Ms B] from the office and arranged for her to complete her e-learning whilst asking other consultants who her supervisor would be. My desk was close to hers and we chatted over these days. I am probably the person who interacted with her most over these few days. I did not note any concerns regarding work or attitude during this period.

Chronology of Events

4. On 8 April 2020 I was again working in the office, when Helen Carter, deputy director for Health Care Public Health asked to speak to me in her office. She stated that [Ms B] should not be on placement with us. I do not know where this information came from. She also spoke with Carol Chatt who was the training lead at the time. Helen and Carol asked where [Ms B] was, and asked that I sit within sight of the door where they planned to meet with her. No enquiries were

made of me with regards to [Ms B's] work or attitude. If they had been, I would have remarked, as above, that I had not noticed anything unusual.

5. I recall that Helen and Carol asked [Ms B] to speak to them in a side room. I do not know the content of this conversation but was aware that [Ms B] was very upset. I think she was crying. I recall bringing over a pack of tissues after she came out of the room.

6. I did not hear any of the conversation. I recall feeling that the approach had been heavy-handed, but I did not know what the issue was in regard to the placement.

7. After [Ms B] left the office there was no further conversation with me regarding the event. I believe that Helen Carter and Carol Chatt went back to Helen's office. I do not recall if Carol Chatt or Helen Carter seemed upset. No-one discussed the incident with me afterwards.

9. I do not have any information regarding the background of this event, why [Ms B] should not have been on placement, nor where she should have been on placement, nor any of the events after this."

591. We have taken what Ms Cartwright says at face value. She appeared to us to be relatively independent and described most of the events in a factual way with little by way of opinion.

592. We have not treated her comment about the situation being dealt with in a heavy handed way with any weight, because she admits she was not fully informed about the incident and, consequently, we find she was not really in a position to comment in that way.

593. Dr Walker was present during these events too and simply says in her statement that she was initially trying to find out what had happened and why the Claimant was present at PHE, which is proven by the emails we have referred to. Dr Walker then had a conversation with Dr Carter only, and explained the Claimant was not meant to be at PHE. Then she says steps were taken to try to mitigate against the Claimant's known behaviours when decisions were made that the Claimant did not agree with, so that everyone would be protected. Dr Walker also stated that she spoke to Katherine King to keep her in the loop as Deputy Dean.

594. We believe Dr walker's version of events because all of what she has said makes sense in light of the emails from the time and the order in which the events happened. We also do not believe that any of what Dr Walker said to Dr Carter was misleading, distorted or false in any way.

595. Consequently, claim 4.28 j of the list of issues fails on the facts.

596. The relevant parts of the Claimant's statement are below:

"237. I returned to the UK on 4 April. I arrived at work on 6 April, feeling positive and hopeful about my future. I felt refreshed from my holiday and I love work and

being busy, so I was keen to get stuck in. On arrival, I asked for Sharon Gall at reception but she wasn't there. I then asked for Carol Chatt and Roger Gajraj as these were the people I had been in contact with to organise my placement. It was a regular occurrence that as a registrar group we would contact each other to gain access to the building and I knew that the same thing had happened to Rebecca Russell when she had begun her placement on 3 March [939, 2387,3750-3752]. Another registrar, Gunvir Plahe, saw me and took me in. I didn't think anything of it. I was given a pass later that day.

597. It is important to note the number of names provided here to the reception desk. The Claimant says she gave 3 names to security and was then taken upstairs by a fourth. The Claimant continues:

"238. Someone, I can't remember who, invited me to eat the pizza that had been leftover from the weekend. I did not want any as I was managing my diet in line with the diabetes misdiagnosis. He was keen to show me however and I felt that he was trying to be hospitable to me as a new person which I appreciated so I went along with it to be polite. I can't remember exactly what happened or who was there as it seemed trivial. I gather that Helen Carter (HC) felt I rudely asked for the pizza and I did not show her appropriate deference as a Deputy Director. I don't remember speaking to HC at that time. If I did, I may have seemed overconfident in my approach as I was experienced at dealing confidently with very senior colleagues from the DH.

239. Angela Cartwright gave me my laptop which had been prepared by Sharon Gall as I understand it. She set me up to complete my mandatory training and we made small talk over these few days. I attended work 9am – 5pm on Monday and Tuesday. I completed 'new starter' induction activity of mandatory training and team meetings. I was glad to be back in the swing of work. I felt able to get up and attend work with regularity. I appreciated having the structure and discipline of a 9-5 job. I did not and had no intention of sharing my personal circumstances with people who I had just met.

240. At PHE they were buying sandwiches for staff due to the coronavirus pandemic. The vegetarian sandwiches were running out very quickly in the day. This was a problem for me as I am vegetarian. We were discouraged from leaving the building due to the pandemic and there were police present in the street to enforce this. If there are no vegetarian sandwiches left, it meant I could not eat. In addition, at that stage I was still having my diabetes diagnosis investigated and so was managing my diet by eating a late lunch and being very careful to not skip meals.

241. I thought it would be best to bring this to the attention of whoever was buying the sandwiches and ask them to get more vegetarian ones. I did not feel this was controversial, aggressive or unprofessional. I did not wish to have problems with my blood sugar at work and it was my responsibility to avoid that. Likewise, they had a duty of care to me as a diabetic. If I had experienced problems with my blood sugar due to a lack of food, I would likely have been criticised for not having said anything.

242. I do remember this conversation with HC. I asked her if she knew who was buying the sandwiches, as I would like to ask them to get more vegetarian ones. She was quite curt in response, telling me that it was her who was buying the sandwiches and that was all they had in the shop. She seemed a bit unreasonably annoyed but I left it at that. I was bemused by her response but I wasn't bothered by it. I wasn't particularly angry or upset about the sandwiches. I decided instead that I would put one in my desk in the morning to make sure they didn't all get eaten before I had chance. I thought it might look underhand or selfish if someone saw me, but it seemed like my only option.

243. I understand now that she felt this request was indicative of a significant mental health imbalance and a serious mental health episode [1055]. This was the justification for escorting me from the premises and sending an email to the entire public health team at R4 (including people I had never met) to tell them I was a risk and that they should not speak to me [1449, 2590].

244. Around this time, I saw CW come into the kitchen where I was eating my lunch. She had a very bright red face and almost hid from me. She looked very annoyed. I gather now that HEE staff had 'hunted' around to locate me after I had let them know I was at PHE and wished to be left alone [989-990, 992a, 997, 999, 1008, 1013, 1019, 1023, 1031, 1040].

245. At around 2.30pm, HC and CC approached me at my desk and asked to speak to me in a side room. I complied immediately. HC told me that she had been told that by RC that I was not authorised to work at PHE. She asked me to leave the building.

…

248 I then asked for some time in the room. I was terrified and in a traumatised state of 'freezing' described by HC as 'silent shock'. I found my relationship with StHK and HEE toxic and had been unable to repair it despite many attempts. I phoned DD. At this point I was in tears. I told her that since I had emailed her, I had been approached by HC and CC and told that I was not authorised to be there and I had to leave. I remember saying to DD, 'I don't know what to do. I can't get away from them. They won't leave me alone. I can't go on. There's no way out.' In response she said, ''Please don't say that you can't go on because if you are saying that to me I will have to do something that you might not like.' Prior to this I had never realised that this was the HEE/ StHK approach to suicidality. I realised at this point that suicidality was something that would be used as a justification for doing things against my wishes.

…

250. Whilst I was on the phone to DD [3650], HC kept knocking on the door impatiently and trying to speak to me. However, I can't speak to one person on the phone and also to another person in the room so I didn't engage as I was quite occupied with trying to compose myself and speak to DD. I was completely overwhelmed at this point by what was happening to me, and unable to think straight. I couldn't believe that this was how HEE were behaving. I would never

anticipate this kind of behaviour nor treat anyone like this. I was in a hugely stressful situation with no way out. I did not know how I would ever get out of it because nothing I was saying was being listened to.

251. HC started saying that if I didn't leave she would call security to forcibly remove me. I was still in a state of shock and this was very intimidating to me. I have never in my entire life been asked to leave any venue at all. I am of very slight stature and the thought of being physically restrained by a large security guard was very threatening to me.

252. HC seemed energised. She was not uncomfortable with my distress. Carol Chatt in contrast appeared very awkward and uncomfortable with what she was having to do and the fact that I was crying. She apologized repeatedly and said that if HEE had asked them to do this, this was what they had to do. CC mentioned something about having to get back to her work. HC said something on this point but I can't remember exactly what.

253. DD said something like, 'If they're asking you to leave, you just have to get your stuff and go'. I needed someone to say this to me as I was so overwhelmed by what was happening that I was paralysed and couldn't do anything. DD told me we could speak again when I got home [3650].

254. I came out of the room and was crying as I packed my things up. I asked HC to confirm who had asked for me to be removed and she stated 'Rob Cooper'. AC brought me over a pack of tissues. HC remained stony faced and unsympathetic throughout. I put my coat and scarf on and went through the door. I felt so humiliated and broken. I wanted to get out of there as soon as possible. I ran down the stairs in 'flight' mode - another aspect of an amygdala response to high stress. HC came after me to get my pass. I gave it back immediately. I obviously did not want to go back to be humiliated like this again.

255. I ran out of the building and 'flopped' on a bench outside the building. Flopping is an amygdala response to severe stress. A police officer came up to me to ask me to move on and saw me sobbing heavily. I explained that I had just had some very bad news and needed a moment, but I would move as soon as I could. She was sympathetic and said that I did look very upset and that was no problem. After I could get the strength to move again, I walked home and went to bed."

598. Mrs Davis remembers having a call with the Claimant the afternoon of 8 April 2020, but did not remember any specifics of it.

599. Then there is the investigation report about the incident. This is in the bundle at pages 1077 – 1084. The report was written by Dr Carter. The key points form the report are as follows:

    599.1. On 6 April 2020, it is reported that the Claimant was rude when asking where leftover pizza was from the weekend.

    599.2. On the morning of 8 April 2020, it is reported that the Claimant was rude

to Dr Carter because there was a lack of vegetarian options for sandwiches for staff to eat;

599.3. Later that morning Dr Walker had seen the Claimant present and asked Dr Carter why the Claimant was there and that they had thought she was still in Australia.

599.4. The Claimant's past was discussed with Dr Carter discussing her difficulties in the previous placement, the reasons for her extended leave, the difficult and challenging emails that she had sent to others suggesting suicide and the support she was currently receiving.

599.5. The combination of Dr Carter's own experiences of the Claimant's behaviour about food and these disclosures by Dr Walker, caused Dr carter concern and Dr walker advised her to speak with someone else who we believe was Dr Cooper.

599.6. Dr Cooper informed Dr Carter that Dr Walker could not communicate with the Claimant due to a grievance and Dr Cooper felt that R1 couldn't communicate with the Claimant in general because she had taken out a Tribunal claim against them. This led to Dr Carter agreeing to speak to the Claimant to ask her to leave.

599.7. The decision to ask the Claimant to leave immediately was made by Dr Carter.

599.8. Dr Carter asked Carol Chatt to accompany her. The name is blanked out in the incident report. However, it was common ground that the second person was Carol Chatt.

599.9. The conversation took place at 14.00. The Claimant was asked to leave and said that R2 had informed them this was an unauthorised placement.

599.10. The Claimant did not take the news well and was in shock and then got upset. She made a phone call and then would not leave the premises despite being repeatedly asked to leave. Eventually the Claimant attended her desk to pack up her things.

599.11. The Claimant then ran off and tried to keep her security pass for the building. She eventually gave this to Dr Carter on the 4th floor after being followed by Dr Carter at speed.

599.12. Once she had left, the Claimant sat on a bench outside the building and Dr Carter advised security not to let her back into the building.

599.13. Steps were then taken to ascertain how she had been allowed to start the placement and to protect IT systems by blocking passwords and access to various sites and ensuring that she was not allowed back in the building. This included PHE organising for a photo of her to be kept behind reception due to different security staff being on shift over the

weekend and to check that all staff who witnessed the event were ok. The laptop was also secured for evidence because an investigation would need to be undertaken.

600. We have considered the report and we accept that it accurately describes what happened that day. It is largely factual and fits in with what other witnesses have said where versions of events overlap. There is more detail provided about the call Dr Carter had with Dr Cooper, but there are no major inconsistencies with other witnesses including some of the Claimant's evidence.

601. Having taken all of the evidence into account, we find that the decision that the Claimant should be asked to leave the PHE premises was a joint decision between Dr Cooper and Dr Carter. Dr Carter then asked the Claimant to leave the building and made those arrangements.

602. R1 was not involved in the decision to ask the Claimant to leave PHE on 8 April 2020 in any meaningful way.

603. Consequently, claim 4.2.2 in the list of issues fails on the facts.

604. The timing of when that conversation would take place was Dr Carter's decision because of her meeting commitments that day. She says so in her report.

605. The decisions about all the aftermath at PHE that day including blocking access to emails and sites, placing the photo behind reception and sending emails to colleagues about the incident were also decisions made by PHE based on what Dr Carter has recorded in her draft report. These are simply listed as "Actions".

606. Further relevant parts of Dr Cooper's witness statement say as follows:

"40. I did not classify [Ms B's] attendance at PHE as a security incident, this was a matter for PHE, who subsequently investigated this incident. I do not recall advising Helen to inform security and not allow [Ms B] back into the building. I was not involved with the placement of [Ms B's] photograph in the reception at PHE. My only involvement was to agree on behalf of HEE was that she should be asked to leave PHE which was within the WM Government Offices in Birmingham.

41. I did not make or allude to a distorted or misleading claim about [Ms B] that she eluded security protocols and used false names to enter PHE fraudulently. I did not know of this during my conversation with Helen and only found out about it from her subsequent incident report.

42. I did not prompt PHE to gather evidence of [Ms B's] behaviour in her PHE placement. I did try to understand what the concerning behaviour Helen had described was, because having seen the report (3585) it was a matter of concern a PH trainee had caused a security incident in the Regional Government Offices and there we would need to be informed of whatever information might be needed to review how this had happened and what might be needed to discuss with [Ms B] before returning to training."

607. Dr Walker equally denies referring to this issue as a security concern and also denies any involvement in any of the decision making about the situation, other than to try to gather information about what had happened at paragraphs 153 and 154 in her statement.

608. There is insufficient evidence to doubt how Dr Cooper and Dr Walker have described the situation. The aftermath, on balance, was an issue for PHE not R1 or R2.

609. The Claimant also alleges that Dr Cooper and Dr Walker should have sought OH advice before having the Claimant removed from the PHE building.

610. This allegation is misconceived. Neither Dr Walker nor Dr Cooper had the Claimant removed from the PHE building, Dr Carter did.

611. Whilst Dr Cooper may have suggested the Claimant needed to leave, he was not involved in having the Claimant removed that day. He was not present in the building and had no power over PHE's building, security or staff.

612. Consequently, claims 4.16.3, 4.17, 4.28 (j), 5.2.6, 5.2.18 (k), 7.1.3, 7.1.15 (k), 8.3.1, 8.3.2 and 8.3.3 in the list of issues fail on the facts and are dismissed.

613. Then there is the allegation at 4.20.3 and 5.2.9 (c) where the Claimant alleges that Dr Walker disclosed information to Jayne Parry back in February 2020, planned to make further disclosures and made the same disclosures to PHE staff in April 2020 that implied the Claimant was *"a difficult problem requiring close management".* The PHE staff are identified as Dr Carter and Dr Chatt.

614. There is simply insufficient evidence to prove that such a disclosure was made actually or could be implied from other information.

615. We find this allegation is the Claimant's own interpretation of Dr Walker's conduct and why she thinks information was disclosed. We find on balance that Dr Walker did not identify the Claimant as or imply that she was a difficult problem requiring close supervision. Increased supervision, yes close supervision no. There is no evidence to suggest the Claimant was ever framed as being a difficult problem.

616. When considering April 2020, Dr Carter says the following about what Dr Walker told her:

> *"…CW informed me that HEE were under the impression that [Ms B] was in Australia. CW had signed off special leave because she was unable to return to the UK and required extended leave. [Ms B] had been told by HEE that she was not to undertake a placement with PHE health protection team.*
>
> *CW informed me that [Ms B] had been told by HEE that she was to contact HEE upon her return from Australia and commence a placement at Birmingham University. The reasons for this were lack of educational progress during her time on the training scheme to date and due to the pressures on the PHE team due*

to the Covid~19 response. HEE had not communicated this to PHE WM because they thought that [Ms B] was still in Australia and unable to return due to flights being cancelled due to Covld- 19.

CW informed me that [Ms B] had displayed challenging behaviours in her previous placements that had led to Educational Supervisor's requesting that she be removed from the placement by HEE. [Ms B] had a history of contacting staff stating that she was going to commit suicide and significant serious personal disclosures. CW assured me that [Ms B] was receiving multi forms of support through occupational health."

617. All of the above is factual information. We consider this disclosure was necessary in the circumstances so that Dr Carter was fully briefed and could make decisions accordingly. We therefore consider that such information provided to Dr Carter was not unauthorised. Dr Carter reasonably needed to know this information both to make immediate decision or if the placement continued to safely support the Claimant in the placement and protect her colleagues from receiving potentially distressing emails. In these circumstances, Dr Walker did not need the Claimant's explicit consent on this occasion, because it was done to keep employees safe. We believe the evidence at paragraph 150 of Dr Walker's statement here as to why she made the disclosures of information to Dr Carter and the safeguards she thought were in place about it such as Dr Carter being the most senior individual on site whom she had known for a long time and trusted professionally.

618. The disclosures made did not indicate anything about the Claimant being a difficult problem or requiring close supervision. A person looking at the information might have come to that conclusion themselves, but Dr Walker did not state or imply that. She provided purely factual information.

619. Similarly, Dr Walker stated at paragraph 151 of her statement that she only had conversations about this with Dr Carter not Dr Chatt. The Claimant did not challenge that evidence and in any case, it was credible evidence in our view.

620. Consequently, the allegations at paragraphs 4.20.3 and 5.2.9 (c) fail on the facts and are dismissed.

The Claimant's medical suspension further OH referrals and aftermath

621. On 8 April 2020 at 16:35 Mrs Potter sent an update email to Mrs Davis after a call between Mrs Potter and Dr Cooper. Dr Cooper had mentioned medical suspension again and Mrs Potter had run this past her boss Ms Proudlove. Ms Proudlove was said to support that approach at page 1047 in the bundle. Mrs Potter would try to speak to the Claimant to instruct her not to attend work. In addition, Mrs Potter stated that they were arranging an urgent OH appointment to assess whether the Claimant was fit or not.

622. At 17.19, Mrs Potter wrote to the Claimant requesting the Claimant not to attend work the next day at page 1058.

623. At 17.42, the Claimant responded to Mrs Potter's request that the Claimant remain away from work. The Claimant asked for the rationale behind the decision at page 1058.

624. Later that day at 18:02, Dr walker then sent an update email to Dr Djuric to update her about what had happened that day in summary at page 1049 in the bundle.

625. At 17.48 and 18.25, the Claimant sent a couple of emails to Mrs Davis. She said as follows:

"My mission for this week is to keep my head together and get out of their system!

Anything you can do to help me achieve the latter and get back to normality with minimum future interference from HR and TPDs will be really appreciated.

I should have stayed in Australia... I only came back cos I thought I could go back to full-time work and normality with no drama..."

and

"Is Anne Potter right? Am I not allowed to decide for myself if I am fit for work?

Can they compel me to go for an OH assessment even if I don't want one and just want to go back to work full-time?

I'm not planning to go in... I just don't know what I need to do to be free of them...!

Thanks"

626. At Birmingham City Council, Dr Varney sent the following to his team at 19.18 at page 1051 in the bundle:

"Dear Team,

I'm sorry to say that [Ms B] who used to work with us is quite unwell and had to be removed from PHE premises today due to her conduct and behaviour.

I am concerned that she may reach out to some of you and want to ask you to please avoid contact and refer her to talk to Health Education England who are responsible for care and support of trainees.

I am sorry to have to share this with you all but I wanted to ensure you are aware as quickly as possible so that you can avoid any risk to yourself. The deanery is making sure she has access to specialist support.

If any of you want to discuss this with me directly then do drop me a text message as I will be keeping an eye on things tomorrow.

Best wishes
Justin"

627. The Claimant alleges that Dr Walker and Dr Cooper facilitated communication with Dr Varney which resulted in him sending this email to the Claimant's former team at R4.

628. We were told at the start of the hearing that the claim with R4 had been settled.

629. We have not had any evidence put forward other than the Claimant's say so that R2 facilitated any communication with Dr Varney that resulted in him sending the above email to her former team. In fact, Dr Varney said in his witness statement at paragraph 33 that he got the information from Dr Carter at PHE, not R1 and not R2. We believe his statement, despite it not being sworn or tested because, it fits with the other evidence we have seen about this incident and heard from Drs Walker and Cooper whom we also believe.

630. Consequently, the allegations in the list of issues paragraphs 4.19.2 and 5.2.8 (b) fail on the facts and are dismissed.

631. Similarly, although Dr Walker admitted that she did share some detail of the Claimant's past behaviours with a view to keeping others safe from the distress receiving some of the Claimant's emails may cause if unexpected, what PHE then decided to do with that information was a decision for PHE.

632. If it chose to then send an email advising its staff what to do if they receive an email from the Claimant, then that is not a decision of R1 or R2. No claim has been brought under an any ancillary provisions of the Equality Act 2010.

633. Consequently, the allegations in the list of issues at paragraphs 4.19.3 and 5.2.8 (c) fail on the facts and are dismissed.

634. When considering allegations 4.19.1 and 5.2.8 (a), the Claimant has failed to identify a perpetrator here or indeed anyone who she believes made this decision if any decision was indeed made. No positive case has been put forward for these allegations and there are no submissions about them at all. They are vague and unevidenced.

635. Consequently, allegations 4.19.1 and 5.2.8 (a) fail and are dismissed.

636. The Claimant also alleges that Drs Walker and Cooper disclosed information to the University of Birmingham, PHE and R4 as well as internally at R2 to portray the Claimant as difficult and dangerous and with the purpose of those communications being to influence PHE and R4 staff not to communicate with the Claimant.

637. Having reviewed all the evidence, we are not persuaded that Drs Walker and/or Cooper did what has been alleged.

638. The information they gave to other organisations on 8 April 2020, was to try to

minimise safety concerns. That doesn't mean they were therefore portraying the Claimant as dangerous. The Claimant is failing to consider the impact her emails threatening suicide can have on people not used to receiving them, not warned about receiving them and not trained about how to handle them.

639. Similarly, we are not persuaded that R2 took steps to prevent the Claimant's colleagues from talking to her either. There is no evidence to support this and no case has been put forward where R2 is accused of informing other trainees not to speak to the Claimant.

640. Consequently, the Claimant's claims at paragraph 4.16.5 (b) and 7.1.5 fail and are dismissed.

641. In response to Dr Varney's email, he received a number of responses. Some were very brief. All of the responses showed, in our view, that people at R4 were genuinely concerned for the Claimant's welfare.

642. Of particular note, is an email from Andrea Walker – Kay at page 1062 in the bundle. It said as follows:

"Hello Justin

Many thanks for sharing this information about our former colleague. I, too, was very concerned about her behaviour before she left for RHE so this has not come as a surprise. She confided in me and all I could offered was a listening ear. Towards the end of her time with us I did suggest to her that if the situation was affecting her professionalism (there were times when she shouted and screamed on the telephone) she should seek professional help. She then told me she was having help but that the number of sessions she was given had run out. I did not share this as she spoke to me in confidence.

I am very sorry to hear that she has deteriorated to such an extent. I do believe, however, that the demands of the training course and her state of mind was far too much for her as she told me she was struggling to meet deadlines.
This she blamed on her personal life which she was unable to put behind her.

I hope you don't mind my writing the above as it is a relief to be able to do so; it has been burdensome and I have been very worried for her.

Please have a restful day off and don't forget to water your plants!

Best wishes
Andrea"

643. It was also clear that the Claimant's behaviour was having a significant impact on Ms Griffiths before the Claimant's Australia trip too.

644. Consequently, we find that the Claimant's behaviour whilst she was working on her placement at R4, was having a detrimental impact on her colleagues as a matter of fact.

645. On 9 April 2020 @ 11.25 (page 1064), Ms Proudlove requested that an Emma Knowles or the Well Being Team should contact the Claimant to check on her welfare and to discuss with her any support mechanisms that might be available.
646. The email also confirmed that in the next hour, the Claimant's medical suspension would be confirmed. In addition, the emails stated that a "referral" had been made with "an attachment from her TPD outlining their concerns". Paragraph 23 of Ms Proudlove's statement identifies the referral as an OH referral and the attachment was the letter that Dr Walker had written on 10 January 2020, which Mrs Potter had failed to send to OH due to an oversight.

647. Ms Proudlove's evidence again at paragraph 23, was that to send such and email and seek an OH referral when the Claimant's behaviour and emails had been so concerning was entirely appropriate. She had sent it because of concern for the Claimant's wellbeing and because they needed to know what support they could offer the Claimant if any. Ms Proudlove denies writing to OH to influence the outcome of the OH review and instead says the intention was to get advice about supporting the Claimant.

648. Ms Proudlove accepted that the decision to medically suspend the Claimant was therefore made without OH input at that stage as the Claimant alleged. Ms Proudlove stated in her statement that this was done because they had already referred the Claimant to Occupational Health and were pending an appointment and report and that there was real documentary evidence that the Claimant was unfit for work because of her behaviour at PHE and because of previous suicide threats. In our view, these were reasonable concerns to have about the Claimant.

649. Also on 9 April 2020, Dr Cooper sought to get further information by email about what happened at PHE on 8 April 2020, because PHE were considering this to be a major security incident at page 1065 in the bundle.

650. At 14.31 Ms Griffiths had been discussing cover arrangements with her colleagues. She had picked up an email from the Claimant and asked that her colleagues do not accept communications from the Claimant and to call her if anything needed to be discussed.

651. Similarly, Mrs Davis was providing responsive advice to the Claimant about who she could raise her concerns with. She said in an email @13.13 that she should follow her employer's policies about any complaints concerning them and speak to Professor Whallett's PA to raise any concerns about the TPDs or the training provider in general at page 1070.

652. At 15.07, Mrs Potter responded to the Claimant by email. The email needs to be considered in full:

"Dear [Ms B],

Further to your email regarding the decision confirming you should not attend work today, my preference was to discuss this decision with you over the phone however due to you not wishing to speak to me, I have emailed to confirm the

rationale for this below.

Prior to you commencing a period of paid and unpaid leave, a phased return to work was put in place following a period of sickness to support your return to work, however the phased return was unsuccessful (and you therefore had a further period of absence before commencing your leave. Lead Employer have been made aware of a number of email exchanges between yourself and Rob Cooper Head of School & Gordana Djuric Training Programme Director dated 11th February whereby you advised that you were feeling suicidal and intended to buy a suicide kit from the internet when you returned to England.

As you can appreciate any such comments regarding taking your own life is of extreme concern to us, and one we take very seriously as your employer. Therefore based on the limited information we have at hand to determine whether you are fit to undertake your role as a Public Health trainee and in line with our Attendance Management policy (enclosed), we are placing you on a period of Medical Suspension for a period of two weeks. The decision to medically suspend you has been taken due to concerns raised that indicate that you may be unwell, and therefore unfit to attend work at this time. This period of suspension will enable further advice to be sought from Health, Work and Well-being regarding you fitness to work, any support required at this time as well as any adjustments that might be beneficial to enable a RTW.

Please see attached a copy of our Attendance Management policy paragraph 6.3 regarding further information regarding Medical Suspension.

As advised above, it is my preference that we discussed the above decision via telephone, however as this is not your preference I have confirmed our decision in writing. Nevertheless, I am keen to discuss this via telephone and would be grateful if you could confirm whether you are available this afternoon to discuss. I have also been in contact with HWWB to arrange an urgent telephone review as I appreciate this must be a very difficult time for you. I would also like to remind you of the support mechanisms available at this time:

Kind regards"

653. This email therefore reiterates the reasonable and legitimate concerns Mrs Potter and her wider team had with the Claimant's wellbeing and conformed why this decision had been taken. We do not doubt the reasons and the motives behind this decision by R1. Indeed, it is our unanimous view that all and any threats of self-harm need to be taken seriously. In this case, it was a particularly serious state of affairs because not only had the Claimant threatened suicide, but also appeared to have planned it, decided when she was going to do it and how. This was not simply a throw away comment in an email. The threats were real, had been thought about and for all the Respondents knew, could well happen.

654. Given that medical suspension would require the sign off from Head of HR, Miss Livesey, we find that the decision to medically suspend the Claimant on 9 April 2020 was a joint one between Ms Proudlove and Miss Livesey and whilst her statement does not expressly say this, this is what Miss Livesey's statement

implies at paragraphs 12 and 13. Mrs Potter simply delivered the message.

655. We find that Miss Livesey shared Ms Proudlove's and Mrs Potter's view that the medical suspension was necessary for the wellbeing of the Claimant and to allow time for the situation to have proper OH input and advice.

656. The initial medical suspension was for two weeks and therefore temporary, which is significant to the Respondents' justification defence. We discuss this later.

657. At 15.33, the Claimant emailed Mrs Davis forwarding Mrs Potter's rationale email to her. She said as follows:

"Doreen...

Give me strength...

Please give me a call when you are free?

I'm fine. Just getting so tired of this ridiculous drama."

658. We take time here to note the flippant and unreasonable reply from the Claimant. The "drama" as she put it, was entirely of her own making. The Claimant had dishonestly gained entry into a government building and attempted to start a placement there, organised covertly by her, when she knew she was not supposed to be in that building or doing that placement. In our view, the Respondents had been very patient with the Claimant. Many would have commenced a disciplinary process with a suspension following the Claimant's behaviour and not unjustifiably so. We do not know what the Claimant expected the Respondents to do, but the Claimant is an intelligent woman and she must have realised that action of some sort would be taken in response to her behaviour and conduct.

659. Mrs Davis later responded to say if there were any concerns, then in the first instance to email Professor Whallett's PA. Mrs Davis had also organised a meeting with Professor Whallett, Mrs Davis and the Claimant to take place 17 April 2020 at 11.30 at page 1075 – 1076.

660. On 9 April 2020 @ 16.55 the Claimant emailed Prof Whallett's PA with her concerns about the TPD team at pages 1091 – 1095.

661. On 10 April 2020, the report about the incident on 8 April 2020 mentioned earlier on in the judgment was sent by Dr Carter to Dr Cooper.

662. The Claimant alleges that the decision made by Miss Livesey and Ms Proudlove was made ignoring the advice of the OH report in January 2020, which stated the Claimant was fit for work.

663. Ms Proudlove denies this at paragraph 23 in her statement, saying that things had moved on since January 2020 and there were serious emails from the Claimant which needed a further assessment.

664. Miss Livesey says the same at paragraph 66 in her statement.

665. Having considered the evidence of Ms Proudlove and Miss Livesey, we are persuaded that both managers took the OH report into account. They did not ignore the report or its advice.

666. We reminded ourselves of the specific words used in the occupational health report. It said when referring to the Claimant, *"She is keen to remain at work as she feels it provides her structure. I agree with this and as long as there is no worsening of symptoms, in my opinion being at work would be more advisable than being off work"* (our emphasis) at page 780 in the bundle.

667. By the point the medical suspension decision was made, there had been a worsening of symptoms. There had been further emails about suicide and there had been the build up to, and actual incident at, PHE.

668. The Respondents therefore did not fail to follow the advice of the OH report in January 2020, because that advice was conditional on the Claimant's symptoms remaining the same and not worsening. They had worsened and therefore, the implied advice from the OH report was that if the symptoms did worsen, then she would not be fit for work.

669. The Claimant also alleged that Mrs Potter, Dr Walker and Ms Proudlove wrote to the OH doctor to influence the outcome of the OH review.

670. We are not persuaded that this is what happened. At all times, Dr Walker, Mrs Potter and Ms Proudlove wrote to OH to ask for advice and to provide what they believed to be relevant information to inform the OH doctor of key facts, issues and incidents so that fully informed advice could be provided. It was not to influence the outcome of the review.

671. R2 also did not make the decision to medically suspend the Claimant. R1 did.

672. Consequently, the claims at paragraphs 4.2.1, 4.2.4, 4.16 and 5.2.15 fail and are dismissed.

The 13 April 2020 OH assessment, outcome and medical suspension aftermath

673. Also, on 10 April 2020 @ 10.31, Ms Proudlove emailed a colleague with a couple of questions to put to the OH doctor in conjunction with the letter from Dr Walker at page 1085. The appointment with OH had been arranged to take place by telephone on 13 April 2020 at 10am with Dr Mansoor.

674. The Claimant confirms that she went to the OH appointment on 13 April 2020 at paragraph 263 in her statement. She said she never consented to the appointment but went as she felt she had no choice.

675. In our view, by going to the appointment, that was consent by her behaviour. If the Claimant had not wanted to have gone, she could have missed the

appointment and emailed the Respondents to say she was not attending because she did not consent to. The Claimant did not do that she therefore consented.

676. By 14 April 2020, the Claimant had also been in touch with Dr Carter to ask her for information about what happened on 8 April 2020.

677. Dr Carter gave a summary response back at 10.53 (page 1112) and updated Dr Cooper about this at page 1103 in the bundle. She said to Dr Cooper that she would not be providing responses to the Claimant's specific requests for information.

678. Following the seriousness of the incident on 8 April 2020, and the Claimant's complaint to Professor Whallett, the Deputy and Post Graduate Dean responsible for the Claimant's training and welfare were now needing to be fully briefed about what happened, so they could understand the background and decide what to do. A number of emails were then co-ordinated by Mrs Davis from Dr Cooper, Dr Carter, Mrs Potter and Dr Walker so that Mrs Davis could brief Professors' Whallett and Smith accordingly. These included supporting documents, timelines of events and action plans that were put into place to try to support the Claimant.

679. We take time now to consider the allegations made by the Claimant about various individuals and both Respondents making alleged misleading or distorted claims about her, at paragraphs 4.8, 4.28, 5.2.18 and 7.1.15 that we have not already dealt with.

680. By way of reminder, the majority of the Claimant's claims in the above paragraphs of the list of issues are said to originate from Dr Walker's update email to the other TPDs of 17 January 2020. This therefore needs to be quoted in full and is at pages 776 – 777 in the bundle:

"[Ms B] - In the end we had a difficult meeting prior to Christmas but did hot institute a medical suspension at that time. I admit that her anger took me by surprise and I was worried about precipitating a crisis in her mental health if we persisted. Instead we put in place a fixed 3 day week plan for her to work on her dissertation so she could deliver her dissertation title in January. This deadline had already been extended. Unfortunately she was unable to stick to this, visited her GP and was signed off for 2 weeks. We had a further HR meeting with Anne Potter this Week. Her GP had assessed her as fit for a staged return to work (no note as yet been submitted confirming this from the 8th). She also had her OH assessment this week and they said, she should return on a staged return to work starting 3 days a week (Wed - Friday) building up to full time over 4 weeks. A second adjustment was that as her hours Increase she works from home on Tuesdays - the day of her counselling. Also she has plans to take 6 weeks off from 17th February till end of March. A month of this is annual leave agreed with Dennis Wilkes prior to his departure and Anne Potter from Lead Employer Is looking at how she takes the other 2 weeks.

We had no problem putting this in place. However, it was put to her that she

needed to do work and not only on her dissertation. Also that if she wanted to stay at R4, Justin Varney would have to agree to accommodate this. He told me she could stay but she had to be productive and put forward 2 pieces of work taking 3-4 days each she could work on, I sent this to her and initially she agreed. Justin had previously asked that she be moved to a different placement following her OH assessment because 1) she was doing no work for them, 2) she was having a detrimental effect on junior members of his team, 3) he was unable to supervise her to the extent she required. He agreed to keep her for the 6 weeks if she did some work.

[Ms B] then sent me two emails the first quite long, but in a nutshell suggesting that asking her to do this work means that we are not accommodating her needs as a traumatised person adequately. She has also asked for independent mediation to repair "the relationship". Anne Potter is going to respond in the first Instance. I had planned to meet her in 2 weeks for a more formal planning session and had asked her to bring her eportfolio up to date prior to that.

My opinion remains unchanged and I communicated this in writing to the Occupational Health department. From what I have observed, we have a trainee who is unfit to work at present. She is not working, In fact, and when asked to work on something of her own choosing over the Christmas and New Year period, was unable, to do so. As now she, her GP and OH physician all agree she is fit to make a return to work, I think perhaps she is now scared of not being able to undertake the work. I do not think letting her only work on her dissertation is helpful for multiple reasons. However, she wants to go into R4 office to work and to do that Justin says she has to do some work for him, which seems entirely reasonable from his point of view. If you think a better way it to let her try (again) to only to work on her dissertation, I would expect 1) that she no longer works at R4 and 2) that the additional time spent working on dissertation now is paid back on her return."

681. When considering paragraph 4.8, we have already found that the letter Dr Walker write to the OH doctor on 10 January 2020 was not distorted or misleading in any way. This was the situation as Dr Walker saw it and the content was reasonable, balanced, accurate and professional.

682. Consequently, all allegation 4.8 fails and is dismissed with the exception of the complaint that the letter was sent to occupational health in April 2020 without her knowledge or consent, which we will consider as a separate allegation of direct discrimination.

683. When considering paragraph 4.28 and we refer to some of those claims in turn.

684. The Claimant alleges that it was distorted or misleading to say as follows:

    684.1. *l) that she had displayed challenging behaviours in her previous placements that had led to her Educational Supervisor requesting her to be removed from the placement (CW in conversation with HC and by HC in written report dated 8 April 2020);*

We find this is an accurate description of what happened. So regardless, it was not distorted or misleading. We also do not think this was said in the way the Claimant is alleging.

684.2. *m) That she had a history of contacting staff stating that she was going to commit suicide and making significant serious personal disclosures.*

We find this description to be an accurate one. There is ample evidence we have already referred to that proves this happened on multiple occasions.

684.3. *n) That she was receiving multiple forms of support through occupational health.*

We find this description to be an accurate one. The Claimant had a phased return to work, extended leave granted and other changes made to her work etc. as advised by Occupational health.

684.4. *o) That she had a tendency to react angrily and this was justification for their subsequent behaviour towards her.*

There are numerous examples of where the Claimant is alleged to have been angry at meetings including the meeting of 17 December 2019, whilst at work at R4 where she is alleged to have screamed down the phone sometimes and the Claimant herself says she only got a little bit cross. We believe references to the Claimant reacting angrily are accurate.

684.5. *p) that she insisted on attending R4 against their wishes, only wanted to work on her dissertation and did not want to complete work for R4 (by CW in an email to other TPDs on 17 January 2020);*

The report of 17 January 2020 by Dr Walker does not say this.

684.6. *q) that her complaints about the behaviour of CW and AP were in reality complaints about being asked to do work (by CW in an email to other TPDs on 17 January 2020)*

Dr Walker's report does not say this at all.

684.7. *s) that she had attended the PHE placement in breach of covid guidelines and had put others at risk (RC in a conversation with HC and/or CW on 8 April 2020 and documented in his notebook)*

This is an accurate statement. We believe the Claimant's behaviour was in breach of covid rules and put others at risk. The Claimant attended the workplace having returned from Australia without isolating or properly informing PHE.

684.8. *t) that she had been dishonest to PHE in arranging her placement (RC in a conversation with HC and/or CW on 8 April 2020 and documented in his notebook).*

This is an accurate statement. The Claimant had been dishonest in arranging her placement.

685. The allegations above in 4.28 (l – q and s – t) are mirrored in paragraphs 5.2.18 (o – t and v - w) and 7.1.15 (o – t and v – w).

686. Consequently, all of these allegations fail on the facts and are dismissed. These acts are either accurate rather than misleading or distorted, or they are the Claimant's characterisation of what was said rather than what was actually said.

687. On 16 April 2020 at 20.16, Dr Walker replies to an email from Dr Cooper where he has attached the OH report from back in January 2020. The following is noteworthy, at pages 1164 and 1165:

687.1. Dr Walker states that during the meeting of 15 January 2020, neither she nor Mrs Potter had the OH report from Dr Aga. They were simply relying on what the Claimant had told them it said and the GP note seemed to support that. This is supported by paragraph 96 of Dr Walker's statement, which said that the Claimant advised them what the OH report said.

687.2. Consequently, neither Dr Walker nor Mrs Potter knew of the adjustments suggested in that report, other than what the Claimant told them.

687.3. When she finally read the report, Dr Walker interpreted the report, as suggesting a part time work option rather than a phased return.

687.4. Dr walker confirmed that Mrs Potter raised the part time working option at the meeting on 15 January 2020, but the Claimant was against it.

687.5. Avoiding long commutes were not raised by the Claimant as being needed.

688. This would seem to us to explain why there was no stress risk assessment undertaken, mentioned or organised at the time by Dr Walker or Mrs Potter as per the OH advice. It wasn't organised because they didn't know they had been advised to perform such an assessment.

689. This is again indicative of the poor communication that sometimes occurred between the organisations involved with the Claimant's employment and training.

690. The Claimant alleges that this email contained a distorted and misleading allegation that the Claimant did not provide a full history of her difficulties and was broadly deceptive, difficult and untrustworthy.

691. We have no hesitation in concluding that the email does not allege anything and

certainly doesn't portray the Claimant as dishonest or untrustworthy.

692. Consequently, the allegations at paragraphs 4.28 (k), 4.29 (b), 5.2.18 (n), 5.2.18 (x – y) and 7.1.15 (n) fail and are dismissed.
693. In addition, by the time this came to light, the Claimant was already on medical suspension and, in any case, from Mid-February 2020 onwards, the Claimant only worked for 3 days between 6 and 8 April 2020.

694. On 16 April 2020 @ 18.07, despite the suspension and background to the situation, Dr Cooper is still liaising with the University of Birmingham to see if a future placement there is an option at page 1166.

695. In response to this query, Dr Cooper informs Dr Walker that Professor Parry has said the Claimant has formally paused her qualification. He was unaware of this and asked Dr Walker if she knew about it and had authorised it.

696. At this point we note the Claimant's allegation that Drs Walker and Cooper made decisions about the Claimant's placement without referring to the OH report of January 2020.

697. We have no difficulty in rejecting that argument. Decisions about the Claimant's placement took place from 11 February 2020 onwards.

698. Despite not having the report at that time, Dr Walker was referred to its content by the Claimant.

699. Dr Cooper was referred to the OH report and its content by Dr Walker, when she was keeping him and others up to date with how things had progressed, for example at page 776 in the bundle.

700. In addition, far from ignore the advice in the OH report of January 2020, the Respondents jointly developed a return to work plan, just as the Claimant communicated the OH report had advised them to do.

701. Consequently, the claims at paragraphs 4.16.1, 4.16.4, 4.16.6, 5.2.3 and 5.2.5 fail on the facts and are dismissed.

702. In the meantime, at 09.50 on 16 April 2020, Ms Proudlove has emailed the Claimant to update her about the situation after the Claimant received the OH report in the post.

703. We have considered the email to be a proportionate, supportive and professional communication. It states what the situation is and the next steps. It gives the Claimant contact details for support by using R1's Employee Assist Programme.

704. The email is left with Ms Proudlove stating that once the OH report has been released to them by the Claimant, Ms Proudlove will be in touch to discuss it and any next steps.

705. Ms Proudlove effectively takes over from Mrs Potter at this point. By this time

and since 10 April 2020, the Claimant had effectively asked only to be communicated with about the mediation that was still outstanding, contractual obligations or, if absolutely necessary, by phone call with prior written warning of an incoming call.

706. In the Claimant's view, the behaviour of Ms Proudlove and the HR team was harassing and hounding and therefore detrimental to the Claimant's well-being, as she said at page 1169.

707. On 17 April 2020 @ 13.14, one of the HR team updates Mrs Potter to state that the Claimant has withheld her consent to the report being release from OH Dr Manzoor at page 1177.

708. The Claimant explains, at paragraph 264 in her witness statement, why she refused to disclose the report.

709. The first reason she gave was because the report suggested a referral to a psychiatrist. The Claimant didn't agree with that approach and suggests that if she refused to engage with such a referral, it would be used against her.

710. Secondly, she claims the referral went way beyond what the Claimant said she had discussed with him. No detail is provided by the Claimant here.

711. Thirdly, the Claimant says she tried to reach a consensus with the OH Dr about the report, which she claims an OH assessor will usually do. Dr Mansoor, she says, refused to do this.

712. We note what she says about the report and the brief and vague insight into what it is said to have disclosed. However, none of the reasons the Claimant has raised for refusing to disclose the report are convincing ones.

713. We are not persuaded that the referral to a psychiatrist was, of itself, a reason for refusing to disclose the report. By now, the Claimant had already explained to the Respondents that assessments were traumatising for her, so this would come as no surprise to them.

714. In addition, we can find no evidence that the Claimant had been penalised in any way for not having the assessments the Respondents had suggested previously.

715. Further, it is not for the Claimant to decide the remit of the OH report or to try to come to a consensus on anything other than the words used to explain the medical opinion. The fact the doctor refused to change the report, strongly suggests to us that on balance she disagreed with the actual findings and advice in the report, not the way the assessment or the writing of the report was done.

716. We have inferred from the refusal to disclose the report, that Dr Manzoor does not advise the Claimant to return to work and suggested she was unfit for work. We think this is, on balance, why the report has not been disclosed.

717. The Claimant alleges that the Respondents failed to follow OH advice or seek further OH opinion when considering placement planning and medical

suspension.

718. We have no hesitation in rejecting that allegation. Dr Walker and Mrs Potter deciding not to medically suspend the Claimant on 15 January 2020 was precisely because they were following OH advice and indeed GP advice, communicated to them by the Claimant, that she was fit for work. No Advice said the Claimant should be placed where she wanted to go.

719. Later on, OH advice was already being sought before the medical suspension was confirmed by Mrs Potter. This is proven by her email at page 1047 in the bundle.

720. OH advice was at the forefront of the Respondents' minds at the point medical suspension was confirmed, and we find was being arranged. It was the Claimant who refused to disclose the report that would have assisted the Respondents.

721. Consequently, the claims at paragraph 5.25 in the list of issues fails and is dismissed.

722. Meanwhile, also on 17 April 2020, the meeting with the Claimant, Mrs Davis and Professor Whallett took place. A note of that meeting is in the bundle at pages 1182 – 1183 as an email to all attendees from Mrs Davis. She writes:

"I thought that it would be useful to summarise the actions agreed at the end of meeting:

1. Dr Whallett to get a copy of the ST2 requirements for a Public Health trainee (this will probably be from the Faculty of Public Health)

2. Dr Whallett to understand and to obtain a list of current available training placements for Public Health trainees within the West Midlands

3. [Ms B] to send a copy of all correspondence received from Public Health England (I can see that you have sent a number of emails to psu.wm(8)hee.nhs.uk, thank you. I've briefly looked at these and apologies if this is a naive request but would it be possible to just let us know who the individuals are that were in touch with you, I couldn't see a role at the bottom of their email signature and I suspect Dr Whallett may request to know this)

4. [Ms B] to send a list of the other ST2 colleagues current placed at Public Health England (I can see that you have already sent this)

5. All correspondence to be sent to psu.wm@hee.nhs.uk; this email is monitored on a daily basis by the PSW team and is confidential. Therefore if anything needs to be acted on prior to the next meeting, it can be picked up

6. A further meeting to take place on 1 May 2020 at 11:00am ([Ms B], I will telephone you to join this meeting)

I have copied Donna into this email so that she is aware of the next meeting

details (for Andy's diary) and also that you will be sending correspondence to PSW rather than herself.

Please let me know if I have missed any of our agreed actions."

The School Board Meeting and subject access request

723. On 18 April 2020 @ 13.22, the Claimant submits a subject access request under the Data Protection Act.

724. She requests that specific search terms are used including the names of Anne Potter, Gemma Lasikiewicz and Hayley Proudlove at pages 1198 - 1199.

725. The Claimant was a member of one of the School Committees at R2. This was common ground.

726. On 21 April 2020, there was due to be a school board committee meeting that the Claimant got invited to. It was to take place via Skype.

727. On 20 April 2020 @ 08.23, Dr Walker had noticed that the Claimant had been included on the circulation list for the meeting and emailed Dr Cooper to make him aware as he was her TPD. Dr Walker says she did not want there to be any obvious misunderstandings at the start of the meeting, at page 1191.

728. At 09.25 Dr Cooper then emails Mrs Davis and Mrs Potter to ask if a trainee on medical suspension should be attending the school board meeting at page 1190.

729. At 09.42, Dr Cooper informs Professor Whallett's PA that the Claimant should not be included on the Skype meeting because she is currently suspended at page 1189. This was therefore Dr Cooper's decision.

730. At 11.01 Mrs Potter replies and confirms that the Claimant should not be attending the meeting.

731. At 11.21, Mrs Davis responds stating she doesn't know the answer but people needed to be mindful of disclosing confidential information especially to other Trainees.

732. Also on 20 April 2020, further investigations continued via Dr Walker and Dr Cooper from R2's perspective into what had happened on 8 April 2020 and what work and behaviour the Claimant had performed/shown in the 2.5 days she was present.

733. The Claimant alleges that Dr Cooper asking PHE for information about her behaviour on or around 8 April 2020, was an act of excessive scrutiny and setting her up to fail.

734. We reject that allegation. The Claimant set herself up to fail the PHE placement by covertly gaining entry to it. Dr Cooper's requests for information were reasonable given that he would also need to look into the matter from R2's

perspective. His requests were not excessive and were not scrutinising the Claimant. He was simply trying to get to the bottom of what happened.

735. Consequently, the allegation at paragraph 4.18.5 fails on the facts and is dismissed.

736. Then, it appears there was a misunderstanding about the School Board Meeting from the organiser's point of view.

737. At page 1211, there is an email from Debbie Horley to one of the lead trainee representatives. It says as follows:

"Attendance at School Board meetings is by invitation only from the Chair (Rob Cooper, HoS), therefore please be advised that no trainees other than yourself or Tessa are expected to be present. It is through your attendance at the meeting that any issues that trainees wish to raise are brought to the board's attention, and similarly any feedback from the board to the trainees is delivered by yourself in your role as chair.

Additional invitations to the board meeting are only issued with approval from the Chair (Rob Cooper, HoS).

Please therefore communicate to the additional trainees that they will not be able to join the meeting tomorrow, however, if they wish to raise anything that should be done so far yourself."

738. Dr Cooper confirms the same at paragraphs 44 – 46 in his statement. In these paragraphs, he also states the Claimant's representative role was not one about educational matters, but about employment issues, which would include the TPDs attending those meetings. He says he could not risk there being a difficulty between the Claimant and Dr Walker at any such meeting causing disruption.

739. Consequently, the reasons why Dr Cooper would not let the Claimant attend the meetings were threefold:

739.1. Because the Claimant was on medical suspension pending OH advice and therefore should not be undertaking any work related activities or educational activities;

739.2. The Claimant was invited to the April 2020 meeting in error; and

739.3. Dr Cooper couldn't risk any tension between the Claimant and Dr Walker at any such meeting.

740. The Claimant alleges that the decision of Dr Cooper about the School Board meeting was made without seeking OH advice.

741. We reject that allegation. At all times R2 had sought OH advice via R1's occupational health service. Referrals were made by R1 and then advice was fed back by R1 to R2 as and when. This had been done by Dr Walker and Mrs

Potter as the allocated managers.

742. A referral for occupational health had been submitted and advice sought. The Claimant had refused to release that advice.

743. Mrs Davis knew that an OH report had been sought and had not arrived. This would have been fed back to Dr Cooper in one of their regular catch ups.

744. Dr Cooper also knew that medical suspension was temporary until OH advice could be obtained. OH advice therefore was being sought by both R1 and R2 at this time, it simply hadn't arrived. Dr Cooper says as much at paragraph 43 of his statement, albeit in the context of medical suspension.

745. Dr Walker played no part in the decision about the school board skype call. She may have been the person who highlighted it as a potential problem, but she did not make any further decisions about it on the evidence we have seen.

746. Consequently, the allegation at paragraph 4.16.5 (c) fails and is dismissed.

747. Then there is the allegation at 4.16.5 (d) *"Andy Whallet (or someone else at HEE) not permitting anyone independent of HEE to provide support to the Claimant and discouraging people from speaking to the Claimant".*

748. We find this allegation is hopelessly vague and unclear. There is no date. The Claimant is unsure who made the decision or indeed it seems to us if any decision or action like this was made or done. This allegation wasn't put to Professor Whallett and there are no submissions about it in the Claimant's written submissions.

749. Consequently, the Claimant has failed to prove this factual allegation in fact occurred and therefore the allegation at paragraph 4.16.5 (d) fails and is dismissed.

750. On 21 April 2020, the Claimant emails R1 saying that she believes she has been discriminated against because of her disability at page 1217 in the bundle.

751. On 23 April 2020 at 16.31, Ms Proudlove sent an update letter about the Claimant's medical suspension. This letter is in the bundle at pages 1689 – 1690 in the bundle. It is very similar to the last email Ms Proudlove sent to the Claimant on 16 April 2020. This time it logs that consent for the OH report to be forwarded to the Respondents has been withheld by the Claimant.

752. At 16.41 the Claimant emailed Mrs Davis asking for guidance about Ms Proudlove's letter, claiming that she believes the behaviour of R1 is not lawful about the occupational health referral based on what she has been advised at page 1225 in the bundle.

753. In response to this letter, the Claimant sends a number of emails.

754. On 23 April 2020 at 17.23 the Claimant sent an email to Ms Proudlove and copied

it to Mrs Potter at page 1221 in the bundle. The following points are important from this email:

754.1. The Claimant mentions that she has been given independent advice;

754.2. She did not want a reply to the email but simply wanted it noted on her file;

754.3. The Claimant explains that she has had "PTSD like symptoms that ted towards depression". She explains she doesn't suffer from stress and can feel triggered when she feels that someone is controlling her life, she isn't being listened to, she is being backed into a corner and there is no way out of a bad situation or her character is being discredited.

754.4. She is currently in good general health and feeling positive;

754.5. She says the adjustments she requires are for managing "rumination", maintaining motivation and concentration and avoiding triggers.

754.6. The Claimant requested adjustments to be made which appear to be based upon how she alleges she perceives she is being treated by the Respondents.

755. We pause here to note that the Claimant has made an allegation at paragraphs 4.9, 5.2.16 and 7.1.13 of the List of Issues that Ms Proudlove and Mrs Potter had arranged an OH referral without the Claimant's knowledge or consent, failing to share the referral in advance and mis-stating facts within the referral around 4 December 2019 and 23 March 2020.

756. She also alleges that Ms Proudlove and Mrs Potter contacted the OH assessor on or around 23 April 2020, to have an unauthorised discussion with them knowing the Claimant had not consented.

757. We do not accept that an OH referral was made in December 2019 and/or March 2020 without the Claimant's knowledge or consent.

758. The need for an OH referral upon her return from Australia, was discussed before she undertook that trip. It was discussed in the January welfare review meeting. It was an agreed outcome of that meeting.

759. In addition, the occupational health referrals of 4 December 2019 (pages 1730 – 1733) and 23 March 2020 (pages 1798 – 1803) were not made by either Ms Proudlove or Mrs Potter. They were made by Ms Lasikiewicz (nee Thomas) as per Ms Proudlove's statement at paragraphs 13 and 23.

760. Ms Lasikiewicz is also named as the "referral originator" on the form at page 1798 and as the "HR contact" making the referral at page 1730 supporting this finding.

761. From her ET1 at paragraph 41 of the attachment (page 16 in the bundle), the

Claimant complains that the misstated information in the forms was that she had suffered from anxiety, was absent from work between September 2019 and 5 December 2019 and has seen and agreed to the contents of the December form.

762. First, it is demonstrably untrue that the Claimant has never suffered with anxiety. This is documented in several places as being a diagnosis for the Claimant. One example being at page 159 in her GP notes and another at page 163 in a letter from a psychological therapist dating from October 2019 before either referral was made.

763. In addition, the Claimant had been absent from work on and off after she went to the police about the sexual assault in September, October and November 2019. This was not logged as sick leave because the Claimant failed to follow the absence reporting procedures and Dr Wilkes confirmed that Claimant was both in and out of work in a flexible arrangement. However, the days the Claimant wasn't at work, were still absences.

764. We also find that no alleged conversation around 23 April 2020 took place between the occupational health assessor and Ms Proudlove or Mrs Potter. There may have been an email on 10 April 2020 discussing the Claimant, but we are not persuaded this was unauthorised. The claim has not been pleaded about 10 April 2020 and Ms Proudlove's statement where she describes why she did this was not challenged.

765. There is however no evidence that the referrals were sent to the Claimant at any point before being made.

766. Consequently, the only part of allegations 4.9, 5.2.16 and 7.1.13 that survives is the allegation that OH referrals on 4 December 2019 and 23 March 2020 were not sent to the Claimant before submission and it appears they should have been because it was labelled as part of the process on at least the December 2019 form. We discuss this later in the Judgment.

767. On 24 April 2020 at 18:29 the Claimant emailed Ms Proudlove and Mrs Potter. It is significant what the Claimant says. She says as follows:

"I believe that the relationship between me, HR and the TPD team has now deteriorated to the point where it is no longer functional. My view is that the involvement of an independent third party is required to establish a constructive way forward.

I also have concerns about how I have been treated by the TPD team and HR. I feel discriminated against because of my disability in a number of ways. Disability discrimination is unlawful under the Equality Act 2010.

I understand that you believe actions taken are in my best interests. However, despite your intentions, my experience is that these actions are disfavourable, and detrimental to my well-being, my dignity and my progression on the training scheme. That you collectively do not respect my perspective is, for me, the main factor in the deterioration of the relationship.

I have attempted to resolve the issue without recourse to formal processes and have not been successful in doing so. The matter continues to escalate in a way that I find harmful, distressing and contrary to my well-being. I have therefore raised concerns via the formal processes of both HEE and StHK.

My personal view is that communication between us is best re-established once the outstanding dispute is resolved with the support of external parties.

I would appreciate if you could determine an appropriate independent person to facilitate necessary communication until further resolution is reached. I am happy for them to contact me directly for an initial discussion.

It is important that this person is agreed mutually. Effective communication cannot take place without trust, confidence and consent."

Ms Proudlove's letter of 5 May 2020

768. On 5 May 2020, Ms Proudlove writes a letter in response to the Claimants emails of 23 and 24 April 2020. This is in the bundle at pages 1249 – 1252.

769. The Claimant makes a number of allegations about this letter. We consider them in turn.

770. The Claimant alleges that distorted claims were made in this letter. She says that Ms Proudlove alluded to allegations of the Claimant using false names to get around the security at PHE. This was what the report from Dr Carter could be interpreted as saying.

771. We don't believe the security guards' feedback to Dr Carter, meant what Ms Proudlove says PHE alleged. We think the guard meant the Claimant used the names of four different contacts to try to get into the building rather than the Claimant providing four different names for herself to get in.

772. However, reading the report objectively, it could be read in the way Ms Proudlove says the allegations were made and we have been taken through insufficient evidence to show what the security guard actually meant. Either could be a reasonable interpretation of the report.

773. Consequently, given that there is no conclusive answer about what the security guard actually meant because we have heard no evidence from Dr Carter or the guard, we are not persuaded that Ms Proudlove's reiteration of an allegation from PHE was a distorted or misleading statement.

774. Consequently, the claim at paragraph 4.11 (c) of the List of issues fails and is dismissed.

775. The Claimant then took issue with the fact that Ms Proudlove said there were a few days of sick leave after the meeting of 15 January 2020. Ms Proudlove said this in her 5 May 2020 letter:

"Following the meeting on 15th January, you had a few days of sick leave and continued to advise the Lead Employer and HEE that you did not wish to participate in any future meetings until mediation had taken place. A meeting was set up with Dr Rob Cooper, Head of School on 11th February to discuss this matter and it was agreed that he would be your new point of contact at HEE WM. You informed the Lead Employer that you were intending to take 6 weeks paid leave in mid-February and March in order to visit Australia. On 21st January 2020, you emailed the Lead Employer requesting 6 weeks paid leave for this visit. You were advised that you did not have enough annual leave to cover this request but you could take 22 days paid leave along with 6 days unpaid leave. You were happy with this suggestion. It was the Lead Employer's intention to meet with you following your period of leave to discuss the concerns you had raised regarding the meeting on 15th January and subsequent meeting with Dr Cooper on 11th February."

776. The Claimant says this about the letter:

"On 5 May, I received a letter from HP with RC and Debbie Livesey in copy declining my request for an independent third party. The demand for my health information was again being repeated and the medical suspension was being extended. It felt like I was being 'held to ransom' over my health data. My initial reaction was one of hyperarousal and I communicated this to HP [1228]. The letter contained numerous false allegations, including that I had eluded security protocols to fraudulently enter PHE [1249-1252]. It was deeply upsetting to be accused of something so ludicrous. I felt powerless to counter the outlandish narrative they were constructing around me. It also misleadingly stated that I had been told OH assessment was required prior to me returning to work and that I had agreed to attend a placement at UoB."

777. The Claimant has made no submissions about this allegation. In our view, it is likely the non-working days as part of the phased return were logged as sick days. However, it is not for us to speculate. It is for the Claimant to prove this was misleading or distorted and she has failed to do so.

778. Consequently, allegations 4.11 (d), 5.2.18 (l) and 7.1.15 (l) fail and are dismissed.

779. The Claimant also alleged that it was misleading and a distorted allegation that, on or around 3 March 2020, Mrs Potter sent an email to the Claimant requiring her to attend an OH review before her return to work after her Australia holiday.

780. Ms Proudlove's evidence was that the statements in that letter were simply what she genuinely believed was correct on her review of the material before her at the time at paragraph 43 in her statement.

781. Ms Proudlove uses the word "requirement" in the letter.

782. In her email to the Claimant, Ms Potter says "I would like to arrange" an OH review. Looking at the wording used in Mrs Potter's email as a whole, whilst it doesn't say requirement, it wasn't a request either.

783. When looking at the fact Mrs Potter is a proxy for the Claimant's employer, and given employers issue instructions all the time and make requirements without using those precise words because a softer approach is more polite and often has a more positive response from an employee, Ms Proudlove's interpretation of the email, was in our view a reasonable one. This was especially so given Mrs Potter said in her statement that, whilst that word was not used, it was a requirement at paragraph 55.

784. We are not persuaded that what Ms Proudlove said was misleading or distorted.

785. Consequently, the Claimant's claims at paragraphs 4.11 (e), 5.2.18 (m) and 7.1.15 (m) failed and are dismissed.

Refusing requests for third party involvement to resolve grievances

786. Ms Proudlove's letter also rejected the involvement of an independent third party to try to resolve the difficulties in the relationship between the Claimant and the Respondents.

787. However, this was not done without seeking OH advice. R1 had sought OH advice and the Claimant had attended an assessment. However, the Claimant had failed to release the report as of 17 April 2020.

788. In her letter of 5 May 2020, Ms Proudlove says *"Unfortunately, given you have withheld consent for your latest HWWB report to be shared with us, we have very limited information to hand and no up to date information to help us determine how best to support you and move matters forward in your interest at this time. Your email dated 23rd April sets out specific requests for reasonable adjustments. However, as outlined in my letter on 23rd April, you have not consented to the report from your HWWB appointment on 13th April 2020 being released to the Lead Employer. For the reasons explained I request that you share this report without delay as it is critical that we have comprehensive and up to date information to hand regarding your current health and any adjustments and support that may be required. You can consent to release of this report by emailing HWWB.admin@sthk.nhs.uk."*

789. This was another attempt by Ms Proudlove to seek OH advice at the same time as you were requesting an independent third party to become involved.

790. The Claimant alleges in paragraph 276 that Ms Proudlove's letter refused independent third party involvement. We can see no mention of any refusal in this letter.

Refusing or delaying mediation

791. Similarly, mediation was never refused.

792. The Respondents stated that mediation would be organised upon the Claimant's return to work.

793. Miss Livesey explains the reasons for the delay in mediation and that this was eventually granted when a suitable mediator had been found that permission being an email from Miss Livesey to the Claimant of 14 May 2020 at 16.59 at page 1307 in the bundle.

794. Consequently, we can find insufficient evidence of any refusal to involve an independent third party or a mediator.

Refusing event attendances and preventing the Claimant from undertaking volunteering without seeking OH advice

795. On 15 September 2020, Miss Livesey emailed the Claimant to explain that a risk assessment in addition to a follow up OH review to be undertaken to support the Claimant's return to work at page 2411 in the bundle.

796. In the same email, Miss Livesey said:

> *"I am aware that your personal advocate Catherine Youds has also recently submitted a request on your behalf to Malise Szpakowska in my absence for you to facilitate an event organised through the Faculty of Public Health Anti- Racism Event on 29th September. Unfortunately as outlined above until a Risk Assessment and updated advice from HWWB has been received the Lead Employer are not able to provide agreement to you at this point to support/ speak at this event. I am however happy to approach HEE in this instance as I am aware you have a pressing deadline to confirm your availability to seek their approval for you to attend this event as a participant if you wish; please let me know if you would like me to seek approval in this respect.*
>
> *In the meantime if there are any further training courses/events you wish to attend which align to your specialty training programme these requests should be submitted to Dr Andy Whallett, Deputy Post Graduate Dean in the first instance."*

797. Consequently, Miss Livesey did refuse permission for the Claimant to attend this event as a presenter, and we consider if that refusal was unlawful discrimination later in this judgment.

798. On 10 November 2020, the Claimant sent an email to Miss Livesey at page 2479, before they had agreed to have a catch up to discuss the risk assessment.

799. In this email the Claimant wanted to discuss agenda items for the meeting she had listed, including what voluntary work she may be able to undertake. The

Claimant's GPs had suggested that she may be able to do some voluntary work at the Claimant's suggestion, as at page 192 and 193 in the bundle.

800. In response to the Claimant's queries, Miss Livesey wrote in an email of 17 November 2020, *"Hi [Ms B], The risk assessment process will enable review of your current environment and situation factoring in your role as a public health specialty trainee. Using the risk assessment framework will assist our discussions including support, exploration of tasks and voluntary work which may be available for you to undertake currently"* at page 2478 in the bundle.

801. In response, the Claimant asked for Miss Livesey to follow the agenda items the Claimant had raised in her emails. Miss Livesey responded positively and said she was happy to go through the agenda items, but there also needed to be sufficient time for the risk assessment framework to be discussed. Miss Livesey wanted to discuss the risk assessment approach and framework, so the Claimant could understand what was going to happen, which was perfectly reasonable as at pages 2478 and 2479.

802. Shortly afterwards, the Claimant then writes this in response:

" Dear Debbie, I am becoming upset by your approach and am going to withdraw from the meeting tomorrow as I believe it will cause me distress and be detrimental to my well-being. I do not believe the mediation has resolved the communication issues and we must therefore await the outcome of the grievance before communicating further. Best wishes".

803. We cannot see any reasonable basis for the Claimant responding in this way.

804. As can be seen from above, there was no refusal of voluntary work. R1 simply wanted to ensure that an appropriate risk assessment and wider discussion happened before any decision was made.

805. In addition, the Claimant claims that Ms Proudlove misled her by claiming that mediation was not arranged because of operational pressure and lack of staff.

806. We find that because the backdrop to the mediation was at the start of the coronavirus pandemic, there was operational difficulty in both finding a trained mediator and because of the pandemic. Any statement by Ms Proudlove to this effect was therefore accurate.

807. Similarly, R2 did not refuse or delay mediation. They made attempts, in liaison with R1, to find a suitable mediator. The Claimant was absent from work for most of the period she claims R2 failed or refused to provide a mediator, namely January 2020 and May 2020. This was either because of her trip to Australia from Mid-February 2020 – 4 April 2020 and she was on medical suspension thereafter.

808. Mediation was delayed, but we do not consider R2 to have delayed it.

809. Later on, the grievance process found that maybe the mediation should have been set up more quickly. However, no one decided to delay it.

810. Consequently, the Claimant's claims at paragraphs 4.2.3, 4.6.1, 5.2.4 and 7.1.2 fail and are dismissed.

811. The Claimant alleges that the Respondents failed to seek OH advice before excluding the Claimant from undertaking work related activity during her period of medical suspension.

812. This is essentially the same thing as being placed on medical suspension. If the Claimant was allowed to undertake work activity whilst medically suspended, that would defeat the object of the suspension pending OH advice and a fitness to work assessment.

Claims the Respondents failed to provide adequate support via ES, Counselling and occupational therapy

813. The Claimant alleges that both Respondents failed to provide adequate support to her. We have no difficulty in rejecting that argument on the facts of this case as follows:

    813.1. The Claimant had at least 4 occupational health referrals made for her. One in January 2020, one self-referral in March 2020, one in April 2020 and one on April 2021.

    813.2. Of those, the Claimant withdrew from two of them and reports were only disclosed in January 2020 and April 2021.

    813.3. The Respondents, jointly via the professional support unit, offered a psychology review, which turned down the Claimant for support and a psychiatric review that the Claimant attended but was not happy with the way that review was conducted.

    813.4. R2 via Mrs Davis offered what we believe was hundreds of hours of support by phone, email and generally, in assisting the Claimant to seek help and guidance. The Claimant acknowledged this with a very complimentary email referenced earlier in this judgment.

    813.5. The Claimant was put in touch with the Samaritans, her GP and A&E when she became distressed, by both Respondents.

    813.6. Both Respondents worked jointly to produce amended work plans and timetables for the Claimant;

    813.7. They made placement decisions for the Claimant to support her return to work and to try to get her back to progressing in her training;

    813.8. At all times, the Claimant had an ES. This was Dr Wilkes at first, then Dr Varney and Ms Griffiths. The Claimant acknowledged the work Ms

Griffiths and Dr Varney had put in to supporting her before she left R4, because she left gifts for them in their desk drawers upon her leaving that placement and confirmed this in an email.

813.9. It is also not the role of a training provider or the employer to take on the responsibility of becoming the Claimant's source of treatment, becoming her clinicians or becoming her multi-disciplinary team.

814. Consequently, the Claimant's allegation at paragraph 5.2.19 of the list of issues fails and is dismissed.

815. The Claimant also alleges that various people namely Drs Walker, Djuric, Cooper, Smith and Professor Whallett, failed to deal with the Claimant's concerns about the behaviour of Dr Walker and Mrs Potter at the meetings on 17 December 2019 and 15 January 2020, as at paragraph 4.23 in the list of issues.

816. In our Judgement, Dr Walker clearly dealt with the Claimant's perceptions of her behaviour by trying to extricate herself and pass on the TPD role to Dr Djuric.

817. Dr Djuric addressed the situation by agreeing to take the Claimant on as TPD when this was suggested by Dr Walker.

818. Dr Cooper took steps to address the situation by having a meeting with the Claimant in February 2020. He also suggested that grievances about R1 needed to be raised with them and organised for Mrs Davis to support the Claimant with information about where to send the complaints about R1 and R2.

819. Dr Cooper does not recall any issues being discussed with him about Mrs Potter, as per paragraph 19 in his statement. This wasn't challenged by the Claimant.

820. Professor Smith said in his statement that in response to being told that the Claimant had concerns about Dr Walker in January 2020 and their relationship effectively breaking down, he says he directed Professor Whallett to lead on the situation and asked Dr Cooper to step in as TPD at paragraph 16 in his statement.

821. He also stated at paragraph 19 of his statement, that he was unaware of any concerns at that time about Mrs Potter. His evidence here was not challenged and we believe him. Consequently, he was unable to deal with any such concerns about Mrs Potter because he was not aware of them.

822. Professor Whallett corroborates what Professor Smith says in his statement at paragraphs 69 – 70. He says that in response to the concerns raised about Dr Walker, he arranged for Dr Mittal to become involved to support her and then Professor Parry. There is no reason to doubt this. He also had two meetings with the Claimant to try to discuss and move things forward.

823. In any case, none of the named individuals at R2 have any power to address concerns about Mrs Potter other than to suggest she follow R1's grievance procedure, which at the appropriate times where applicable, they did.

824. Therefore, in our judgment, either concerns were adequately responded to, the concern was not raised with the alleged perpetrators or there was no power to deal with the concern.

825. Consequently, the claim alleged at paragraph 4.23 of the list of issues fails and is dismissed.

826. The Claimant also alleges the same allegation against Mrs Potter, Ms Proudlove, Miss Livesey and Ms Szpakowska at paragraph 4.7 in the list of issues.

827. Mrs Potter clearly addressed her own conduct at the meeting on 15 January 2020, to the Claimant's satisfaction, when she took on board the Claimant's criticism of her said "fair point" and then changed her behaviour accordingly.

828. Ms Proudlove took over from Mrs Potter because of the situation and we find this was done with the agreement of Miss Livesey and direction from Ms Szpakowska as per her statement at paragraph 7.

829. As R2 had no power to deal with allegations about R1, the same was true with R1 dealing with allegations about R2.

830. Consequently, for similar reasons as in 4.23 above, the allegation at paragraph 4.7 in the list of issues fails and is dismissed.

The Claimant's grievances

831. On 22 April 2020, the Claimant emailed various people alleging that she felt she had been discriminated against because of her disability and that she intended to submit a grievance. One of these people was the CEO of R1, Ann Marr OBE, at page 1572.

832. In response, Ms Marr explained that she would need to find an independent party to look at the grievance when it was received.

833. The detailed grievance arrived on 26 April 2020, and this was common ground as being the grievance that started the grievance procedures. The grievance was detailed and is in the bundle at pages 1571 – 1572.

834. A detailed investigation was conducted by the investigating manager, Viki Hunt, from whom we heard evidence.

835. Part way through the investigation, the Claimant submitted her subject access request and intimated that she would be complaining about what she alleged was the mismanagement and misuse of her data by R1 and R2.

836. Some confusion crept in about whether this should have been an issue dealt with in her grievances or not. This was resolved on day 12 of the final hearing where it became an agreed fact that all data protection issues were to be dealt with separately to the grievance procedure.

837. Therefore, all claims about breaches of data protection are no longer part of the Claimant's case before us as logged in the outcome of hearing document Annexed to this judgment.

838. All issues about data protection breaches and the Information Commissioners' Office "ICO", were therefore not considered by consent.

839. On 18 May 2020, Ms Hunt introduced herself and the scope of the investigation and what the next steps would be at pages 1305 – 1306.

840. On 29 May 2020, the Claimant raised a further concern, in addition to her 26 April 2020 concerns and complaints.

841. The additional complaint was about Dr Cooper blocking the Claimant from attending a School Board Meeting at pages 1629 – 1630 in the bundle. Attached with the email was a significant amount of other documentary evidence running to some 87 pages.

842. On 12 June 2020, the Claimant also added further complaints to the grievance process.

843. These included several allegations each of direct discrimination, direct discrimination by perception, discrimination arising in consequence of disability, harassment and failures to make reasonable adjustments.

844. This email is in the bundle at pages 1718 – 1720 and in our view essentially broadly mirrors the allegations the Claimant raises in the list of issues. It massively broadened, complicated and expanded the original grievance.

845. With it, the Claimant attached further significant disclosure with the attached documents numbering some 99 pages.

846. It is therefore apparent, with some sympathy for the Respondents, that, not unlike the way this claim has been managed by the Claimant, the grievance submitted was an ever expanding situation with an ever increasing degree of complexity being added to the complaints as time went on.

847. It is through that lens we need to view how the grievance procedure was conducted by R1.

848. On 1 July 2020, a further allegation of defamation of character was raised about a letter written by Ms Proudlove. This was the letter of 5 May 2020 already discussed in this judgment about what Ms Proudlove had been informed happened on 8 April 2020.

849. In addition, there was an agreement between the Respondent's that R1 would look into the grievances raised not only about R1 but also the complaints raised on 9 April 2020 to Professor Whallett. This was evidenced, by the statement of Ms Hunt at paragraphs 9 and 12.

850. On 21 May 2020, there was an initial meeting with the Claimant to discuss precisely what she was complaining about. This was attended by the Claimant. Ms Hunt and also Ms Lewis who was assisting Ms Hunt with the investigation.

851. Ms Hunt described the Claimant as articulate, but that the allegations lacked focus and the Claimant would often "*go off on lots of tangents and sometimes became difficult to follow. She could change quickly and go from being amenable to quite angry at times"* at paragraph 14 in her statement.

852. Having considered Ms Hunt's evidence, she was a straightforward witness and we have no reason to doubt what she said. Her evidence fits with how everyone else described their meetings with the Claimant.

853. We find the Claimant would become angry at meetings discussing these issues, sometimes without warning, and that her mood would change quickly based on the general evidence of Dr Walker, Dr Cooper, Ms Hunt, Mrs Davis and the documentary descriptions of meetings by Ms Griffiths and Dr Varney in December 2019.

854. The notes of the meeting are contained in a document called the "Terms of Reference", which was a procedural document that finalised the issues that needed to be determined as part of the grievance as agreed between the parties. This is in the bundle at pages 1464 – 1473.

855. The Claimant's desired outcomes were discussed and agreed and the terms of reference discussed and agreed.

856. At this point, the Claimant alleged the perpetrators of her alleged poor treatment were Mrs Potter, Drs Walker and Cooper, Ms Proudlove and Miss Livesey. All these people were interviewed by Ms Hunt, as per her statement and the documents referred to at paragraphs 18 – 22 in her statement.

857. As the investigation progressed, further interviews took place, for example, with Dr Wilkes as per paragraph 23 of Ms Hunt's statement.

858. There were also concerns about the way the Claimant was interacting with two other members of the HR team. They reported in emails that the Claimant had shouted at them during phone calls at pages 2307 – 2310.

859. We stop to pause here. Clearly another pattern of behaviour of the Claimant, which we have found proven, is that she had a tendency to shout at people or be rude and aggressive with them when she was under stress. We say this because:

    859.1. This behaviour has been reported on and off throughout the timeline to this situation.

859.2. The Claimant was reported as having screamed at people down the phone whilst working at R4.

859.3. The Claimant had become angry at least two meetings. The first one with Dr Walker and Mrs Potter and then again with Dr Cooper.

859.4. Then she is reported to have shouted at two HR team members who were simply unlucky enough to have been available to speak to the Claimant. They described the Claimant's attitude as being *"very aggressive and threatening".* The other person said, *"I was very upset once this call ended as the trainee was extremely rude to me and shouted at me for the whole duration of the call."*

859.5. The Claimant has insight into her behaviour because of texts she has sent to her friends about her becoming "cross" with people.

859.6. We therefore believe the Claimant has control over her anger and therefore chooses to behave in this manner to vent her frustrations. We are not persuaded that this behaviour is because of her disabilities in any way.

859.7. The Claimant's behaviour was unprofessional and not acceptable, yet the HR team, to their credit, are documented as having dealt with the situation professionally and did not terminate the call with the Claimant despite the abusive tone they received from her.

860. In coming to their conclusions, Ms Hunt had regard to the Employment statutory Code of Practice about all the discrimination allegations the Claimant made, as per her statement at paragraph 27 and pages 1582 – 1602.

861. We know the Code was gone through and considered, because of the various highlighted passages in it and the fact it formed part of the grievance investigation pack with handwritten appendix titles on it. This was not a document that was simply printed out and filed in the investigation material.

The grievance investigation report authored by Viki Hunt and Diana Lewis

862. The investigation report is contained in the bundle at pages 1538 – 1569 and is dated 31 July 2020. It is a detailed and conscientious report. It attaches all the evidence that was considered in writing it and that evidence is some 2324 pages of material including emails, letters, notes, interview notes and other relevant documents.

863. One point to note is the Claimant failed to acknowledge the profound impact her chosen behaviours are documented as having had on the people involved who received her threats of suicide and in her placing the blame on them as a way of "venting" when she was frustrated.

864. The report describes that Mrs Potter, Ms Proudlove and Dr Walker were all visibly upset when recalling events of the months prior to the investigation at page 1553 in the bundle. We have no doubt that this is an accurate description of how they came across and really felt at the investigation meeting, given the circumstances.

865. One observation that has troubled us with this case, is the note Ms Hunt and Ms Lewis include in the investigation report when discussing the Claimant's view of the situation. The report says *"Whilst [Ms B] states that she does know the well intentioned actions of others to try to help her saying she does know they think they are doing right but under the EA it is not appropriate. The interaction is ill placed benevolence. [Ms B] felt disempowered, forced into the sick role rather than controlling her own condition when she knew best."*

866. Despite this documented view at that time, the Claimant has none the less, made incredibly serious allegations of dishonesty and discrimination against virtually everyone who tried to support her.

867. Her documented view that the Respondents' employees were trying to do the right thing, does not fit with how the Claimant has brought her case either in the grievance or in the Tribunal. There is a significant and concerning disconnect with how the Claimant describes things at the time to how she then later alleges she was treated, which throws into doubt the reliability of the Claimant's evidence.

868. For instance, if the alleged perpetrators meant well as the Claimant readily accepted, then we find that very difficult to reconcile with the allegations of deceptive conduct mentioned not only in the grievances at the time, but also in the texts with her friends, which have an overall theme that the Respondents were trying to, somehow, set her up to fail or get rid of her, when it is demonstrable and, in our view fairly obvious, that all the Respondents were trying to do was support the Claimant as best they could within their remits.

869. The Claimant effectively knew the Respondents' decisions were attempts to assist her. However, simply because the Claimant was not being managed in the way she wanted to be, we find that she believed her view was the only one that mattered and consequently, the Claimant resisted a lot of the help and support reasonably offered to her. In doing so the Claimant often rejected that help and support in inappropriate ways when considering her tone, conduct and accusatory emails containing mention of suicidal ideation.

870. The Claimant has clearly shown, in our view, insufficient consideration for the impact her behaviours of essentially blaming suicide on colleagues or shouting at them when she has been annoyed at the decisions or approach, they have taken.

871. Taking all of the above into account, we therefore found the Claimant lacked credibility in a lot of the factual allegations she made during the grievance process.

872. Despite the above, the report is not at all one sided. It finds a number of issues require further action:

    872.1. It acknowledges that mediation was not handled in a timely manner due to poor communication page 1563.

    872.2. It acknowledges that Ms Proudlove's attempt to communicate informally with the OH doctor was poor practice page 1564.

    872.3. It acknowledges that this has been a challenging situation that had effectively reached an impasse because of the delay in mediation at page 1567.

873. The report made a number of helpful and considered recommendations. These included, in summary:

    873.1. organising mediation as soon as possible;

    873.2. attempting to revisit the OH situation and try to get some independent advice about adjustments; and

    873.3. for there to be clearer information and processes, changing supervisory personnel and raising awareness and communication between the Respondents and between the Respondents and their trainees (pages 1567 – 1569.)

874. The Claimant has taken no issue in this case with how the investigation was conducted.

Further events and the involvement of Amanda Farrell

875. Whilst the investigation report was being finalised, on 28 July 2020, Ms Lewis emailed Miss Livesey to seek support about a request made by the Claimant at page 2360 in the bundle.

876. The Claimant had requested guidance about how to navigate the dispute without worsening her situation, how to deescalate tensions by filtering communications, a request for an advocate to try to assist with these things who would remain impartial and un-compromised with no risk of them betraying the Claimant's confidence as she put it.

877. In addition to the essential points the Claimant was making above, she made other points that were, in her view, desirable and these were to think through realistic future options given the conflict, to assist her with understanding the public health training landscape and also to help her to plan and use her time in her best interests over the next few months.

878. Miss Livesey agreed to help but have some annual leave commitments so the assistance may have taken few days to progress. The Claimant was grateful.

879. On 3 August 2020, Miss Livesey responds by saying that a mentor assigned by R2, would be best and she had therefore spoken with professor Whallet to see what or who was available to assist the Claimant.

880. When considering an independent advocate, Miss Livesey asked whether the Claimant had anybody in mind and also suggested that sometimes independent advocates are organised via employee designated unions. Miss Livesey agrees to accommodate a personal advocate, which was further support offered to the Claimant at page 2359.

881. On 4 August 2020, the Claimant responds with a holding e-mail informing Miss Livesey that with the climate who'd recently become aware of what she considered to be severe misuses of her personal data by R2 and she was therefore considering how best to respond. She also stated very clearly that she objected to Miss Livesey sharing discussing or processing her data with R2 on this or any other matter at page 2538.

882. We take a moment to pause here and consider the impact the Claimants objection would have had on R1. Clearly, by objecting to Miss Livesey communicating at all with R2, if such an objection had to be complied with, then the Claimant was effectively seeking guidance and support from Miss Livesey but was then preventing Miss Livesey from discussing and/or organising such support from R2.

883. Naturally, as we have already found earlier in the judgement, Miss Livesey Pointed out to the Claimant in response at page 2358, that the contract of employment between her and R1, was not based on consent and was instead based on the processing needed within the contract of employment and its terms.

884. Effectively, we have interpreted Miss Livesey's e-mail as relying on ordinary employment administrative reasons for processing data needed to ensure that the employment relationship could function. This, of course, included processing health and safety information, welfare information and information about the Claimant’s Training with R2, because her employment was entirely based on being a training position.

885. By e-mail of 7 August 2020, the Claimant agrees that if R2’s input was needed then it would be difficult to proceed.

886. Curiously, the Claimant then said that, even before the data issue arose, she had made numerous requests for support such as coaching, mentoring, supervision from R2 over several months. She alleges that the response has always been a very clear no or an avoidance/non-response and this was all documented in emails which the Claimant offered to share with Miss Livesey.

887. We observe here that the Claimant’s characterisation of how her requests for support have been handled, is simply not true. R2 had done all it could reasonably do to support the Claimant given her particular and complex circumstances.

888. A meeting was then organised to take place on 10 August 2020 between Miss Livesey and the Claimant to discuss a way forward and how best for R1 to source an independent advocate at page 2357.

889. On 6 August 2020, the Claimant also wrote to the specific data protection email address asking R1 to take steps to ensure that all her data especially special category data were not to be processed with R2 at page 2363 in the bundle.

890. This effectively meant that even though there was a grievance still ongoing involving R2 and requests for further support from the Claimant, she was attempting to prevent R1 from communicating with R2 at all.

891. In our view, it would have been impossible for R1 to have complied with that request because it would mean that the Claimant's employment could not work.
892. In any case, as Miss Livesey had already indicated in her email mentioned above, consent was not the sole basis for processing data in the Claimant's employment contract.

893. R2 also confirmed by letter from Professor Whallett, at page 2366, that it will still be necessary for data to be shared and processed for the delivery of the Claimant's training and for the management of her training.

894. On 2 September 2020, the Claimant attended a grievance outcome meeting. She attended with her Union representative Darren Hall and those in attendance from R1 were Ms Farrell, Ms Hunt and Ms Lewis. The notes of the meeting are in the bundle at pages 2379 – 2384.

895. The important aspects of the meeting are as follows:

    895.1. By the time of the meeting, mediation had taken place with the Claimant, but only with Debbie Livesey. The Claimant explained that she had chosen not to continue with mediation about anyone else.

    895.2. Ms Farrell enquired how the mediation went and the Claimant responded that it had gone ok. Ms Farrell also asked what other support she had and the Claimant responded *"I have come to the conclusion I don't want to discuss my health with my employer. I don't want to, I don't need to, I don't have to."* At page 2380 in the bundle.

    895.3. The independent advocate was still being organised.

    895.4. Ms Farrell then feeds back about the grievance outcome. She confirms that she has read everything and provides her findings.

    895.5. The Claimant was not happy about the decisions especially about the rejection of the discrimination complaints. However, the Claimant then suggests that the issues around the misuses of data have not been looked into at page 2382, when it was previously agreed that all data protection act issues were going to be considered by the ICO, not the grievance process.

895.6. The same confusion happened at the hearing before us and the Claimant confirmed that ICO issues were agreed to be dealt with by the ICO.

895.7. We therefore do not understand why, on the one hand, data protection issues are being carved out of the grievance to be heard separately and then the Claimant complains that they have not been looked into. These issues also included complaints about the way she was treated in April 2020 when she was asked to leave PHE.

895.8. A debate ensues and the Claimant is offered the right of appeal if she is not happy. Ms Farrell identified that it wasn't helpful to debate the outcome. The decision had been made and would be confirmed in writing. The Claimant could then appeal that decision.

895.9. Ms Hunt then offers to look at the ICO information anyway. The Claimant rejects that request, despite complaining it hasn't been looked into. Instead, the Claimant says that it will be part of the appeal at page 2383.

895.10. Ms Hunt apologises if she has missed anything. However, we find that Ms Hunt's interpretation of the Claimant's request to carve out the data protection issues was a reasonable one given the email correspondence we referred to above when the terms of reference were being drawn up.

895.11. Ms Farrell offers a way forward, namely, complete mediation with all relevant colleagues and for the Claimant to undergo a further occupational health assessment so that a full risk assessment can be performed and any other reasonable adjustments made.

895.12. It is confirmed that an outcome letter will be sent by the end of the week.

896. At the end of the meeting, Ms Farrell emails the Claimant to thank her for her attendance, confirm the timeline for the outcome letter in writing and to offer any further support. The Claimant thanks her for this at page 2377.

897. On 7 September 2020, Ms Farrell wrote the outcome letter to the Claimant. This is in the bundle at pages 2367 – 2376.

898. The Claimant's grievances were partly upheld by Ms Farrell about the mediation taking too long, a risk assessment not being performed and that the Claimant's consent should have been sought before Dr Walker's letter was sent to occupational health.

899. Having considered the outcome letter in detail, there is only one point that it does not specifically mention but does address more generally in Ms Farrell's finding that the Claimant was not subjected to undermining behaviour including admonishing the Claimant and using an attacking tone. Ms Farrell does not specifically refer to the concern made by the Claimant that Dr Walker demanded a fit note from the Claimant at a welfare meeting.

900. However, when looking at the document as a whole, and considering both the outcome letter and the outcome meeting, we do not agree that the Claimant's grievance was not properly dealt with by Ms Farrell.

901. We do not agree that the issues the Claimant raised were not properly investigated by Ms Hunt and Ms Lewis.

902. We conclude that Ms Farrell read all of the documents she says she did and did not fail to consider evidence in support of the Claimant's position. This is readily disproven by the fact the Claimant's grievance was partially upheld in at least three respects.

903. Similarly, we are not persuaded that Ms Farrell did not make her decisions or that R1 generally failed to be transparent about the stage 1 grievance process. Ms Farrell did not fail to interview any witnesses. It strikes us that at this stage of the grievance all relevant witnesses were interviewed.

904. Consequently, when considering the allegations at paragraphs 5.2.13, the only issues factually proven against Ms Farrell's decision were 5.2.13 (c) and (d). These allegations correspond to each other and will be considered later in the judgment.

905. After the meeting and outcome, Ms Farrell then sends letters to various people involved in the allegations the Claimant made including Ms Proudlove, Dr walker, Mrs Potter, Professor Whallett and Dr Cooper with some learning points and recommendations. These letters appear on the bundle at pages 2396 - 2408.

906. On 14 September 2020, the Claimant asked for copies of the Investigation report and its appendices which were later provided to her on 29 October 2020 at page 2447a in the bundle.

The stage 2 grievance and involvement of Nicola Bunce.

907. On 30 September 2020, the Claimant emailed a Leanne Williams with her rejection of the grievance and the reasons for it at pages 2441 – 2442 in the bundle.

908. On 7 October 2020, the Claimant emails Ms Williams and asked if her complaints about the outcome could be progressed urgently. She included that what she perceived as substantial delays were harming her career and wellbeing at page 2440.

909. After some correspondence backwards and forwards about progression, on 16 October 2020, Ms Williams requested the Claimant provide further information about her grounds of appeal. This included requests for:

    909.1. The witnesses the Claimant alleges were failed to be interviewed;

    909.2. The parts of the complaint that were alleged not to have been addressed;

909.3. Which items were factually inaccurate;

909.4. The new evidence the Claimant says undermined the original grievance decision.

910. The email concluded by stating that Ms Bunce would be the Stage 2 decision maker and suggested a meeting in November 2020 requesting dates of unavailability at page 2438.

911. Ms Bunce considered herself to be independent when looking at the stage 2 grievance at paragraph 12 of her statement, because she had no previous involvement in the grievance at stage 1 or the sequence of events leading to the grievance. We believe her. Ms Bunce was independent, there is no evidence to suggest otherwise.

912. On 27 October 2020, the Claimant replied with the names of the witnesses she says the stage 1 grievance managers failed to interview at page 2446. This included 10 people from PHE 2 people from the university of Brimingham, 21 people from Birmingham City Council, 2 registrars and Mrs Davis of R2.

913. In evidence, Ms Bunce said that she had not been sent a list of the witnesses the Claimant wanted interviewed. She said that she only became aware of the list of witnesses when she first viewed the Tribunal Bundle.

914. Ms Bunce explained that had she been sent that list, she would have sought advice from HR about whether this meant she needed to reopen the investigation into the stage 1 grievance and treat it like a full rehearing instead of simply reviewing the decision of Ms Farrell and responding to the specific appeal points made.

915. Consequently, we conclude that Ms Bunce was not aware of the witness list at any time she made her decisions about the Claimant's grievances. This was not a satisfactory state of affairs and all information available, relevant to the Claimant's grievances, could and should have provided Ms Bunce. No explanation has been put forward about why this document was not sent to Ms Bunce.

916. Ms Bunce stated at paragraph 15 of her statement that no other information was provided by the Claimant and no new evidence was put forward.

917. On 23 November 2020, Ms Williams sent a Teams link to the Claimant, for the stage 2 grievance meeting to take place.

918. The Claimant responded as follows by email of the same date at page 663 in the bundle:

"Hi Leanne,

Thanks for sending this through. I am just having a think what to do as I have had to read through a lot of documentation to prepare for this and I'm finding it

really upsetting. You will see at the 2nd stage hearing the things I am referring to, but the hatefulness of the language used about me and the distorted statements made about me are very hard to read.

This all started because I had a trauma response to the reporting of rape to the police and to remind myself of how my employer has responded to destroy the career and reputation of a vulnerable individual asking for help is absolutely devasting. I've cried about it once already this morning and I'm not sure if I will be able to maintain my focus for this week.

Best wishes"

919. Gill Ellis, Head of HR Operations, sent a response to the Claimant in an attempt to reassure her at page 2492 in the bundle.

920. On 25 November 2020, Ms Bunce was sent the stage 1 grievance outcome and associated documents.

921. On 27 November 2020, Ms Bunce was forwarded the Claimant's grounds of appeal.

922. On 30 November 2020, the stage 2 grievance meeting took place. Ms Bunce chaired the meeting and Ms Ellis was also in attendance to assist with Matthew Russell, HR Advisor, present to take notes. The Claimant attended with her union representative Darren Hall.

923. The notes of the meeting are in the bundle at pages 2549 – 2558 and it took place via Teams. The key points from the meeting were as follows:

    923.1. The Claimant said she had a lot of additional evidence she wanted to put forward. Ms Bunce asked the Claimant to send that to her after the meeting and the Claimant agreed at page 2549.

    923.2. It was explained to the Claimant that the remit of the investigations was about behaviours within R1 and R2, no one else.

    923.3. The Claimant referred to a document that she appeared to be reading from which listed all the Claimant's specific concerns she was mentioning at the meeting. The Claimant was asked and agreed to provide a copy of it to Ms Bunce and Ms Ellis at page 2552 in the bundle.

    923.4. The issues discussed at the meeting were largely the same as those from the first stage grievance.

    923.5. The Claimant complained about the behaviours of people at PHE and R4 namely those who asked her to leave the premises and the email sent by Dr Varney to his colleagues about the Claimant and that they were not to engage with her previously mentioned in this judgment.

924. The meeting took over 2 hours and we conclude essentially amounted to the Claimant reading a prepared submission and Ms Bunce and Ms Ellis asking questions where they felt they needed to.

925. On 2 December 2020, the Claimant emailed both managers as follows:

"Dear Nicola and Gill,

Thanks very much for your time on Monday and for so very patiently listening to my very long speech.

I hope it wasn't too boring! I spoke for a good 2.5 hours, which can be a bit of a drag for others, I do realise...

As discussed, please find attached copies of:
- the document I read from
- the appraisal prepared by J Varney for HEE in Feb 20 - I wasn't party to this
- the PHE security report
- the email sent to my former team at R4

Where I have indicated (D) after a point, it means that it is substantiated by written evidence. I haven't supplied these documents at this stage but can do so on request.

I look forward to hearing from you soon.

Best wishes,"

926. The Claimant's lengthy submission document is in the bundle at pages 2575 – 2589 some 14 pages.

927. Having considered the evidence of Ms Bunce under cross examination and also in her statement, we conclude that Ms Bunce approached her determination of the appeal as a review of Ms Farrell's previous decision and responded to the various points of appeal raised by the Claimant. It was clearly not a full rehearing of all the evidence.

928. Ms Bunce said in cross examination that she did not consider the procedure required her to undertake a full rehearing of the evidence.

929. We accept the procedure is silent on whether there should be a full rehearing or simply a review of the past decision. Consequently, we find the manager undertaking stage 2 therefore had freedom to choose whether to undertake a complete rehearing or a review combined with consideration of the appeal points put forward.

930. Ms Bunce did not request any further documentation from the Claimant, but confirmed in her statement at paragraph 26, that she read the grievance documents she was provided with in full. We believe Ms Bunce.

931. At paragraph 29 in her statement, Ms Bunce explains why she did not ask for any further documents from the Claimant. She says:

"I did not ask [Ms B] for copies of any of the documentation she had referenced in the document she had spoken from and sent after the meeting [2575]. This is because, as I note in my outcome letter, there did not appear to be significant disputes about the facts of what had happened, and I did not doubt that there were, for example, email chains to establish what had happened. I knew that the stage 1 investigation had considered a large volume of documentation, and [Ms B] had sent over the new documentation she was relying on for her appeal in her email to us after the meeting."

932. We believe Ms Bunce's explanation. It fits with the answer she gave to the Tribunal when she was asked how she thought she was fully aware of the facts before coming to her decision if she did not request the documents and replied *"I didn't think it would add anything"* and in response to the question how did she know that if she did not ask for them, she responded *"I thought I was simply doing an appeal"* alluding to the fact this was a review rather than a rehearing of the evidence at stage 2.

933. In addition, we were not referred to any documents by Counsel for the Claimant that were claimed to be material and not considered. Nothing was put to Ms Bunce questioning that if she had reviewed a particular document, it would have changed the outcome of the grievance at stage 2.

934. The Claimant complains that at various stages in the grievance process, witnesses were not interviewed. We must therefore identify what the policy requirements and rules were about witnesses.

935. In her statement at paragraph 25, Ms Bunce stated that she did not interview any other witnesses as part of the stage 2 process. She said as follows in her evidence, which was unchallenged *"I did not interview other witnesses as part of the stage 2 grievance hearing. If it had become clear that there was new evidence being presented that could have made a difference to the outcomes of any of the points in the initial grievance, I could have adjourned the hearing and asked for the investigation to be re-opened. However, my view was that no such evidence was provided."*

936. The stage 1 procedure says the following about calling witnesses at page 1856 in the bundle *"… Witnesses may be called if required (if applicable this will include the person who the grievances against)."*

937. The stage 2 grievance procedure is in the bundle at paragraph 5.3 (page 1857 in the bundle). About the issue of witnesses, it says *"the individual deputy medical director all nominated deputy (e.g. clinical director)/ GP Partner/senior manager agreed to hold the grievance will notify the trainee, in writing, that a hearing has been arranged. The right to be accompanied and to call witnesses must be included in the letter."*

938. This is all the information available we could identify in the grievance procedure about calling witnesses.

939. It therefore appears to us that the Claimant had a right to request witnesses be interviewed. However, the fact that the stage 1 part of the process says that witnesses may be called *"if required"* suggests to us that the manager conducting the meeting has the right to determine if witnesses are required to be called when considering the case and the material before them.

940. We are not persuaded there was an unfettered right for the Claimant to call who ever she liked as a witness and then R1 was then obliged to interview them regardless of their relevance. There was insufficient evidence to support that view.

941. However clearly, if a witness was put forward as relevant by the Claimant, if a decision was taken not to interview that witness, there would need to be a genuine reason why they were not interviewed and that reason should be reasonable and sufficiently explained.

942. Aside from the general statement Ms Bunce made that there was no new evidence provided and, therefore, interviewing new witnesses would not have had any impact on the outcome of the grievances, Ms Bunce also stated at paragraph 34 that there was no dispute about what happened at PHE because in her view, the Claimant had not disputed that she went to PHE despite having been told not to. Additionally, it was not, in Ms Bunce's view, in dispute that she had made her own arrangements for the placement which commonly happened at the time and it wasn't disputed that some of the PHE staff were expecting the Client to attend.

943. We know Ms Bunce did not have the full list of witnesses submitted by the Claimant at the time she made her decision. Consequently, the witness list could not have affected her mind.

944. On 21 December 2020, Ms Bunce wrote to the Claimant with her outcome letter to the stage 2 grievance, which is in the bundle at pages 2637 – 2642.

945. The letter rejects most of the appeal points and concludes that Ms Farrell fairly came to the decisions she did on the evidence she had.

946. When considering point 2 of the appeal about providing appropriate support, in her outcome Ms Bunce says *"HEE/STHK is not responsible for delays in being able to access these specialist support services, and you also declined to act on the advice given by the psychologist and seek a referral via your GP."*

947. The Claimant complained that this was a distorted or misleading claim. Ms Bunce clearly makes this statement, but she stated that was what she had genuinely understood had happened at the time as per her statement at paragraph 33. We consider this later in the judgment.

948. When considering appeal point 4 about a performance management plan set up in December 2019 by Dr Walker and Mrs Potter, Ms Bunce upholds part of that grievance. She said:

"After looking at all the information in relation to the performance management plan which was instigated after your meeting with Clare Walker, Training Programme Director and Anne Potter, Assistant HRBP in the middle of December 2019 during which you stated you were behind with your dissertation. The plan was set up to support you in this and you agreed to it. Unfortunately you were then absent from work due to sickness and a return to work plan not a performance plan was instigated on your return to work in January 2020 up until your leave in February 2020.

I cannot find any evidence that the plan was set up in order for you to fail, I do however partially uphold your appeal point in that I cannot find any evidence to show that the words performance plan were used in any discussions with you in December 2019 nor that you were advised it was a formal process. However the plan was never actually used as you were absent the day after it was implemented therefore you have never been performance managed against it. As a result I partially uphold appeal point 4"

949. Ms Bunce also decided that it wasn't necessary to interview witnesses at R4, because the origin of the email Dr Varney sent was known from the document itself.

950. Ms Bunce decided the email had come from R4 and not R1 or R2. Ms Bunce therefore had no way of looking into the issues at R4 because that was outside her remit. She was looking into the complaints about R1 and R2, not the complaints about R4 which the Claimant confirmed she was pursuing directly with R4 as per paragraph 35 of Ms Bunce's statement. That paragraph wasn't challenged by the Claimant in evidence.

951. When considering point 5 about the letter of 10 January 2020 written by Dr Walker, this was dismissed by Ms Bunce because there was no evidence it had been shared with anyone other than Mrs Potter by Dr Walker.

952. The remaining appeal points are not upheld by Ms Bunce. Ms Bunce believed the Claimant's grievances were adequately dealt with by Ms Farrell.

953. She says in her statement that she considered all the other points the Claimant raised including harassment, reputation information and data sharing, the PHE placement and health data at paragraph 37. This is an accurate description of what Ms Bunce considered and decided.

954. The Claimant was given the right to submit a stage 3 grievance appeal and she did so.

The stage 3 grievance appeal and the involvement of Nikhil Khashu

955. On 18 January 2021, the Claimant's union representative Mr Hall, appealed against MS Bunce's stage 2 decision. The appeal can be found at page 2648.

956. The appeal raised the following key points:

    956.1. That the purpose of the grievance was to resolve issues in the working relationships between the parties to facilitate the Claimant's return to work.

    956.2. That it was not clear how the Claimant's safe return to work could happen given that Ms Bunce's outcome ruled out looking at her claims of discrimination harassment and victimisation in the Claimant's view.

    956.3. That a lack of evidence was relied upon in this stage 2 outcome despite the Claimant stating that written evidence in support of those complaints could be provided upon request. The Claimant therefore wanted to present the new evidence at stage 3.

    956.4. The outcome of point 9 was contrary to PHE's own report and emails the Claimant sent to the staff organising her placement at PHE, And also inconsistent with the claim that PHE were not accepting new trainees.

957. Mr Khashu, Executive Director of Finance and Information, was given the stage 3 grievance appeal to decide.

958. At paragraph seven of his witness statement, Mr Khashu stated that he had copies of all the documents including the outcome letters and evidence from both the previous grievance stages, and that he read the outcomes of those grievances very carefully. This evidence was unchallenged and there was no reason to doubt it.

959. Before the grievance meeting took place, the Claimant presented an 11 page document with all the arguments she wanted to make in it, which referenced the documentary evidence she relied upon. This in the bundle at pages 2649 – 2659.

960. The Claimant identified the decision made to not consider the discrimination, harassment and victimisation claims any further, due to legal proceedings being underway in the Employment Tribunal, at page 2649, and this was preventing her safe return to work.

961. In this document, an allegation about Dr Mittal is raised, namely that he misled her by saying that he had no awareness of her personal circumstances when she alleged, he clearly did at page 2650. We discuss this later in the judgment.

962. R1 had arranged the meeting to take place originally on 22 February 2021. However, the Claimant was not well enough to attend it and submitted a fit note.

963. On 15 April 2021, the Claimant attended a further occupational health review. The report is in the bundle at pages 164 – 166 in the bundle. The key findings and advice from it are as follows from Dr Donal Menzies:

    963.1. The consultation was initially going to be by video. However, after two attempts, the video failed and telephone was used instead.

    963.2. The Claimant had been absent from work since 22 February 2021 with *"trauma, depression and work stress".*

    963.3. She was currently suspended from work.

    963.4. Her depressive episode and symptoms were starting to improve.

    963.5. No actions were needed by either the Claimant or R1 to facilitate the stage 3 grievance meeting.

    963.6. There was no physical illness.

    963.7. The Claimant was ready and willing to prepare for and attend the stage three grievance meeting.

964. On 9 June 2021, by email at 15.59, the Claimant sent a substantial number of additional documents to HR in readiness for the stage 3 appeal.

965. The stage 3 grievance meeting then took place on 11 June 2021. Those in attendance were the Claimant, Mr. Hall, Mr. Khashu, Claire Scrafton, Deputy Director of HR and Matthew Russell, HR advisor, as a note taker. The key points from the meeting were at 2724 – 2731:

    965.1. The Claimant was given a significant opportunity to put all her points across.

    965.2. Mr Khashu wanted to try to keep the meeting to the points the Claimant had made on appeal rather than revisit all the evidence again unless there was anything new the Claimant wanted to be considered.

    965.3. The Claimant was given 28 days to supply any new information after the appeal meeting date.

    965.4. The Claimant stated at this point that she was amenable to having a conversation for the Claimant to leave R1 on amicable terms.

    965.5. The Claimant was asked what a resolution to the situation would look like to the Claimant and she said she would come back to the panel about that later on.

966. Mr. Khashu stated at paragraph 12 of his witness statement that he approached the stage 3 hearing as a procedural review of the decisions made at stages 1 and 2 in the grievance process. He said he conducted all stage 3 hearings in that

way, but often employees would think that it was an opportunity to go through the whole case again. This evidence was not challenged.

967. On 18 June 2021, after a request by R1, The Claimant emailed her speaking note to R1. Which starts at page 2690. This was titled *"appeal hearing prep"* by the Claimant and runs to page 2693.

968. Apart from identifying some parts of Ms Bunce's outcome where she thought they were untrue, the Claimant's points made at stage 3 were not significantly different from the grievance points made at stage 2.

969. By 28 June 2021, the Claimant had failed to provide the additional information discussed at the appeal meeting, and also had not referenced which evidence related to which of her appeal points, as she agreed to. Mr Khashu therefore chased the Claimant by e-mail.

970. Emails went back and forth between the Claimant and the HR advisor who took the notes, namely, Mr Russell. The Claimant confirmed she was putting together a plan, had quite a lot of paperwork for the external Tribunal procedure to prepare and said that she would get back to R1 soon.

971. On 30 June 2021, Mr Russell asked whether the date of 5 July 2021 would be a realistic date for the additional documents to be shared at page 2699 in the bundle.

972. On 1 July 2021, the Claimant responded stating that she was having difficulty because she had a very slow laptop which was old and kept crashing with the amount of documentation she was trying to collate review and send. The Claimant did not commit to sending any information by any date.

973. Both Mr Khashu and Ms Scrafton, organised for a brand new laptop to be lent to the Claimant, in an attempt to assist the Claimant in getting the information to them within a reasonable time. The Claimant was appreciative of the laptop and it was eventually delivered to her sister as per Mr Khashu's statement at paragraph 19 and pages 2702 – 2704 in the bundle.

974. Mr Russell also sent a list of the information he had noted from stage 3 grievance meeting that the Claimant said she would provide and sent this list to the Claimant at pages 2705 to 2706 in the bundle.

975. A time extension was agreed between the parties until the 30 July 2021 and the additional information was finally provided on 9 August 2021 at page 2717 in the bundle, including the written summary at page 2649 in the bundle.

976. Two additional documents were also sent on 12 August 2021 by e-mail as per page 2734 in the bundle.

977. There was then discussion to try to resolve the situation off record via ACAS and other conversations.

978. The Claimant was referred to occupational health again on 8 September 2021 again with Dr Menzies. The report is in the bundle at pages 2741 – 2744. Whilst the Claimant's mood had gotten a bit worse since she had collated all the evidence and submitted it, the outcome of the report is not significantly different from the April 2021 report.

979. When considering whether the Claimant could return to work after the stage 3 outcome and within what time frame, the advice was that this would depend on the outcome of the process, how the Claimant reacts to it and how fairly she perceives herself to have been treated.

980. Mr. Khashu's outcome letter is in the bundle at pages 2746 – 2764. The key decisions and items form the letter are as follows:

    980.1. Mr Khashu did not agree that the Claimant's interpretation of the stage 2 outcome about her discrimination, harassment and victimisation complaints was accurate. He decided these issues were looked at in detail at stage 1 and responded to at stage 2 when Ms Bunce rejected any complaint about the decision Ms Farrell came to at stage 1.

    980.2. He did not believe that Mr Mittal had misled the Claimant about his understanding of her personal circumstances at the time her took over as TPD.

    980.3. A new complaint was identified from the additional information that Professor Parry should not have been given to the Claimant as her ES because of her past involvement in the Claimant's work. This was rejected by Mr Khashu because he felt that the knowledge of the Claimant's past training wouldn't have significantly impacted on Prof Parry's ability to effectively supervise the Claimant.

    980.4. A new complaint that Dr Varney had identified support that would be useful to the Claimant, but R2 had failed to implement this as an act of discrimination, was not upheld. Mr Khashu considered there was insufficient evidence to support this as being unfavourable treatment.

    980.5. Mr Khashu found that it was appropriate and reasonable for people concerned about the Claimant's welfare and training to share information at a senior level to try to appropriately manage the situation.

    980.6. When considering performance plans and Dr Walker's involvement, Mr. Khashu was not persuaded that Dr Walker was ever formally instructed to remove herself from involvement in the Claimant's training at all. She had simply taken a step back.

    980.7. In addition, he was not persuaded that performance plans were put in place for the Claimant. Her performance and attendance were informally managed by R1 but not in an inappropriate or unnecessary way.

980.8. When considering the point about whether the Claimant reacted angrily in a meeting with Dr Cooper, Mr Khashu decided that there was evidence that others had a perception that the Claimant acted angrily to situations. He said this:

"In his interview RC recalled a meeting between you in which his perception is that you reacted angrily when he talked to you about HR. I have considered your observation that this is not recorded in the meeting notes. Whilst I agree it is not expressly referred to in the notes, I do not believe that the absence of this being recorded means that you did not express anger. You do state in your written submission that you recall being understandably upset during this meeting and it may be that you and RC share a difference in opinion as to the way in which your behaviour came across.I have also considered that there are some other references in the grievance documents made by others to you reacting in an angry manner. I appreciate that you may share a difference of opinion of those circumstances also, but it does appear that the perception of others is that you can react in this way.

I do not believe that the evidence suggests that any anger that you demonstrated was used as justification for you being removed from PHE or excluding you from any work activity; the circumstances of you being asked to leave have already been addressed in detail in the earlier grievance outcomes."

980.9. Mr Khashu does not say that he believes the Claimant reacts angrily himself, simply that this is the perception of others from the material he had read.

980.10. He identified that when it came to the issues about whether the Claimant appeared to be related to the fact the Claimant did not want Mrs Davis to contact the Claimant's GP to access specialist services. In his view, this explanation was correct based on the evidence he had reviewed.

980.11. When considering the complaints about not being allowed to undertake representative work, training sessions and other events at R2 during her medical suspension, Mr Khashu did not see any evidence the Claimant was made to resign from her representative role or that any inappropriate decisions were made given her circumstances.

980.12. Mr. Khashu thought the medical suspension as justified.

980.13. When considering the PHE situation and the Claimant being asked to leave the placement in April 2020, Mr. Khashu hadn't seen any new evidence that would have caused him to doubt he decisions already made previously in the grievance process.

981. Overall, having looked at the procedure and decision making Mr. Khashu undertook at the time, it is clear that he reviewed the additional and new information in detail because he references various evidence documents the

Claimant submitted in his outcome letter. He also considered and responded to all the points put forward by the Claimant either specifically or generally.

The Claimant's complaints and the grievance procedure overall

982. All the concerns that Claimant raised in her claim about the way this grievance was handled are broad, lacked specificity and are alleged to be either section 15 or section 26 claims for discrimination arising in consequence of disability or harassment. They are alleged to be committed by both Respondents and in particular by Amanda Farrell who decided the initial grievance at stage 1, Nicola Bunce who decided the stage 2 process and Nikhil Khashu who decided stage 3.

983. The overall claim is that the Respondents failed to *"properly deal with the Claimant's grievance and other concerns…"* a number of more specific allegations are then alleged.

984. In looking at the grievance process as a whole and whilst taking into account the factual back drop to both the incidents complained about in the grievances and the factual matrix of the grievance procedure when looking into the complaints were complicated and changing, we make the following factual conclusions about the factual allegations the Claimant has made in the list of issues:

    984.1. At allegations 4.11 (b), 5.2.18 (j) and 7.1.15 (j) Ms Bunce does appear to conclude that the Claimant failed to act on the advice of a psychologist to seek an appropriate referral. We discuss this later on. However, Mr. Khashu did not make such a claim in his outcome letter as discussed above.

    984.2. <u>When considering allegation 4.11 (f), Mr. Khashu did not make any false or misleading claim that the Claimant had a tendency to react angrily. He said that evidence from others to that effect was present and that this was their perception, not his. Consequently, the claim of direct discrimination at paragraph 4.11 (f) of the list of issues fails on the facts and is dismissed.</u>

    984.3. When considering 4.11 (g), 4.28 (r), 5.2.18 (u) and 7.1.15 (u) of the list of issues, we are persuaded that Ms Bunce did say that the first R1 and R2 knew about the Claimant starting her placement at PHE was when she was witnessed being present in the building at that placement. That view is supported by Mr Khashu because he says he was provided with no evidence to show that Ms Bunce's view was incorrect. That is a misleading statement because it is an incorrect one. We therefore consider this later in the judgment.

    984.4. <u>When considering allegation 4.12 and 7.1.16, we are not persuaded that R1 subjected the Claimant to misleading or distorted claims including extra scrutiny and/or by documenting criticisms of the Claimant's alleged behaviour without making her aware of those claims. We think it inaccurate to describe the fact the Claimant was being monitored more</u>

closely for her welfare, training and overall performance progress to be improved as documenting criticisms. They document factual information and behaviours of the Claimant to try to manage her as best they could in the circumstances. Consequently, the claims at paragraph 4.12 and 7.1.16 fail on the facts and are dismissed.

984.5. When considering allegations 5.2.13 (c) and (d) and 7.1.11 (b) and (d), Ms Bunce and Mr Khashu did not fail to investigate the origin of the email sent to R4 informing people not to speak to the Claimant, or address the concerns raised about the handling of the placement at PHE. It was clear upon investigation of the documents, that the email had been sent by Dr. Varney and Ms Bunce and Mr. Khashu considered and rejected the Claimant's grievance about the end of her PHE placement which dealt with that complaint. Ms Farrell did not look into these aspects of the grievance. We discuss this later.

984.6. When considering allegation 5.2.13 (e) and (f), 7.1.11 (c) and (j) and 8.3.4 having reviewed the process by all three managers at stages 1, 2 and 3, we are not persuaded that R1 failed to deal with the Claimant's allegation of discrimination in their various forms when coming to their decisions. These allegations were looked into, responded to, rejected, reviewed at another two stages including any new evidence and were rejected again.

984.7. We do not believe that any evidence supporting the Claimants grievances was disregarded at any stage. The managers may have had a different perception of the evidence to the Claimant, but there was no evidence at all anything was disregarded arbitrarily. The grievance complaints were therefore dealt with but did not give the Claimant the result she wanted or expected. All evidence she put forward was appropriately considered by the managers. Allegations 5.2.13 (e) and (f) and 7.11 (b) - (d) and (j) therefore fail and are dismissed.

984.8. This means that none of the Claimant's alleged detriments because she did a protected act for her victimisation claims are made out on the facts and all victimisation claims in the list of issues have therefore failed.

984.9. When considering allegation 7.1.11 (e), we are not persuaded that any of the grievance managers failed to deal with the Claimant's grievances by failing to address concerns about whether the Claimant had been managed in line with policy. This allegation was considered properly by all three managers and rejected.

984.10. When considering allegation 7.1.11 (f), (g) and (h) we are also not persuaded that any of the managers failed to deal with the Claimant's grievance about transparency candour and data sharing or any concerns about misleading allegations allegedly made about the Claimant. These issues were looked into, considered properly and rejected.

984.11. Consequently, claims 7.1.11 (e) – (h) therefore fail on the facts and are dismissed.

984.12. When considering 7.1.11 (i), it is correct that neither Ms Bunce nor Mr. Khashu interviewed any witnesses, new or otherwise. We discuss this later in the judgment.

984.13. When considering allegation 7.1.11 (l), we are not persuaded that any of the grievance managers failed to deal with the Claimant in a transparent manner. She has not proven any facts to enable us to conclude this was the case and consequently this claim fails and is dismissed.

Other complaints

985. We deal first with the allegation at paragraph 5.2.13 (a) in the list of issues because this does not relate to the grievance at all. Here the Claimant alleges that Dr Cooper treated her unfavourably because he did not take the complaints she had made about the behaviour and approach of Dr Walker and Mrs Potter seriously and had allowed them both to have continued involvement in the management of the Claimant and misled her about Dr walker's continuing involvement.

986. We have not been taken to any evidence showing that Dr Cooper said to the Claimant, either actually or impliedly, that either Mrs Potter and/or Dr Walker would have no further involvement in the Claimant's case. Indeed, he would not have been able to offer any such assurance about Mrs Potter, because he had no power over her, because she worked from R1 and not R2.

987. We acknowledge that Dr Walker had taken a step back from direct contact with the Claimant because it was clear they were not communicating well and Dr Walker had emailed the Claimant as such hence why she copied in Dr Djuric to try to take things over. However, again, at no time does Dr Walker indicate she would take no further part at all, even in requests for information from the team. Indeed, that would have been a surprising stance to take given the knowledge of the situation Dr Walker had and the fact she would need to hand things over and may be referred back to past issues that had already been discussed, if they needed to be revisited with the input of those who were present at the time.

988. When it came to Dr Walker, Dr Cooper says what he did in response to the Claimant's concerns at paragraph 18 of his witness statement. He says he changed the Claimant's TPD. That is correct. He offered to set up mediation. That is correct. He listed to the Claimant. That too is correct. Dr Cooper also says that he flagged R1's process to the Claimant. He also did this and was working closely with the PSU and Mrs Davis to support the Claimant.

989. Consequently, without more for the Claimant she has fallen a long way short of proving Dr Cooper misled her or failed to take her concerns about Dr Walker and/or Mrs Potter seriously.

990. Therefore, the complaint at paragraph 5.2.13 (a) fails on the facts and is dismissed.

991. In a similar way, the Claimant also alleges that Drs Walker and Cooper as well as others at R2 fail to take the Claimant's complaints seriously and believe them to be a reflection of her mental state and her desire not to do work.

992. We have no idea what the basis of this allegation is. We have not been taken to any evidence suggesting anyone at R2 though the Claimant was lazy or did not want to do any work. All the evidence and communications we were taken to throughout the timeline of this case were written in the context of the Claimant being unable to do work because of the symptoms and behaviours arising from her disability.

993. We are not persuaded that Drs Walker, Cooper or anyone else at R2 had that view and indeed, if the Claimant is unable to identify who the "others" at R2 were then this further underlines the lack of evidence in support of this factual assertion.

994. Consequently, the allegation at paragraph 4.30 of the list of issues fails on the facts and is dismissed.

995. We then come to the allegations at paragraphs 5.2.13 (b) and 7.1.11 (a) where the Claimant says that her concern is that she had been misled about mediation not being organised for the reason of operational pressure and a lack of staff.

996. First, we cannot identify where this particular allegation is actually grieved about. It is not present in the Claimant's witness statement and there are no submissions made about it.

997. Secondly, the Claimant's grievance was upheld about the mediation in part because it had been arranged too slowly in the view of all three grievance decision makers.

998. Thirdly, if this was supposed to be a standalone allegation unrelated to the grievances about what Ms Proudlove said, we cannot identify where Ms Proudlove stated mediation was not organised for the reasons the Claimant alleges.

999. Mediation was then held with individuals the Claimant chose to have a mediation meeting with.

1000. Consequently, the allegations at paragraphs 5.2.13 (b) and 7.1.11 (a) fail and are dismissed.

The involvement of Dr Ankush Mittal as the Claimant's TPD and transparency issues involving Dr Mittal and Professor Whallett

1001. As we have previously mentioned earlier in this judgment, Dr Mittal had fleeting previous knowledge about the Claimant's situation because she, like other

trainees in difficulty, was discussed at a number of TPD meetings chaired by Dr Cooper.

1002. The first time it is documented that any significant information about the Claimant and her situation as discussed was on 17 January 2020, when Dr. Mittal was emailed by Dr Walker about two trainees in difficulty of which the Claimant was one. This email was in the bundle at page 789.

1003. The email discussed the difficult meeting in December 2019, the outcomes and the possible solutions.

1004. On 20 January 2020, Dr Mittal responded in a positive and supportive way. He said as follows:

"Hi all,

Just in relation to a previous HR issue for which I was an independent advisor on an employee grievance panel

We had a case in some ways similar to [Ms B], in that the employee was both at work and also unfit to work at the same time

The employee had failed to meet work objectives set for him over a 6 month review period and the management were considering a dismissal given that the usual process had been followed for supporting an employee in difficulty

However, I do recall we overturned that decision on the basis that being unfit for work does not suggest that work is not the right environment in which a recovery to become fit for work should not be shaped.

The view of the psychiatry team at the time was that the case may not have been fit for work due to the underlying mental health condition, which would affect motivation, concentration and also communication, but that work was an important Component of the graduated recovery process and reintegration into a functional state (which could take months) and that the employer would be making a reasonable adjustment under HR law to accommodate for this by allowing the employee to work to different expectations over a period of adjustment and recovery.

Happy to discuss further and I understand we are meeting tomorrow anyway

Best wishes
Ankush"

1005. Dr Walker replies with her email of the same date at page 787 in the bundle, which said:

"You won't see me tomorrow as I have an interview at Nottingham for PHE.

I'm not sure what the best learning environment would be for [Ms B]. The bottom line is she's not learning and she's not working. OH seems to believe her fit for work on a phased return over 4 weeks. She's already in week 2 of this. We have put in place all the adjustments she told us about. Justin only has agreed to keep her at R4 if she| does some work for him. And, it's hard to justify an occupational health reason for not doing any work except for her dissertation as researching and writing something for Justin is fundamentally similar to researching and writing something for her dissertation. And she wants to go into R4, but not into BU to work.

I don't know where I can send her and say there is no expectation of her doing any work for you until April but she obviously needs support? She also doesn't want to move out of zone which limits my options too.

I'm lucky that Lead Employer have several trainees they are managing with mental health difficulties and are managing her in accordance with their usual practice.

Best wishes,
Clare"

1006. On 23 January 2020, Dr Mittal replied:

"Thanks Clare

You make valid points and I trust your judgement on this one

4 weeks phased return seems unlikely if the training is not engaging to meet a phased return approach

I found I had to lean on a lot of HR advice in the past and I am sure you have that to hand from lead employer as you progress with this

happy to discuss if you want someone to talk anything through with

Best wishes
Ankush"

1007. In our view, this exchange of emails was nothing more than two team members legitimately discussing a trainee in difficulty trying to find solutions to the challenges the situation posed.

1008. On 27 January 2020, after the exchange of emails between the Claimant and Dr Walker mentioned earlier in this judgment where the Claimant alleged the two meetings with Dr Walker and Mrs Potter were distressing like her police interview, Dr Walker forwarded the email chain to Dr Mittal simply asking, *"Any advice re this?"*

1009. There is no response email from Dr Mittal. He says at paragraph 5 of his witness statement that he cannot recall if he responded and there isn't any other

evidence we were taken to or have reviewed that suggested he did respond. If he did, it was most likely by telephone conversation rather than on writing.

1010. There was then only minor indirect involvement from Dr Mittal and in May 2020, it was discovered that correspondence was being sent to his hee.nhs.uk email account which Dr Mittal said was not his day to day account and was rarely checked. He described his @wolverhampton.gov.uk account as being his day to day email account at paragraph 8 of his statement. There is no reason to doubt what he was saying. Indeed, virtually all the email responses in the bundle from Dr Mittal are from his Wolverhampton email account.

1011. On 1 May 2020, Mrs Potter forwarded the "School report" for the trainees to Dr Cooper by email at page 1238 in the bundle. The school report was described as a document that was periodically sent out by R1. It included any trainees in difficulty and the reasons why they had HR involvement.

1012. Dr. Cooper noticed that Dr Mittal had not been CC'd into that email as a TPOD and so Dr Cooper forwarded it to Dr Mittal. Unfortunately, Dr Cooper sent it to Dr Mittal's obsolete account at page 1238.

1013. In May 2020, to try to support the Claimant, the Respondents were trying to identify a new person who could support he educational needs. Professor Whallett was taking the lead on this and therefore, on 5 May 2020, he sent an email to Dr Mittal to ask if he was willing to assist. The email said:

"Dear Ankush

I hope that you are well.

I wondered if we could have a conversation about supporting a trainee in Public Health? There have been a number of distracting issues, and I am keen that a TPD is able to focus on the Educational needs to do all that we can support this trainee with a robust PDP and the help of Supported Return to Training.

I have agreed with Rob Cooper that you would be a good person to fulfil this role as things move forward, if you are happy to do so.

If so, please could we arrange a call. Thank you very much.

BW
Andy"

1014. Unfortunately, this was sent to Dr Mittal's obsolete account. Having heard nothing from Dr Mittal, Professor Whallett then emailed a chaser email to him on 21 May 2020. This said:

"Dear Ankush

I hope you are well.

I understand Rob may have had a chat with you about this trainee.

Please could we have a discussion about her soon as I would like to move forward with an educational plan for her.

There are still ongoing employment and placement discussions in the background, but I am keen that you would be able to concentrate on her Educational needs.

Please can we arrange a call to discuss

Many thanks

Best wishes

Andy"

1015. This too was sent to the wrong email address.

1016. On 26 May 2020, Dr Mittal stated that he managed to organise a call with Professor Whallett at paragraph 12 in his witness statement. He also stated at paragraph 13 that he had once been a trainee in difficulty himself during his training and thought that he would therefore be a good person to assist the Claimant.

1017. By 27 May 2020, Dr Mittal had agreed to provide any necessary educational support as confirmed by an email from Mrs Davis to professor Whallett at page 1323 in the bundle. Mrs Davis also confirmed the arrangements with the Claimant the following day on 28 May 2020. About this, she tells the Claimant at page 1238 in the bundle:

"Dr Whallett has now identified Dr Ankush Mittal as the person to support you from an educational point of view. My understanding is the Ankush will be making contact with you. As you will of course remember the remit of identifying someone from within Public Health to work with you now, is so that you can formulate an educational plan and PDP for the next phase of your training against the requirements of the curriculum so that when the time comes for you to return to training, there is no delay in you getting on and achieving what you need to. With regards to the formal role that Ankush will be fulfilling, he may not eventually end up as your Educational Supervisor (as this person may depend on your placement), however he is a TPD so in a really good position to work with you and identify a suitable training plan for you."

1018. By 1 June 2020, Dr Mittal had met with Professor Smith to discuss the Claimant and how best to support her as per Dr Mittal's statement at paragraph 14. He does not remember the content of the meeting and thinks it would have been brief.

1019. By 8 June 2020, it appeared that Dr Mittal had not made contact with the Claimant, causing her to chase Mrs Davis and communicate that she was

becoming concerned at the length of time things were taking as per the Claimant's email of the same date at page 1358.

1020. This prompted Mrs Davis to email Professor Whallett also on 8 June 2020 at 15.44, to enquire whether he was happy for Mrs Davis to contact Dr Mittal to check whether any contact had been made.

1021. Professor Whallett gave consent for Mrs Davis to make contact as shown by an email of 8 June to Dr Mittal from her asking if contact had been made at page 1386 in the bundle.

1022. Mrs Davis also updated the Claimant on 10 June 2020 at 12.18 to ask whether there had been any contact from Dr Mittal by then at page 1379 in the bundle.

1023. On 16 June 2020 at 11.47, Dr Mittal asked Dr Walker for the most recent email address for the Claimant and asking for a catch up at page 1451 in the bundle.

1024. At about the same time the Claimant was having conversation with who she described as trusted colleagues and said this about Dr Mittal at page 1452 in the bundle:

"Since I emailed you, my trusted colleagues have suggested Ankush would be a good person to have these discussions with."

1025. We therefore conclude that Dr Mittal was generally well regarded by a number of different people who the Claimant trusted.

1026. By 29 June 2020, the Claimant and Dr Mittal had made contact. However, the Claimant was unsure what she should be disclosing to him. The Claimant therefore emailed Mrs Davis for advice at page 1477 in the bundle. Mrs Davis was absent, so the Claimant forwarded it to the general PSU email address.

1027. On 3 July 2020, Dr Mittal updated Professor Whallett and copied the Claimant. He said at page 1503:

"Hi both,

Just so you are both updated together, I have a little bit of an easier diary from next week onwards and am very much looking forward to helping [Ms B] with ideas around her learning plan and have sent over some suggested times.

I do hope my reasonably recent experiences of training in the region can add some value and help shape any plans.

Best wishes
Ankush"

1028. Dr Mittal stated that he sent this email after a phone call with Professor Whallett and copied in the Claimant so that both were clear about what was happening at paragraph 22 in his statement.

1029. On 6 July 2020, there is an email exchange about trying to organise the first in depth 1-2-1 with the Claimant. The chain goes as follows starting at 11.11 am at page 1506 min the bundle:

"Dear [Ms B],

In response to your recent email I wanted to add a bit of structure to how I can help you with your learning plans.

Debbie at HEE is part of our business support here and is happy to help us write up any of the learning related themes from our conversations and support us with any notes and actions/agreements.

I have a bit more space in my diary now this afternoon so [Ms B] if you are free any time from 3pm onwards Debbie can send you a meeting invite for skype business and we can start to discuss your support and hopefully shape your training in a positive way when you return to your placements.

Do let us know when the best time is and we can get a 1 hour time period held in our diaries for this afternoon.

Best wishes

Ankush"

The Claimant says at 11.33:

"Hi Ankush,

I wasn't expecting Debbie to be copied in or attending.

Please can you advise what information about me you have shared with Debbie so far of what information I have shared with you?

Thanks"

Dr Mittal then says at 12.19

"Hi [Ms B],

I can confirm that I have not shared any data about you with Debbie at all other than asked for her to support us as we develop any learning plans and do keep a record of any agreed actions.

I can also assure you that I have not had any details of your personal circumstances, and have simply been advised to hear your thoughts and offer my advice on how we could give you a good training offer as a school, and certainly my role will be to help make sure you get that.

Do be assured I want to make this as helpful a process for you as I can, and give you the opportunity to help shape some of your training in the context of your learning goals.

Best wishes

Ankush"

The Dr Mittal emails the Claimant again at 13.07:

"Hi [Ms B],

Perhaps it is best if we speak over the phone 1-2-1 today and then perhaps I will get a better understanding of how to help.

I really have a limited understanding of any of the past experiences you may have had with anyone in HEE and can see that this is something you are worried about.

How about we agree a phone call at 3pm? I would be happy to take a call on my number

How does that sound?"

1030. The reference to Debbie in the email is Debbie Horley, Account Manager at R2.

1031. Dr Mittal says in his statement at paragraph 27 that he had discussed and agreed with the Claimant that things would be discussed confidentially.

1032. On 9 July 2020, there was an email exchange between Dr Mittal and Ms Horley. Dr Mittal explained that he had offered the Claimant a 1-2-1 without Ms Horley being present in response to the Claimant's concerns as per his email at page 1512 in the bundle.

1033. The Claimant claims at allegations 4.24 and 5.2.14, that Dr Mittal failed to be transparent about what information had been provided about her in emails on or around 6 July 2020.

1034. We have considered the email correspondence around that date and we cannot see where Dr Mittal has failed to be transparent about information.

1035. The Claimant's issue seems to be two fold, first, that Ms Horley was Dr Cooper's PA and therefore, because the Claimant was having perceived issues with Dr Cooper, Ms Horley's involvement was inappropriate and Dr Mittal should not have shared her data with him and, secondly, that Dr Mittal claimed he had no prior knowledge of the Claimant's situation and the subject access request suggests that he did have prior knowledge of the situation.

1036. We cannot see where Dr Mittal had been made aware there was an issue between the Claimant and Dr Cooper. He had been made aware there were

difficulties between the Claimant and Dr Walker in January 2020, but nothing to do with Dr Cooper.

1037. In cross examination, Dr Mittal basically said that he would have known about the Claimant's difficulties generally from the email exchanges in January 2020. However, there was then a period of 5 months where, in the meantime, he said he had forgotten about the few emails that had been exchanged.

1038. We are not persuaded that Dr Mittal had forgotten about the Claimant's situation in that period. We have heard that TPD meetings about which Dr Mittal was a regular attendee would have discussed all trainees in distress on a monthly basis.

1039. That said, there is insufficient evidence that Dr Mittal was not being transparent with the Claimant. Indeed, it was he who said to the Claimant that Ms Horley was going to take a note of the meeting.

1040. There is no evidence that any information other than the fact the meeting was going to take place with the Claimant was discussed between Dr Mittal and Ms Horley and consequently, in our view, there was nothing for Dr Mittal to be transparent about when it came to information sharing in the emails of 6 July 2020.

1041. When considering what Dr Mittal said he knew of the Claimant's situation prior to properly engaging with her to formulate an educational plan, the Claimant confirms her understanding of the situation at paragraph 295 of her statement. She said *"…He told me he had a very limited understanding of my situation [1508]. I engaged with him on this basis thinking that he would have had little to no prior knowledge."*

1042. However, Dr Mittal made no mention of no prior knowledge. He said he had little prior knowledge. In the discussion at the TPD meetings, we find that Dr Mittal had general knowledge of the Claimant's situation, not anything specific or to the level of detail the Claimant thinks was discussed.

1043. There appears to be a difference in understanding between Dr Mittal and the Claimant nothing more. Dr Mittal did not mislead or lack transparency about what information involving the Claimant he was privy to. We believe that what the Claimant says Dr Mittal told her in her statement at paragraph 295, was true. He had little knowledge of her situation. He never said he knew nothing about it.

1044. The Claimant also complained about Professor Whallett not being transparent with her about what information was being provided about her at the same paragraphs of the list of issues where Dr Mittal was accused.

1045. The alleged offending correspondence from 16 February 2021 appears to be a letter from Professor Whallett to the Claimant at page 2660 in the bundle. This would benefit from being quoted in full:

"Dear [Ms B]

Many thanks for your email of 8th January 2021 in which you state that you do [not] feel that you wish to meet with Dr Mittal any further.

My understanding is that you had agreed with Dr Mittal that there should be a defined structure for discussions with him, including clear expectations of the meetings. After he had openly suggested that it might be helpful for Debbie Horley to take notes in order to support that process, you had agreed with Dr Mittal that this would not happen and then fully agreed to conduct your discussions with him one to one from there.

I believe you have had a number of calls and email exchanges with Dr Mittal until early September. Dr Mittal offered open ended support to you towards end of September, but from there you did not take him up on this by telephone or email. You also did not take him up on a further offer In early October and have not responded to his latest offer made on 22nd December 2020.

Throughout this process, Dr Mittal was only given the absolutely essential information required to provide you with the educational and training support that you needed so that he could be totally independent in his support for you which I believe he has been. Furthermore, Dr Mittal tells me that in a phone call with him on 15th July you had complimented him on his helpful approach to working with you.

I am therefore sorry and surprised that you perceive there has been any breach of trust on his part and disappointed that you had not managed to engage with him to focus on your training needs as I expected you to do. As I have said in my previous letter, a proper understanding of your curricular requirements in the context of any support or adjustments that are recommended, if any, will be needed to determine a suitable placement required to make your training successful. However, as Dr Mittal Is stepping down from his TPD role, it will be necessary to allocate you another TPD to take on this role. I have arranged for Jayne Parry to take this role on.

I understand that arrangements are being made by the Lead Employer for a risk assessment and an Occupational Health referral. From there, the plan is that a joint meeting with you, HEE (represented by myself and Jayne Parry) and Lead Employer will take place to discuss any support or adjustments that are needed to return you to training in an appropriate placement.

In addition, you must keep us informed of any new address details and whether this is a temporary or permanent change for the reasons I described to you in my previous letter. Please can we be updated on this."

1046. Having reviewed the correspondence mentioned by Professor Whallett in this letter, we are content the letter describes the state of affairs at the time accurately.

1047. We are equally not persuaded that Professor Whallett has in any way lacked transparency about information sharing with the Claimant. There is simply insufficient evidence to suggest anything was hidden from the Claimant either accidentally or deliberately.

1048. In any case, the Claimant made no submissions either in writing or orally about these two allegations.

1049. Consequently, allegations 4.24 and 5.2.14 in the list of issues fail on the facts and are dismissed.

The Claimant's resignation

1050. On 9 September 2021, the Claimant received the stage three outcome letter. However, she could not open the attachment claiming that she needed to reset her password.

1051. On 14 September 2021, the Claimant met with a Natalie Villages, HR Business Partner to discuss the Claimant's welfare as pe the email at page 2767 in the bundle.

1052. The note of that meeting is in the bundle at pages 2768 – 2769. The outcome of the meeting was that the Claimant was not fit to attend work as confirmed by her GP and she needed time to digest and review the outcome of the stage 3 grievance.

1053. On 23 September 2021, the Claimant had read the outcome of her stage three grievance letter from Mr. Khashu.

1054. In response, she emailed Mr Khashu and said as follows at page 2765 in the bundle:

"Dear Claire and Nik,

Thank you for this outcome letter which I have now had opportunity to read.

I am very disappointed with the outcome which I believe is fundamentally flawed.

I also remain concerned at the impact on my health and well-being if I were to return to this hostile work environment.

I will need to seek legal advice before deciding on my next steps. This may take some time given the volume of paperwork, the complexity of the issues involved, and the exacerbating impact of this ongoing situation on my symptoms of depression and post-traumatic stress.

I am writing now as I would like to reserve my rights generally whilst I seek advice, in particular my right to resign and claim constructive unfair dismissal.

Best wishes"

1055. Clearly by this time the Claimant perceived her contract of employment to have been fundamentally breached, hence why she mentioned reserving her rights to claim constructive dismissal.

1056. On 11 November 2021, the Claimant resigned with immediate effect. She did this by emailing a letter to Ms Szpakowska.

1057. In that letter, the Claimant states the reasons why she resigned were as follows:

1057.1. Flaws in the grievance process including allegations of falsified evidence and failing to consider new evidence;

1057.2. Failing to apply the correct legal tests to determine if disability discrimination has occurred;

1057.3. Failing to reconcile differing accounts of witnesses in the grievance process;

1057.4. Failing to make reasonable adjustments;

1057.5. The trust committed discrimination arising in from her disability;

1057.6. Restricting her training;

1057.7. Taking steps to remove her from the workplace;

1057.8. Declining to provide mediation;

1057.9. Being singled out for having her PHE placement blocked;

1057.10. Failing to read the Claimant's OH report before removing and blocking her PHE placement;

1057.11. Ongoing detrimental treatment making her health worse in breach of R1's duty of care towards her

1057.12. Trivialising dishonesty during the grievance process;

1057.13. Trivialising harassment complaints and failing to deal with discriminatory stereotypes;

1057.14. False and misleading allegations being made against her;

1057.15. Breaches of confidentiality (labelled in the letter as breaches of data protection legislation) including Dr Walker's letter to the OH Doctor;

1057.16. R1 and R2 failing to be transparent, independent and impartial with her;

1057.17. R1 Declining counselling support;

1057.18. R1 denying breaches of trust and confidence without explanation;

1057.19. R1 facilitating a hostile workplace for the Claimant;

1057.20. Subjecting her to discrimination, harassment and victimisation;

1057.21. Because the Claimant had not had any contact from R1 or R2 from ACAS.

1058. In response to the letter, Ms Szpakowska wrote as follows by email dated 16 November at pages 2795 – 2796 in the bundle:

"Dear [Ms B],

Thank you for your letter dated 11th November 2021.

I am sorry to hear that you wish to resign with immediate effect from your employment with St Helens and Knowsley Teaching Hospitals NHS Trust and I appreciate that this is a very difficult time for you. I wish to remind you of all the well-being and support resources you have available to you at this time - further information can be found here.

The reasons outlined in your letter for your immediate resignation are:

1. Flawed Grievance and Failure to Resolve my Serious Concerns
2. Disability Discrimination / Failure to Make Reasonable Adjustments / Discrimination arising from
Disability
3. Trivialising Dishonesty including during Grievance Process
4. Trivialising a Complaint of Harassment
5. Data Protection breaches and breach of the Trust's duty of confidentiality towards me
6. Further breaches of Trust and Confidence

I do not believe that the Trust has breached your contract of employment or committed a repudiatory beach of your contract. You raised most of these concerns via the Trust's Grievance policy and procedure and they were considered in detail. You received the stage 3 outcome letter on 9th September 2021 which concluded our internal grievance procedures. I am sorry to hear that you remain dissatisfied with the review that has been undertaken but there are no further internal appeal options that are available for you.

I also do not agree that the Trust has trivialised your concerns or failed to address the issues of discrimination, harassment and victimisation that you raised or that the grievance process was flawed.

I am sorry that you consider that the Trust has facilitated a hostile environment and failed in its duty of care towards you, but I do not believe that to be the case. I am aware that Natalie Villegas, HR Business Partner has been supporting you throughout your period of long term sickness absence and have arranged welfare meetings to discuss your health with you and support you to return to work. I appreciate that this has been a difficult time for you and I encourage you to continue to access support where you need to do so including advice and support from your GP, Trade Union and Health, Work and Well-Being.

While I understand that you may consider that resigning from employment is in your best interests, I would like to offer you the opportunity to take some time to reflect on and reconsider your decision over the next few days. If you change your mind during this period and wish to retract your resignation, please contact me via email by 5pm on Friday 19th November to confirm this. I will not action your resignation from employment until then. Natalie Villegas, HR Business Partner has contacted HWWB to confirm arrangements for an appointment and they will be in touch shortly.

Finally, in relation to communications with ACAS, you stated as part of the grievance process that you wished to explore a resolution with the Trust on a without prejudice basis, via ACAS. You were informed that the Trust was happy to consider any suggestions that you wanted to put forward in this way and the Trust has since liaised with ACAS (in addition to continuing to support your sickness absence through its usual processes) but is not aware that you have put forward any suggestions.

I look forward to hearing from you further.

Yours sincerely

Malise"

1059. In response, the Claimant reiterated the lack of ACAS contact and that led to some further ACAS communication from both sides as indicated in various emails in the bundle for example at pages 2793 – 2794 in the bundle.

1060. The culmination of these additional communication resulted in Ms Szpakowska offering on final chance for the Claimant to retract her resignation by 5pm on 29 November 2021 at page 2792.

1061. The Claimant refused to retract her resignation and confirmed this by email on 23 November 2021.

1062. R1 then processed her termination of employment paperwork.

1063. On 30 November 2021, Professor Whallett wrote to the Claimant asking whether she also wished to resign from her training course, indicating that she would need to find a new lead employer for the course and it would be very unlikely she would be able to do that at page 2798.

1064. By email of the same date, the Claimant wrote to Professor Whallett resigning her training post at page 2799.

1065. On 7 September 2022, in her ET1, the Claimant alleges that the reasons why she resigned were as follows:

1065.1. Flawed Grievance and Failure to Resolve my Serious Concerns;

1065.2. Disability Discrimination/Failure to Make Reasonable Adjustments/Discrimination arising from Disability;

1065.3. Trivialising Dishonesty including during Grievance Process;

1065.4. Trivialising a Complaint of Harassment;

1065.5. Data Protection breaches and breaches of the Trust's duty of confidentiality towards her;

1065.6. Further breaches of Trust and Confidence.

1066. In her particulars of claim at page 386 dated 28 April 2023, the Claimant claims that the conduct of R1 breached the implied term of trust and confidence and express terms of her contract although the express clauses aren't pleaded or identified.

1067. The Claimant also pleaded the last straw to be as follows: *"The Claimant contends that the Respondent's actions in rejecting her grievance thereby denying her the ongoing support she required and/or expecting her to return to an environment which was hostile to her was the final straw."*

1068. In her Scott schedule from May 2023, the Claimant's gives the following reason for her resignation at page 486 in the bundle *"failure to support or facilitate a transfer to another training location, or alleviate C's concerns over a return to an environment which she perceived to be hostile to her owing to her disability resulting in her having to resign in circumstances of constructive dismissal."*

1069. In her witness statement, we have found the following points significant:

1069.1. At paragraph 324, the Claimant stated: *"On 23 September, I indicated my dissatisfaction with the outcome and reserved my right to resign and claim constructive unfair dismissal. I attempted to pursue discussions via ACAS but StHK was unresponsive. I resigned on 11 November 2021, explaining my reasoning in detail. In summary, the employer had failed to resolve my grievance and the process had been flawed, had failed to consider evidence appropriately, had allowed me to be subjected to discrimination and a hostile working environment, had failed to address concerns about data protection and confidentiality, had trivialised concerns about harassment, had placed unreasonable restrictions and management requests on my training, had undermined me to colleagues and had*

denied me opportunities for training and progression. They had failed to engage meaningfully with my concerns or consider options for resolution. They had failed to uphold key aspects of my grievance, denying me the ongoing support I required."

1069.2. At paragraph 326 the Claimant stated: *"For the avoidance of doubt, the behaviours complained of collectively or individually amounted to a breach of my contract of employment. StHK allowed me to be treated in a way that was contrary to the policies set out in my contract. StHK failed to comply with its implied duty of mutual trust and confidence, including the duty to act fairly, reasonably and honestly, and provide a safe place of work as it:*

a) failed to comply with its obligations under the EqA 2010;

b) unreasonably exposed me to an unnecessary and unreasonable risk to my health and safety (breaching the implied to duty to provide a safe and supportive place of work);

c) failed to address concerns about data protection and confidentiality;

d) failed to consider evidence appropriately, and/ or disregarded evidence that supported my position

e) trivialised my concerns about workplace harassment;

f) trivialised my concerns around lack of candour;

g) allowed me to be subjected her to unlawful discrimination on the grounds of my disability;

h) allowed unreasonable restrictions to be imposed upon me;

i) required me to agree to a series of unreasonable management requests;

j) allowed me to be unreasonably denied opportunities for training and progression; and;

k) allowed me to be undermined in respect of the dealings I had with colleague and partner organisations.

1069.3. Then at 327, the Claimant identifies the specific breaches of contract she relies upon: *"The failure of the Respondent to resolve these concerns overall amounted to a breach of trust and confidence, and also amounted to the breach of specific implied terms:*

a) Breach of data protection and confidentiality;

b) Breach of duty of care;

c) Breach of implied duty to protect health and safety in the workplace;

d) Breach of implied duty not to expose Claimant to a hostile or discriminatory environment;

e) Breach of duty to make reasonable adjustments."

1070. Having read the letter in detail and considered all the evidence, we conclude that the trigger for the resignation was the lack of contact from R1 and R2 via ACAS.

1071. However, we cannot safely make findings about the totality of the situation in which the Claimant resigned, without first identifying if any discrimination occurred before the resignation.

THE SURVIVING DISCRIMINATION CLAIMS

1072. When considering all of the decisions below, we have taken into account the ECHR guidance and Code of Practices where relevant.

1073. We have also decided all of the discrimination claims that have survived out findings of fact in the context of the entire factual matrix as found above.

BURDEN OF PROOF

1074. Section 136 of the Act provides as follows:

"(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court [which includes employment Tribunals] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision"

1075. Direct evidence of discrimination is rare and Tribunals frequently have to consider whether it is possible to infer unlawful conduct from all the material facts. This has led to the adoption of a two-stage test, the workings of which were described in the annex to the Court of Appeal's judgment in **Wong v Igen Ltd (formerly Leeds Careers Guidance) [2005] ICR 931**, updating and modifying the guidance that had been given by the Employment Appeal Tribunal in **Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205.**

1076. The Claimant bears the initial burden of proof. The Court of Appeal held in **Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913** that *"there is nothing unfair about requiring that a Claimant should bear the burden of proof*

at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the Respondent's act was a discriminatory one) then the claim will succeed unless the Respondent can discharge the burden placed on it at the second stage".

1077. At the first stage, the Tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them.

1078. As was held in **Madarassy v Nomura International plc [2007] IRLR 246**, "could conclude" refers to what a reasonable Tribunal could properly conclude from all of the evidence before it, including evidence as to whether the acts complained of occurred at all. In considering what inferences or conclusions can thus be drawn, the Tribunal must assume that there is no adequate explanation for those facts.

1079. Unreasonable behaviour of itself is not evidence of discrimination – **Bahl v The Law Society [2004] IRLR 799** – though the Court of Appeal said in **Anya v University of Oxford and anor [2001] ICR 847** that it may be evidence supporting an inference of discrimination if there is nothing else to explain it.

1080. In a harassment case, the first stage of the burden of proof is particularly relevant to establishing that the unwanted conduct was related to the protected characteristic.

1081. If the burden of proof moves to the Respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act.

1082. To discharge that burden, it is necessary for the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the prohibited ground. That would require that the explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a Tribunal would normally expect cogent evidence.

1083. All of the above having been said, the courts have warned Tribunals against getting bogged down in issues related to the burden of proof – **Hewage v Grampian Health Board [2012] ICR 1054**.

1084. In some cases, it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, in the absence of a satisfactory explanation, would have been capable of amounting to a prima facie case of discrimination **Laing v Manchester City Council UKEAT/0128/06/DA**. Here Elias P as he then was said this at paragraphs 75 and 76:

"75. The focus of the Tribunal's analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied

that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, "there is a nice question as to whether or not the burden has shifted, but we are satisfied here that even if it has, the Employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race.

76. Whilst, as we have emphasised, it will often be desirable for a Tribunal to go through the two stages suggested in Igen, it is not necessarily an error of law to fail to do so. There is no purpose in compelling Tribunals in every case to go through each stage. They are not answering an examination question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the Employer. But where the Tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever."

THIRD PARTIES

1085. A Respondent is not liable for any acts or omissions of a third party.

1086. However, if the Respondent's own behaviour such as decisions to ignore or fail to do anything about a third party's harassment are by themselves motivated by the Claimant's protected characteristic, then that is actionable discrimination **Nailard v Unite the Union [2018] EWCA Civ 1203.**

1087. We consider this issue, because on occasion the Claimant appears to have tried to bind either Respondent with liability for the actions of R3. Nothing has been pleaded in accordance with the ancillary provisions of the Equality Act 2010, so any such allegations fail because there is no cause of action against R1 or R2 for those acts or omissions in these proceedings.

THE APPROACH TO EVIDENCE AND INFERENCE

1088. The Employment Appeal Tribunal summarised the proper approach to the facts in cases under the Act in **Talbot v Costain Oil, Gas & Process Ltd and others [2017] I.C.R. D11**:

"(1) It is very unusual to find direct evidence of discrimination;

(2) Normally the Tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question;

(3) It is essential that the Tribunal makes findings about any "primary facts" which are in issue so that it can take them into account as part of the relevant circumstances;

(4) The Tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference;

(5) Assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also reliability, and involves testing the evidence by reference to objective facts and documents, possible motives and the overall probabilities; and, where there are a number of allegations of discrimination involving one personality, conclusions about that personality are obviously going to be relevant in relation to all the allegations;

(6) The Tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors which point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment;

(7) If it is necessary to resort to the burden of proof in this context, section 136 of the Equality Act 2010 provides in effect that where it would be proper to draw an inference of discrimination in the absence of "any other explanation" the burden lies on the alleged discriminator to prove there was no discrimination."

HARASSMENT

1089. Section 40 of the Act renders harassment of an employee unlawful. Section 26 defines harassment as follows:

"(1) A person (A) harasses another (B) if –

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

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

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…
…

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

(a) the perception of B;

(b) the other circumstances of the case;

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

1090. The Tribunal is therefore required to reach conclusions on whether the conduct complained of was unwanted and, if so, whether it had the necessary purpose or effect and, if it did, whether it was related to the protected characteristic.

1091. If the Claimant proves any of the conduct they complain about, it was unwanted. There is no need to say anything further about that. However, it must have lasting effects rather than being transitory.

1092. It is clear that the requirement for the conduct to be "related to" the protected characteristic needs a broader enquiry than whether conduct is "because of the protected characteristic" like direct discrimination **Bakkali v Greater Manchester Buses (South) Limited UKEAT/0176/17**.

1093. What is needed is a link between the treatment and the protected characteristic, though comparisons with how others were or would have been treated may still be instructive. In assessing whether it was related to the protected characteristic, the form of the conduct in question is more important than why the Respondent engaged in it or even how either party perceived it.

1094. A mere failure to investigate a complaint of harassment will not in and of itself be an unlawful action. **Home Office v Coyne [2000] IRLR 838.**

1095. It is clear that the inaction of an employer can be unwanted conduct. However, if that decision is taken on grounds unrelated to the protected characteristic, then it will not be harassment **Conteh v Parking Partners Limited [2011] ICR 341.**

1096. The question of whether the Respondent had either of the prohibited purposes – to violate the Claimant's dignity or create the requisite environment – requires consideration of each alleged perpetrator's mental processes, and thus the drawing of inferences from the evidence before the Tribunal **GMB v Henderson [2016] EWCA Civ 1049**.

1097. As to whether the conduct had the requisite effect, there are clearly subjective considerations – the Claimant's perception of the impact on her (they must actually have felt or perceived the alleged impact) – but also objective considerations including whether it was reasonable for it to have the effect on this particular Claimant, the purpose of the remark, and all the surrounding context. That much is clear from section 26 and was confirmed by the Employment Appeal Tribunal in **Richmond Pharmacology Ltd v Dhaliwal [2009] ICR 724**. The words of section 26(1)(b) must be carefully considered. Conduct which is trivial or transitory is unlikely to be sufficient.

1098. Mr. Justice Underhill, as he then was, said in that case:

"A Respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That…creates an objective standard … whether

it was reasonable for a Claimant to have felt her dignity to be violated is quintessentially a matter for the factual assessment of the Tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt …"

and

"…We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and Tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase…"

1099. Similarly in the case of **HM Land registry v Grant [2011] EWCA Civ 769**, Elias LJ as he became said, when discussing the descriptive language of subparagraph 1:

"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

1100. In the case of **Greasley-Adams v Royal Mail [2023] EAT 86 EAT** for harassment to have occurred, the person must have been aware that it had happened in order to perceive that it was harassment. Therefore, if comments are made behind an employee's back that they become aware of later on, for example because of an investigation into their grievances about other matters, to determine whether harassment has taken place, the correct approach is to look at C's perception of the situation at the date and time the alleged harassing incident took place. Consequently, if C was not aware of the harassment at the time, they could not perceive that they had been harassed at the time.

1101. Further, if they then later found out about the harassment event, it could well still amount to harassment at the time they find out about it. However, whether it is reasonable for C to believe that they have been subject to harassment in accordance with section 26 (4) (c), that question is to be determined in the context of events taking place at the time C finds out about the harassing event. In the context of **Greasley-Adams,** this meant that finding out about a harassment event during an investigation meeting into his grievances and claiming this was violating his dignity, was unreasonable in the context of the employer investigation C's concerns in good faith.

1102. It is for the Claimant to establish the necessary facts which go to satisfying the first stage of the burden of proof. If they do, then it is plain that the Respondent can have harassed them even if it was not its purpose to do so, though if something was done innocently that may be relevant to the question of reasonableness under section 26(4)(c).

1103. Violating and intimidating are strong words, which will usually require evidence of serious and marked effects. An environment can be created by a one-off comment, but the effects must be lasting. Who makes the comments, and whether others hear, can be relevant, as can whether an employee complained, though it must be recognised that is not always easy to do so. Where there are several instances of alleged harassment, the Tribunal can take a cumulative approach in determining whether the statutory test is met **Driskel v Peninsula Business Services Ltd. [2000] IRLR 151**.

1104. When considering whether conduct is related to the protected characteristic, The Tribunal must first identify the conduct in question. Once that is done, if the conduct is inaction not motivated in any way by the protected characteristic as in **Conteh,** then it will not be harassment. If the positive conduct is not motivated in any way by the protected characteristic, that too will not be harassment. Therefore if, for example, an alleged harasser chooses not to investigate a certain issue of harassment, if that decision when looking at the alleged harasser's mental processes is for a reason unrelated to the characteristic, then it will not be harassment after **Nailard** above.

The surviving harassment claims

1105. The first claim we consider is that at paragraph 7.1.1 in the list of issues:

"7.1.1. [1] make decisions about the Claimant's placement without her input, block the Claimant from undertaking a placement at Public Health England (PHE) on or around the 11 February 2020; and attempt to place the Claimant at a placement at the University of Birmingham to the detriment of her progression through training and her mental health [CW,RC];"

1106. First, this is said to be pleaded against both Respondents. However, as the initials cited as the perpetrators are Dr Walker and Dr Cooper, both from R2, then clearly this I pleaded only against R2. We understand why and that is because it was R2 which made the decision, not R1.

1107. Therefore, for the avoidance of doubt, any head of claim against R1 for this issue is dismissed.

1108. Moving onto R2, it is clear that its decision not to place the Claimant at PHE was unwanted conduct from her point of view.

1109. Applying **Bakkali,** there is a link between the treatment complained of and the Claimant's disability. R2's witnesses were clear that they decided to place the Claimant at University of Birmingham instead of PHE because they wanted a more structured programme and they wanted a placement where the

supervisors were more likely to have sufficient time and resource to provide the detailed and significant support the Claimant needed because of the difficulties she was having because of her disability.

1110. Consequently, the placement decision was related to disability.

1111. It is clear to us that the decision to place at Birmingham University was not designed by Dr Walker or Dr Cooper to harass the Claimant and make a negative work environment for her, quite the opposite.

1112. However, it did clearly have the effect from the Claimant's perspective.

1113. Therefore, taking into account all the circumstances and the Claimant's subjective view, we must now determine if the Claimant's view of the situation was a reasonable one to have.

1114. We have no hesitation in finding that her view was not objectively reasonable. We say this because:

1114.1. The context of this decision is being made in very difficult and challenging circumstances for those involved. It was made on 11 February 2020. The Claimant had used language that communicated her suicidal ideation and that those involved were somehow at least partly to blame or would be partly to blame if they did not make decisions the Claimant viewed as positive for her.

1114.2. There is no doubt in our minds that R2 was doing its absolute best to try to resolve all issue it was faced with and balance its own interests, with those of the Claimant and any legal and professional duties owed to everyone including those staff the Claimant was communicating with.

1114.3. We find R2, Dr Walker and Dr Cooper genuinely believed that they were helping the Claimant and making decision for her benefit and support to keep her at work and to keep her training in an attempt to turn a negative training progress trajectory into a positive one.

1114.4. There is no evidence that the decision to send the Claimant on placement at University of Birmingham would have or did place the Claimant at a detriment to her training.

1114.5. Likewise, there is insufficient medical evidence that the decision caused a detriment to the Claimant's mental health. Yes, the Claimant reacted badly to the decision, because it was a decision she did not like and that caused her to send manipulative emails to those involved threatening to buy a suicide kit and blame them for the consequences. It also caused her to covertly organise the placement at PHE anyway. However, we are not persuaded that these subsequent behaviours were due to the Claimant's mental health. We find she was fully aware of her behaviour, why she was doing it and its consequences. There is insufficient evidence to the contrary.

1115. Given the context of the decision, the fact the Claimant was consulted about the decision before it was made, the decision was made in a professional way and communicated to the Claimant appropriately, using appropriate language and that Dr Walker and Dr Cooper genuinely wanted the Claimant to continue her training and succeed, it was not reasonable for the Claimant to believe this was harassment.

1116. Consequently, the claim at paragraph 7.1.1 in the list of issue fails and is dismissed.

1117. We move onto the claim at paragraph 7.1.7 in the list of issues. Which asks whether both Respondents:

"7.1.7. [8] Plan to place the Claimant on medical suspension without OH involvement, believing her to lack insight (HEE and STHK, December 2019), and place her on medical suspension in April 2020, contrary to the OH report of Jan 2020 that recommended the Claimant remain in work [CW, RC, GD, DL, HP];"

1118. Clearly, both the plan to place the Claimant on medical suspension on December 2019 and the actual decision to place the Claimant on medical suspension in April 2020 were acts of unwanted conduct from the Claimant's perspective.

1119. For the December 2019 plan, those who were the leads at both Respondent for this plan were Dr Walker for R2 and Mrs Potter for R1. Miss Livesey and Ms Proudlove were only involved to the extent that the medical suspension would be authorised as a last resort if it was appropriate after the meeting.

1120. We also find that if on 17 December 2019 a decision had been taken to suspend the Claimant, that decision would have been Mrs Potter's having received pre-authorisation from Miss Livesey.

1121. Consequently, whilst they may have been involved to a lesser extent, Dr Cooper, Dr Djuric and Ms Proudlove were not significantly involved.

1122. Mrs Potter is missing from the perpetrators of this allegation, but we find that was an oversight and have included Mrs Potter as an alleged perpetrator here because that is clearly what the Claimant meant.

1123. Applying **Bakkali,** again, there is clearly a link to the decision to plan the medical suspension and the disability the Claimant has. It was only thought about after the Claimant had suicidal ideation triggered by a combination of the Claimant reporting a past sexual assault to the police, her perception they weren't dealing with that investigation well and Phoenix Psychology rejecting the Claimant's application for support and her subsequent behaviours on 27 November 2019.

1124. Clearly the Respondents thought the Claimant was behaving in the way she was, because of her disabilities and that was why they planned the suspension.

1125. We are persuaded that the medical suspension plan was viewed by the Claimant as being patronising and offensive. We do not find the Respondents behaved in that way with that purpose, but it was clearly the effect on the Claimant.

1126. We then move on to discuss whether it was reasonable for the Claimant to have that view. In our judgment, it was not. Again, all those involved were trying to do was the best they could to support the Claimant so they kept her safe and well, sought advice from occupational health experts and so they could decide what a good working and learning environment would be for the Claimant.

1127. When the actual decision to medically suspend is made, this is a joint decision between Miss Livesey and Ms Proudlove.

1128. Again, they made this decision for similar reasons as they did for the original plan to suspend the Claimant, and their evidence was they simply could not ignore the fact that before her return to work from her Australia trip, the Claimant had threatened to buy a suicide kit, use it and blame the Respondents for that.

1129. We agree that the Respondents could not ignore these emails. They were reasonable taking the steps they were and in the context of them trying to keep the Claimant safe from perceived harm whilst they were trying hard to seek specialist OH advice before the Claimant could return to work.

1130. It is not reasonable for the Claimant to believe that the decision to place her on medical suspension was harassment in the context in which it was being done.

1131. Consequently, the claim in the list of issues at paragraph 7.1.7 fails and is dismissed.

1132. We then consider the allegation at 7.1.8 of the list of issues which says:

> *"7.1.8. [9] Prevent the Claimant from undertaking any work-related activity between April 2020 – November 2021 under the terms of the medical suspension [CW, RC, DL, MS];"*

1133. In our view, this was another way of describing the medical suspension. The Claimant seems here to be trying to separate the decision to suspend itself from decisions made during the suspension when the Claimant was making requests to do work related activity.

1134. When it comes to Dr Cooper, the Claimant argues that he should not have prevented her from undertaking her role as a representative on the School Board.

1135. Dr Cooper made the decision that she should not be present at that meeting. Dr Walker was not involved in the decision, only in giving others prior warning

that the meeting may be an issue because the Claimant had received the invite to it despite being medically suspended.

1136. Clearly, the Claimant viewed this as unwanted conduct and clearly, it is related to disability because the medical suspension would not have been in place had the Claimant's disabilities not meant she was presumably unfit for work and study subject to awaiting advice from occupational health.

1137. The Claimant clearly perceived that this behaviour had the effect of creating a negative work environment for her.

1138. We do not believe that Dr Cooper's purpose was to create such an environment.

1139. When considering whether it was reasonable for the Claimant to view Dr Cooper's decision as being harassment, we are persuaded that it was not reasonable for her to have that view.

1140. Dr Cooper was simply making a decision for the well-being of the Claimant pending further OH advice and to try to ensure there wasn't embarrassment at any meetings also attended by Dr Walker. In addition, the decision was made because the Claimant shouldn't have been invited to that meeting anyway.

1141. In that context, we find that it was unreasonable for the Claimant to have viewed the situation as having the effect of creating a negative work environment for her. Dr Cooper was trying to comply with its duty of care towards the Claimant and with the general rules for the board meetings being arranged.

1142. The allegation against Miss Livsey is regarding voluntary work There was no prohibition on her performing that work. As found earlier in this judgment, Miss Livesey simply wanted to risk assess the situation before giving permission to undertake any work related activities even if voluntary.

1143. Ms Szpakowska deals with this allegation at paragraphs 13 – 15 in her witness statement. She says she wrote to the Claimant at pages 2595 – 2598 to encourage her to re-engage with the discussion and risk assessment Miss Livesey wanted to carry out. This in turn may then have allowed the Claimant to undertake some of the activities she wanted to do.

1144. Ms Szpakowska did not make the decision to medically suspend the Claimant. Neither did Dr Walker. They therefore didn't prevent the Claimant from undertaking work related activities at all.

1145. Consequently, the allegation at paragraph 7.1.8 in the list if issue fails and is dismissed.

1146. As a result of this finding, the first line of allegation 7.1.10, namely that the Respondents failed to properly deal with the Claimant's concerns as per 7.1.1 – 7.1.9, which have all already been dismissed, fails and is dismissed.

1147. Part 2 of 7.1.10 alleging that the Respondent's allowed Dr Walker's involvement with the Claimant's situation whilst misleading the Claimant about this is also not well founded. We are not persuaded that there is sufficient evidence proving that the Claimant was in any way told that Dr Walker would have no involvement whatsoever. She was not misled.

1148. Then there are the interactions with Mrs Potter, which did take place during January 202 until April 2020. The first observation that we make is that Mrs Potter did not in fact "continually" contact the Claimant during this time. She contacted the Claimant when it was necessary to do so in our judgment.

1149. The second observation is that the Claimant does not specify what particular contact she objected to other than a call made to the Claimant at 2am in the morning whilst she was on annual leave at paragraphs 229 - 234. Of course, the time difference meant the call was received at 2am from the Claimant's perspective. However, it would have been made in the afternoon in the UK.

1150. The call took place on 4 March 2020. Mrs Potter explains at paragraphs 51 – 54 that she called the Claimant to check if she was well because she had recently received the emails sent from the Claimant to Drs Cooper and Djuric where the Claimant threatened to buy a suicide kit upon her return to the UK.

1151. Mrs Potter stated that she was horrified when she saw the email because she considered that the Claimant must have been very distressed to have sent it at paragraph 52 in her statement. We do not believe the Claimant was distressed when she sent it, but Mrs Potter thought she was.

1152. There is no reason to doubt what Mrs Potter is saying. There is a dispute about whether the Claimant hung up on Mrs Potter after answering the phone or whether she failed to answer the phone at all. Given the Claimant was alleged to have hung up the phone on at least two people at various times namely Mrs Davis and Mrs Potter, we prefer Mrs Potter's evidence about this call and believe that the Claimant would hang up on people when she was frustrated or angry at their behaviour.

1153. Clearly this was unwanted conduct from the Claimant's perspective.

1154. However, there is insufficient evidence that it had either the purpose or effect of creating a negative work environment for the Claimant.

1155. The Claimant alleges she was distressed about it, but we are not persuaded it would have had the impact suggested. The Claimant by this time said she had been enjoying herself in Australia and was doing much better with her mental health and wellbeing in general.

1156. Even if we are wrong about that, we are not persuaded that in the circumstances of the situation it was reasonable for the Claimant to view the attempted contact made by Mrs Potter as harassment. The Claimant had implied she would commit suicide on her return to the UK and naturally Mrs

Potter wanted to, and indeed in our view had a professional obligation under her duty of care to, check to see if the Claimant was safe and well.

1157. Consequently, the allegations made at paragraph 7.1.10 of the list of issues fail and are dismissed.

1158. Then we have the allegations that remain from 7.1.11 (i) as pleaded against Ms Bunce and Mr. Khashu. All harassment allegations were withdrawn against Ms Farrell.

1159. This allegation claims the following was harassment:

> *" i. failing to interview witnesses to her behaviour in BCC and PHE including her removal from the PHE building [AF, NB, NK];"*

1160. It was clear from the chronology of the documentary evidence that for some reason, the list of witnesses the Claimant wanted interviewed was not provided to Ms Bunce.

1161. We believe her when she said the first she saw of the list was when she was provided with the Tribunal bundle. This could not have therefore affected her mind in any discriminatory way and therefore have been related to disability after **Nailard**. Equally, Ms Bunces stated that she did not feel the need to interview any other witnesses because the facts were largely not in dispute in her view. We believe that reason and that is a reason made unrelated to the disability of the Claimant. It was an evidential decision made based on the factual information Ms Bunce had before her.

1162. Mr. Khashu was equally not provided with any witnesses list form what we can see and we find the reason he didn't interview anyone else was because he was undertaking a review of Ms Bunce's decision not a rehearing or conducting any form of reinvestigation. That decision was not made by Mr. Khashu for any reason related to the Claimant's disability.

1163. We have considered then whether it is proper to draw any adverse inference of the fact that R1 seems to have failed to provide a decision making manager with the list of witnesses as part of the grievance process.

1164. We conclude looking at the totality of the factual backdrop that we can draw no such inference. There is insufficient evidence coming remotely close for us to conclude that there was a discriminatory motive behind this decision or in general. We find this was nothing more than a procedural oversight in the grievance process.

1165. Consequently, neither Ms Bunce nor Mr. Khashu have committed any unwanted conduct related to the Claimant about witnesses and it is not appropriate to infer that R1 has done so either. Claim 7.11 (i) in the list of issues therefore fails and is dismissed.

1166. Then we come to the surviving part of allegation 7.1.13, which alleges that either Ms Proudlove or Mrs Potter failed to share the Occupational Health referral in advance for both the 4 December 2019 and 23 March 2020 referrals.

1167. We have already concluded that neither Mrs Potter nor Ms Proudlove made this referral, Ms Lasikiewicz did.

1168. It is clear that at the time the occupational health referrals were made, the Claimant would have known that she had not seen a copy of them. She makes no complaint about the December 2019 referral for many months after the referral happened and in fact relies on the resultant report in support of her staying at work.

1169. We are not persuaded that the fact the referral was not shown to the Claimant before she attended the appointment had either the purpose or the effect of creating a negative work environment for the Claimant either subjectively or objectively.

1170. When we come to the March 2023 referral, this is at a point in time where the Claimant is not getting on well with R1. However, there is no evidence to show that the decision not to send a copy of the referral to the Claimant before it was made was done related to the Claimant's disability.

1171. In any case, even if it had been, the Claimant has failed to prove facts to show that the purpose for that was to harass her in any way.

1172. Similarly, we cannot see why the fact the referral wasn't shared with her, on its own would have even had the effect of creating a negative work environment for the Claimant. This referral effectively resulted in the occupational health appointment on 13 April 2020, which the Claimant attended. At that point she would have known that she had not seen a referral, yet she attends the appointment. It therefore could not have in our judgment have been offensive, violated her dignity, been degrading, hostile or humiliating etc.

1173. Even if subjectively, it had that effect, that would not have been a reasonable view to have in the circumstances, given that R1 was trying to support the Claimant as best it could at that time after threats of suicide being made and taken seriously.

1174. This was simply a procedural oversight in our judgment, nothing more. There was no decision here taken related to disability after considering the principles in **Nailard** and **Conteh.**

1175. <u>Consequently, claim 7.1.13 in the list of issues fails and is dismissed.</u>

1176. This means that only allegations 7.1.15 (j) and (u) remain where Ms Bunce and Mr. Khashu are alleged to have made misleading remarks in their grievance outcome letters that the Claimant had failed to follow the advice of a psychologist and that the first that R1 and R2 knew of the placement was when the Claimant was identified in the PHE building.

1177. For both cases, we have noted that the Claimant's arguments at the time the grievances were being determined were not precisely the same as the allegation made before us.

1178. Having taken all of the background circumstances into account, the Claimant has proven only that there were a couple of factual inaccuracies stated in the outcome letters. No facts have been proven that these inaccuracies were done by Ms Bunce or Mr Khashu for reasons related to the Claimant's disability. They appear to be their genuine honest comments on the evidence as they perceived the facts at the time.

1179. The Claimant's case during the grievance was an ever changing one and it greatly increased in complexity as time went on. We are not therefore surprised that there might have been a few facts that may not tally or genuine mistakes that may have happened. This does not automatically mean they are related to disability simply because it is a disability related grievance that is being looked into. The alleged perpetrators minds must be motivated for reasons related to the disability in getting the facts wrong and there is simply no evidence of that.

1180. Consequently, the allegations at 7.1.15 (j) and (u) fail and are dismissed.

1181. This means that all the Claimant's harassment claims fail.

DIRECT DISABILITY DISCRIMINATION

1182. The Equality Act 2010 defines direct discrimination as:

"13. Direct discrimination

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

(2)…

(3)If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4)…

(5)…

(6)…

(7)…

(8)…"

1183. Either A or B may be any legal person, which includes a company **EAD**

Solicitors v Abrams [2015] IRLR 978.

1184. The comparison in direct discrimination cases must be a comparison focussing on the individual claiming to have been discriminated against. Therefore, in **Her Majesty's Chief Inspector of Education, Children's Services and skills v Interim Executive Board of C School [2017] EWCA Civ 1426** where an Islamic faith school segregated boys and girls the comparison was not whether girls as a group had been treated less favourably because of their sex, it should be whether an individual girl who wanted to socialise with boys had been treated less favourably because of her sex. The Court of appeal said at paragraph 50 of the judgment:

"…The starting point is that EA 2010 s.13 specifies what is direct discrimination by reference to a "person". There is no reference to "group" discrimination or comparison."

1185. There are two aspects to direct discrimination that must be considered by the Tribunal. One is less favourable treatment and the other is the reason for the treatment complained about with the associated causal link between the two.

1186. Less favourable treatment is based on equality and is not about being "good" to people. You can be good to both men and women, but if you are less good to either person because of their sex, then that will be discrimination. Consequently, if a person behaves equally badly to everyone regardless of their characteristics, then that will not usually be discrimination.

1187. Unreasonable behaviour should not give rise to an inference of discrimination **Strathclyde Regional Council v. Zafar [1997] UKHL 54** it is usually an irrelevant factor. However, it has been held by the EAT that unreasonable behaviour can go to the credibility of a witness who is trying to argue that their motives were not motivated by the characteristic in question **Law Society v Bahl [2003] IRLR 640 EAT.**

1188. In the same way that less favourable treatment does not mean unreasonable treatment, it also does not mean detrimental treatment or unfavourable treatment **T-System Ltd v Lewis UKEAT/0042/15 (22 May 2015, unreported)** or simply different treatment **Shmidt v Austicks Bookshops Limited [1977] IRLR 360 EAT**. There must be a comparison either actually or hypothetically that shows less favourable treatment.

1189. It is the treatment rather than the consequences of the treatment that are the subject of the comparison **Balgobin v Tower Hamlets London Borough Council [1987] ICR 829.**

1190. Whether less favourable treatment is proven requires a comparison to a suitable comparator. There is a general requirement that there be no material difference between the people being compared either actually or hypothetically. Section 23 EqA says:

"23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

(2) The circumstances relating to a case include a person's abilities if—

(a)on a comparison for the purposes of section 13, the protected characteristic is disability;

(b)…

(3)…

(4)…

1191. The comparators need not be identical **Hewage v Grampian Health Board [2012] UKSC 37** because if every single aspect of a comparator was the same between the complainant and comparator, then the less favourable treatment could only be because of the protected characteristic, which would be make it almost impossible to defend a direct discrimination claim.

1192. Following the case of **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11**, it will often be appropriate to consider the reason for the treatment first and then decide whether that reason meant the treatment was less favourable. Therefore, if the reason for the treatment was because of the protected characteristic, then it might be that the finding of less favourable treatment is inevitable.

1193. If the claim is one of direct disability discrimination, then the comparator must have the same abilities as the disabled person. So if a person complains that they have been dismissed because they use a wheelchair and are blind, the comparator would be a person who can see who is also a wheelchair user and is consequently also disabled **Watts v High Quality Lifestyles limited [2006] IRLR 850** In this case the correct comparison to a HIV positive employee was a person without HIV, but who had a transmissible disease that could cause the same level of harm to another person should it be transmitted.

1194. Whether something is less favourable treatment is an objective test **Burrett v West Birmingham Health Authority [1994] IRLR 7 EAT**, but if a subjective view is being put forward as showing why the complainant says the treatment was less favourable, then such a view can be upheld as evidencing less favourable treatment so long as the view held was reasonable **Birmingham City Council v Equal Opportunities Commission [1989] IRLR 173 HL**.

1195. When considering hypothetical comparators, it is necessary for evidence to be put forward about how actual comparators who are in different but not wholly dissimilar situations have been treated to build the neighbourhood from which it can be determined how a hypothetical comparator in the same or similar circumstances would have been treated **Vento v The Chief Constable of West Yorkshire [2001] IRLR 124 EAT.**

1196. In all cases, it is irrelevant whether the alleged discriminator has the same protected characteristic as the complainant **s24 EqA 2010.**

1197. When considering whether the less favourable treatment was because of the protected characteristic, the Equality Act wording of "because of" has exactly the same meaning as the old legislation wording of "on grounds of" **Onu v Akwiwu [2014] EWCA Civ 279.**

1198. Where there is more than one reason put forward for why the alleged discriminator treated the Complainant how they allegedly did, following the case of **Barton v Investec Henderson Crosthwaite Securities limited [2003] IRLR 332**, the characteristic should not play any part in the reason(s) for the treatment complained of, but if it does, it must be a significant factor in being more than trivial and following **R v Commission for Racial Equality, ex parte, Westminster City Council [1984] IRLR 230**, the characteristic needs to be a substantial of effective cause of the discriminatory treatment, but doesn't need to be the sole or intended cause of it.

1199. In addition, there is no legal causal link as such. Instead, the Tribunal should focus on the "real reason" why the alleged discriminator subjected the complainant to the treatment they allege was direct discrimination **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48**, which is a subjective rather than legal test looking at the mental processes of the alleged discriminator.

1200. Following **R v The Governing Body of JFS and the Admissions Appeal Panel [2009] UKSC 15,** the following approach should be taken:

1200.1. Where it is self-evident that discrimination is taking place because there is reference made to the protected characteristic, it is not necessary to analyse the motives of the discriminator, they are irrelevant;

1200.2. Where discrimination is not obvious, it is necessary to analyse the motivation of the alleged discriminator but only for determining whether the characteristic played any part in the alleged discriminatory behaviour;

1200.3. In all other circumstances, motivation is irrelevant to a direct discrimination claim.

1201. Unintentional direct discrimination done with or without good intention is therefore just as unlawful as intentional direct discrimination for example see **Khan v Royal Mail Group [2014] EWCA Civ 1082** and **Ahmed v Amnesty International [2009] IRLR 884.**

1202. To sum up the current situation about causation in direct discrimination cases, Underhill LJ said in the case of **CLFIS (UK) Limited [2015] IRLR 562**:

1202.1. *"As regards direct discrimination, it is now well-established that a person may be less favourably treated "on the grounds of" a protected*

characteristic either if the act complained of is inherently discriminatory (e.g. the imposition of an age limit) or if the characteristic in question influenced the "mental processes" of the putative discriminator, whether consciously or unconsciously, to any significant extent…"

1203. Positive discrimination is just as unlawful as any other discrimination unless it amounts to "positive action" in the meaning of s158 and 159 EqA 2010.

1204. It is also true that for a person to be able to be either consciously or subconsciously motivated by a protected characteristic, they must have knowledge of it - **IPC Media (above).**

The appropriate comparator

1205. Whilst the Claimant has not been clear about which comparators are relied upon for most if not all her claims. Consequently, we believe the correct comparator to be a hypothetical non-disabled trainee registrar in difficulty, with similarly low level progress or work output, during their first year of training having deferred their part A exam.

The surviving direct discrimination complaints

1206. The first complaint is whether R1 planned to place the Claimant on medical suspension in December 2019 and whether R2 requested the Claimant be placed on medical suspension at paragraphs 4.4, 4.5 and 4.21 in the list of issues.

1207. We have already found that the reason why those involved either planned the suspension or decided to place the Claimant on a period of medical suspension was to keep the Claimant safe and to comply with their duty of care and associated professional standards pending more detailed advice from Occupational Health.

1208. Applying **Hewage** and **Laing,** assuming the burden of proof has shifted to the Respondents, we are persuaded that the Respondents made the decisions to plan and place the Claimant on medical suspension not because of the Claimant's disability. We therefore do not need to analyse if there was less favourable treatment that shifted the burden of proof.

1209. Consequently, the allegations at paragraphs 4.4, 4.5 and 4.21 in the list of issues fail and are dismissed.

1210. We have also already found that the discriminatory conduct alleged in other issues, as contained in issues 4.9, 4.11 (b), 4.11 (g) and 4.28 (r) were not done for reasons related to the Claimant's disabilities. Consequently, they could not have been done because of the Claimant's disability.

1211. As a result, allegations 4.9, 4.11 (b), 4.11 (g) and 4.28 (r) fail and are dismissed.

1212. When considering allegation 4.6.2, namely that Miss Livesey prevented the

Claimant from presenting at a meeting she was invited to in September 2020, we have found the reason why Miss Livesey dd this was because a risk assessment had not been caried out to check that the impact on the Claimant attending this event would harm her in some way in breach of the R1's duty of care and health and safety obligations.

1213. It is also clear that no one from R1 made the decision to prevent the Claimant from undertaking her registrar representative activities. Dr Cooper made that decision for R2. Therefore looking at allegation 4.22, it is clear that he made that decision because the Claimant was on medical suspension pending OH advice and therefore should not be undertaking any work related activities or educational activities, she was invited to the meeting in error; and Dr Cooper couldn't risk any tension between the Claimant and Dr Walker at any such meeting.

1214. Applying **Hewage** and **Laing**, the conduct complained about was not therefore done because of the Claimant's disabilities. We are satisfied that the Respondents have put forward non-discriminatory reasons for why they made these decisions.

1215. Then there is allegation 4.8 about Dr Walker being permitted to send a letter to the OH in April 2020 without her knowledge or consent by Ms Proudlove, Mrs Potter or Miss Livesey.

1216. We have already found that Dr Walker sent this letter to Mrs Potter. It was then Mrs potter who sent the letter to Ms Proudlove and Ms Proudlove who forwarded this to the OH doctor. Miss Livesey was not involved at all.

1217. It is also clear that the reason why Dr Walker wrote the letter and Mrs Potter and Ms Proudlove then facilitated the sending of and sent the letter to the OH doctor was not because of the Claimant's disabilities. It was because the symptoms of the Claimant's disabilities meant that they needed to have OH advice to try to safely manage the Claimant going forward.

1218. Applying **Hewage** and **Laing**, the conduct complained about was not therefore done because of the Claimant's disabilities. We are satisfied that the Respondents have put forward non-discriminatory reasons for why they made these decisions.

1219. <u>Consequently, allegations 4.6.2, 4.6.3, 4.8 and 4.22 fail and are dismissed.</u>

1220. We now turn to allegations 4.10.4 and 4.10.8. These were where Mrs Potter accused the Claimant of going to the office only for socialising and seeking support and 4.10.8. stated that the Claimant should either be fit for work and therefore doing the full duties of her role or should be signed off sick if not able to.

1221. We have read these in the context of other comments Mrs Potter made such as the fact the Claimant should not be coming and going as she pleases.

1222. Having considered these in the factual backdrop of all the circumstances at the time these comments were made we are not persuaded that these comments amount to direct disability discrimination. We say this because we have concluded that they are factually accurate assessments of what effectively was happening or should be happening.

1223. It is clear to us that the Claimant was producing very little work and making very little progress towards her training at the time Mrs Potter made these comments, yet the Claimant was still attending work.

1224. We are also sure that whilst at work the Claimant was speaking to colleagues that would listen about her personal situation and what was happening to her.

1225. Effectively then the Claimant was attending work to offload with her colleagues and this no doubt made her feel better or was therapeutic in some way. However, it was still socialising rather than working. Mrs Potter's view was factually accurate.

1226. Similarly, if you are signed as fit for work by an OH doctor, then as far as Mrs potter was concerned, you should be at work and after any phased return or adjustment period, doing your full duties. If you weren't able to do the full duties then Mrs Potter's view was you were not fit for work. That again is a perfectly accurate view to have. It is not for a person signed as fully fit for work to pick and choose what they did or the amount they did.

1227. The only unwise comment that Mrs Potter seems to have made was the coming and going as she pleases comment. This might in some circumstances have maybe implied a slightly negative mindset towards people who are intermittently absent from work because of their disabilities.

1228. However, taking everything in the round, we are not convinced that this one ill-considered remark belies a discriminatory mindset or is serious enough to produce anything other than a transitory amount of offence to the Claimant. It struck us that the issues between Mrs Potter and the Claimant were resolved amicably after the January 2020 welfare meeting and in any case, these allegations are pleaded as direct discrimination claims.

1229. As a result, these comments made by Mrs potter were not less favourable treatment, because a non-disabled employee would have received the same comments if they had the same absence pattern, were producing little work and little training progress in circumstances not materially different from the Claimant's.

1230. In any case, we believe that Mrs Potter made these comments not because of the Claimant's disabilities but because they were her honest factual interpretation of the situation.

1231. <u>Consequently, allegations 4.10.4 and 4.10.8 fail and are dismissed.</u>

1232. We then have the final two allegations of direct discrimination remaining alleged

against R2. These are allegations that Dr Walker and/or Dr Cooper committed direct discrimination by blocking the Claimant from being placed at PHE and attempting to place the Claimant at Birmingham University.

1233. The reasons why Dr Cooper and Dr Walker made this decision was because the Claimant could not have started at PHE anyway due to them needed fully public health trained registrars due to the corona virus pandemic, the fact that they considered the Birmingham University placement to be better for the Claimant because it was more structured and would support her better because of her current personal and health difficulties and because the placement would be less busy and so relieve general work pressure from the Claimant.

1234. None of those proven reasons are because of the Claimant's disabilities.

1235. Consequently, after **Hewage and Laing,** even if we assume the Claimant has shifted the burden of proof with these, the Respondent has proven that in no way whatsoever were those decisions made because of the Claimant's disabilities themselves.

1236. If we are wrong in that, we are not persuaded the placement is less favourable treatment. First, the Respondents were making things easier for the Claimant. Secondly, after **Burett and the Equal Opportunities Commission** cases, it is not reasonable for the treatment to be viewed as anything other than favourable treatment designed to assist and support the Claimant.

1237. A non-disabled trainee in difficulty would have been treated in exactly the same way.

1238. Although the Claimant compares herself to Rebecca Russell who had not passed her Part A exam and was still placed at PHE, we find that Ms Russell was not a valid comparator because she was in circumstances materially different to the Claimant, namely she was not a trainee in difficulty.

1239. Consequently, allegations 4.15.2 and 4.15.3 fail and are dismissed.

1240. That disposes of all the direct discrimination claims and they all fail.

REASONABLE ADJUSTMENT CLAIMS

Knowledge of disadvantage

1241. To determine the knowledge of the disadvantage, we first need to decide whether any of the alleged Provisions criteria or practices are in fact valid PCPs, then decide if those PCPs placed the Claimant at the alleged disadvantage and then look at whether the alleged perpetrators/Respondents knew of those disadvantages, to fix the Respondent with a duty to make adjustments.

1242. If none of the PCP's alleged amount to PCPs we do not need to consider the disadvantages alleged to arise from those PCPs.

The law about PCP's

1243. The phrase Provision, Criterion or Practice is to be construed widely in accordance with the EHCR Code of Practice.

1244. "Provision" means any contractual or non-contractual provision or policy.

1245. "Criterion" means any requirement, pre-requisite, standard, condition or measure applied whether desirable or unconditional.

1246. "Practice" means the Employer's approach to a situation that has happened or may happen in the future. All that is necessary here is that there is a general or habitual approach by the employer **Williams v Governing Body of Alderman Davis Church in Wales Primary School [2020] IRLR 589.**

1247. Generally, PCPs suggest there is state of affairs that exists or would exist if the situation were to occur again. It means that there are things that an employer does do or would do, should the issue arise in the future.

1248. This may include a one-off act or decision only applied to one person **Starmer v British Airways Plc [2005] IRLR 862 EAT**, but similarly, one off acts and decisions aren't automatically PCPs. There must be evidence that they would be applied in the same way again in the future should similar circumstances arise **Ishola v Transport for London [2020] EWCA Civ 112.**

1249. The concept of a PCP is not to be approached in too restrictive a manner; as HHJ Eady QC stated in **Carrera v United First Partners Research UKEAT/0266/15 (7 April 2016, unreported),** *'the protective nature of the legislation meant a liberal, rather than an overly technical approach should be adopted'.* In that case the Claimant said that he had been 'required' to work late. The ET accepted the employer's case that he had been expected to work late, but not forced or coerced into so doing. The EAT held that a 'real world' approach ought to be adopted, and that the Claimant was clearly relying on the 'requirement' as a form of 'practice', and that the PCP was accordingly made out.

1250. However, despite the requirement on Tribunals to give the PCP a broad real world definition, in **Ishola** Simler LJ said:

> *"In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP."*

1251. The identification of the 'provision, criterion or practice' that gives rise to the disadvantage triggering the duty is a matter which requires considerable care, since failure to identify this correctly risks invalidating, for the purposes of the duty to make reasonable adjustments, any finding of substantial disadvantage by comparison with persons who are not disabled **Smith v Churchills Stairlifts plc [2005] EWCA Civ 1220, [2006] IRLR 41, [2005] ICR 524, per Maurice Kay LJ at para 34.**

1252. The old law term of ‘arrangements, was said to be incorporated into the new law of PCPs under the Equality Act 2010 so old cases are still relevant.

1253. In considering a claim of indirect age discrimination under the EqA 2010 s 19, the CA in **Harrod v Chief Constable of West Midlands Police [2017] EWCA Civ 191, [2017] IRLR 539, [2017] ICR 869** upheld the dicta given in the EAT that it is generally unhelpful to seek to identify whether that which provides discrimination is a 'provision' on the one hand, a 'criterion' on the other or a 'practice' on the next. Rather, the focus ought to be on the something which might properly be described by any or all of those labels and whether it can be justified. This case is therefore of guidance in reasonable adjustment cases too.

1254. A complaint sometimes raised by disabled employees is that their condition is such that they may be more likely to have periods of time off work due to ill health. This can lead to sickness absence procedures being instigated, and Claimants requesting that the 'trigger points' at which disciplinary action is considered, be adjusted.

1255. In such a situation the Court of Appeal in **Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265, [2016] IRLR 216** held that the 'PCP' being complained of was a requirement for an employee *'to maintain a certain level of attendance at work in order not to be subject to the risk of disciplinary sanctions'*.

1256. The same formulation of PCP was seen in **Northumberland Tyne & Wear NHS Foundation Trust v Ward UKEAT/0013/19** (18 October 2019, unreported), and the removal – after a period of four years – of adjusted trigger points for Ms Ward led to findings of unfavourable treatment contrary to s 15, and failure to make a reasonable adjustment under EqA 2010 s 20. Choudhury P held that while he had *'no difficulty with the proposition that an adjustment that is considered reasonable at a particular point in time is not automatically to be treated as being reasonable indefinitely thereafter… if the employer seeks to contend that an adjustment is no longer reasonable, it would be expected to be able to demonstrate some change in circumstances.'*

1257. A provision, criterion or practice might include such matters as the rules governing the holding of disciplinary or grievance hearings. It is unlikely however that the application of a flawed disciplinary procedure on a one-off basis will amount to a 'PCP' —**see Nottingham City Transport Ltd v Harvey [2013] EqLR 4, [2013] All ER (D) 267 (Feb),** EAT which states that *'practice connotes something which occurs more than on a one-off occasion and which has an element of repetition about it.'*

1258. See also **Carphone Warehouse v Martin UKEAT/0371/12, [2013] EqLR 481** in which Shanks J held that 'the lack of competence in relation to a particular transaction cannot, as a matter of proper construction, in our view, amount to a "practice" applied by an employer any more than it could amount to a "provision" or "criterion" applied by an employer'.

1259. Whether there is a substantial disadvantage and the PCP is the cause of that disadvantage is to be assessed objectively: **Sheikoleslami v Edinburgh University [2018] IRLR 1090** per Simler J at paras.48-49:

"48. It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question as the Employment Tribunal appears to suggest at paragraph 200 (repeatedly emphasising the words "because of her disability"). For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances.

49. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s. 212(1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see paragraph 8 of Appendix 1. The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability"

1260. As indicated in **Griffiths v Secretary of State for Work and Pensions [2016] IRLR 216** the comparator is merely someone who was not disabled. They need not be in a like for like situation, but should be identified by reference to the PCP, so as to test whether the PCP puts the Claimant at the substantial disadvantage.

1261. There is no requirement in the Equality Act for a strict causation test linking the disadvantage caused by the PCP to the Claimant's alleged disability. This means that first, the Tribunal must determine objectively whether the PCP places the disabled person at a disadvantage compared to non-disabled people. The comparison is not between the disabled person and someone without the disabled person's disability because that could include someone who was disabled with a different disability which is not the right comparison.

1262. No identifiable comparator is needed this is simply an objective test. You do not need to identify a person in the same or similar circumstances for reasonable adjustment comparisons when applying PCPs.

1263. If both the disabled person and a non-disabled person would objectively have suffered the same disadvantage, the Tribunal must then go on to see whether the disadvantage has a worse effect on the disabled person than it would a non-disabled person. That comparison under **Sheikoslami,** is done by hypothetically comparing the disabled victim to how hard the disadvantage would bite if they did not have any disability.

1264. However, note **Thompson v Vale of Glamorgan Council [2021] UKEAT/0065/20/RN** "causative nexus" between the disadvantage and the disability relied upon even when looking at the PCP causing the disadvantage when looking at the overall picture of how the PCP places the disabled person at a substantial disadvantage.

1265. The identification of a 'PCP' can be seen in the cases below.

1266. In **Archibald v Fife Council [2004] UKHL 32, [2004] IRLR 651, [2004] ICR 954:** The House of Lords held that, as the Claimant's disability had made her unable to carry out her job duties, she was substantially disadvantaged relative to others by being subject to dismissal. The contractual term (express or implied) which provided for the dismissal in those circumstances was the relevant 'arrangement' within the meaning of s 4(1)(a) (now a 'provision, criterion or practice') of the DDA 1995. The duty incumbent on the employers was to take reasonable steps to alleviate that state of affairs, and that could have required the employer to transfer her to a sedentary job elsewhere in their employment. The matter was remitted to the employment Tribunal to allow for consideration of this possibility. The proper comparators were the other employees of the council who were not disabled, were able to carry out the essential functions of their jobs and were, therefore, not liable to be dismissed.

1267. **Kenny v Hampshire Constabulary [1999] IRLR 76, [1999] ICR 27, EAT**: The Claimant suffered from cerebral palsy and needed assistance when going to the toilet. He applied for a job with the Respondent but was refused because no volunteers could be found to give the assistance needed. It was held that this was not an instance of an employer's failure to comply with a duty to make adjustments under DDA 1995 s 4A; the statutory language required 'arrangements' to be job-related and it did not extend to the situation where the employer failed to provide carers to attend to an employee's personal needs.

1268. A number of cases have considered whether the duty to make reasonable adjustments imposes a duty to consult with a disabled employee, or to conduct an assessment.

1269. **Tarbuck v Sainsbury Supermarkets Ltd [2006] IRLR 664, EAT**: The duty to consult is not of itself imposed by the duty to make reasonable adjustments. Mid-Staffordshire criticised. Elias J held at para 71: *'[t]he only question is, objectively, whether the employer has complied with his obligations or not',* and

that was said on the basis that the duty involved the taking of substantive steps rather than consulting about what steps might be taken.

1270. The EAT went on to state *'whilst, as we have emphasised, it will always be good practice for the employer to consult and it will potentially jeopardise the employer's legal position if he does not do so—because the employer cannot use the lack of knowledge that would have resulted from consultation as a shield to defend a complaint that he has not made reasonable adjustments—there is no separate and distinct duty of this kind'* at para 72.

1271. **Owen v Amec Foster Wheeler Energy Ltd [2019] EWCA Civ 822, [2019] ICR 1593** involved claims of direct disability discrimination, indirect disability discrimination and failure to make reasonable adjustments. The Claimant had a number of medical conditions which gave rise to a high risk of medical complications. His employers refused to send him on an overseas assignment because of this. In his claims of indirect discrimination and failure to make reasonable adjustments, he complained of a PCP of there being a requirement to pass a medical examination to a certain level before being sent on an international assignment. Whilst this was accepted to amount to a PCP, the CA upheld the judgments of the ET and EAT that there was no reasonable adjustment which could be made to avoid that disadvantage. The Claimant's multiple medical conditions meant a medical assessment was necessary, and the procedure followed was found to be fair and reasonable.

The PCPs and disadvantages alleged

1272. The following PCPs were alleged in the list of issues as below. We discuss each one in turn, what we think the proper construction of the PCP is and what disadvantage each PCP is then said to have caused as pleaded by the Claimant.

1273. **PCP1: Requirement to prepare and/or complete Part A of the Public Health examination in the second year of training Alleged against Respondent 2**

1273.1. The Respondents conceded that this was the usual practice for many trainees in their written submissions. The PCP was therefore made out.

1273.2. In paragraph 42 of her statement, the Claimant describes how exam preparation meant that she needed a lot of time out of the office, which she found difficult because of her symptoms.

1273.3. The Claimant has failed to put forward what she says the precise disadvantage is as a result of this PCP in any pleadings. Therefore, based on her evidence at paragraph 42, it is clear that the disadvantage relied upon is increased difficulty to study and pass the Part A exam compared to if she did not have her disabilities. This disadvantage was not disputed by the Respondents.

1273.4. R2 conceded they were aware of that disadvantage because of what the Claimant told them and therefore had knowledge of that disadvantage at

all material times.

1274. **PCP 2: Requirement to fulfil the conditions of the First Respondent's Attendance Management Policy:**

1274.1. It is not in dispute that the Claimant was subject to the Respondent's absence management policy albeit that R1 says it did not start any procedure against the Claimant.

1274.2. After the **Griffiths** case, the PCP is therefore the practice of requiring an employee to maintain a certain level of attendance at work and the disadvantage is an increased risk of disciplinary sanctions for the Claimant compared to if she wasn't disabled.

1274.3. It strikes us that it was obvious that someone with the Claimant's disabilities would have been placed at that disadvantage compared to if she were not disabled or others who were not disabled and the R1's HR team knew that.

1274.4. The knowledge of this disadvantage would have crystallised as soon as it was identified either actually or constructively that the Claimant was having difficulties attending work, namely on or around 6 December 2019

1274.5. Consequently, R1 had constructive knowledge of this disadvantage from 6 December 2019.

1274.6. We consider the alleged adjustment later.

1275. **PCP3: R2 Putting 'trainees in difficulty' in a placement at the University of Birmingham.**

1275.1. It was common ground that after the Claimant returned from her trip to Australia in early 2020, R2 attempted to place the Claimant at the University of Birmingham.

1275.2. The reasons why R2 wanted to do that were very specific to the Claimant's personal circumstances and were very specific to the fact that at that time, the Covid-19 pandemic was just starting and everyone was in lockdown.

1275.3. R2 conceded that it had placed trainees in difficulty in the past with the University of Birmingham, because of the more structured support it could offer trainees. It is therefore clear that this was a practice and would in all likelihood be a decision taken again for other trainees in difficulty in the future thereby complying with the requirements in **Ishola**.

1275.4. The only disadvantage relied upon by the Claimant was that the attempts to place her at the University of Birmingham placement made the symptoms of her disability worse and caused her anxiety as per row 1 box 2 of the Claimant's Scott Schedule.

1275.5. Whilst the Claimant alleges this, no real evidence other than the Claimant's say so has been put forward to support this assertion. We have been provided with no medical evidence to support the Claimant's view.

1275.6. It is clear the Claimant wanted to go to PHE, but there was insufficient evidence to suggest to us that this was a real need because of her disability, it was simply what she wanted to do because she believed the PHE placement would be more helpful to her studies than the UOB placement.

1275.7. Viewed objectively, the PCP did not place the Claimant at a substantial disadvantage compared to non-disabled people by making her more anxious and making her symptoms worse. Yes, it triggered the sending of emails that threatened suicide by the Claimant, but we find these emails were manipulative behaviour designed to get the placement the Claimant wanted. They were not sent, in our view, because of anxiety or symptoms worsening, as shown by the carefully planned deceptive behaviour at about the same time when the Claimant organised the placement with PHE despite R2 rejecting that as a viable placement.

1275.8. Even if we are wrong in our findings above, as set out in our findings of fact under the heading **"The Claimant's next placement at University of Birmingham and further suicidal ideation"** we are persuaded that a placement at PHE would not have been a reasonable adjustment to make, because it was not possible to make it. We accept the Respondents' evidence that PHE were only taking those trainees who have completed and passed their part A exam and have already done a PHE placement because of their management plan for the coronavirus pandemic.

1275.9. Although the Claimant then attended and was let into the building, this was an unauthorised placement and the Claimant should not have attended PHE on those dates and she knew that.

1276. **PCP 4: R2 Failing to provide an Educational Supervisor with capacity and independence to support the Claimant between November 2019 and November 2021.**

1276.1. We are not persuaded that this can in fact amount to a PCP either in fact or law.

1276.2. For example, Justin Varney of R4 was allocated to be her educational supervisor when Dr Wilkes left in November 2019 and the Claimant felt supported by him and also by Ms Griffiths who was also supporting her at the time, not as an official educational supervisor but certainly as an unofficial one. At page 899 the Claimant sent an email on 14 February 2020 to both saying *"Thanks to both of you for your support and patience these last few months. I have left something for each of you in your desk*

drawers. Best, [Ms B]".

1276.3. In addition, the facts and circumstances of these events are entirely specific to the Claimant. No significant evidence or case has been led that others would have been treated in the same way as the Claimant. The case therefore does not fit with the guidance in **Ishola** of there being a continuum of approach.

1276.4. In addition, even if an appropriate Educational Supervisor was not provided, this is akin to the situation in **Carphone Warehouse**.

1276.5. Consequently, we are not persuaded this constitutes a PCP and all adjustment claims stemming from it therefore fail and are dismissed.

1277. **PCP 5: Both R1 and R2 Removing adjustments agreed with Dennis Wilkes**

1277.1. The Claimant withdrew this PCP at the hearing. Consequently, all adjustment claims stemming from it are dismissed upon withdrawal.

1278. **PCP 6: Both R1 and R2: Requiring the Claimant to attend multiple assessments and recount traumatic events to multiple individuals whilst not providing support, labelling her as difficult for not wishing to do this;**

1278.1. The correct PCP here is simply the Respondents' practice of asking employees or trainees with health concerns to attend medical assessments.

1278.2. Factually, the Respondents did not label the Claimant as difficult and did not fail to provide support. This therefore has to be the correct PCP because the Respondents are correct in their submissions that what happens at the assessments themselves, are totally outside their control and could not therefore have been applied by them. The Medical practitioners will ask the questions they see fit, which will vary from practitioner to practitioner and the Claimant then has a choice whether to answer them or not and if she does provide answers, what level of detail she wanted to provide.

1278.3. In her Scott Schedule at point 14, the Claimant relies upon this PCP as having the disadvantage of being at increased risk of her symptoms getting worse.

1278.4. Throughout 2019 and early 2020, the Claimant had been very open with both Respondent's about how she was having flashbacks and trauma related symptoms and that going to the police had triggered her symptoms significantly to the point where by 6 December 2019, both Respondents knew or ought reasonably to have known that a contributing factor to her symptoms was revisiting these issues with others albeit to varying degrees depending on who she spoke to. Clearly this was a contributing factor to the conversation on 27 November 2019 with Mrs Davis where the Claimant threatened to commit suicide.

1278.5. Both disabled and non-disabled people may find that assessments are stressful and exacerbate their mental health symptoms.

1278.6. However, given the severity of the reactions the Claimant might have to being asked to attend repeated assessments, the disadvantage, it seems to us, would bite harder for the Claimant as a disabled person than if she were not disabled.

1278.7. The Claimant was first attended an OH assessment on 14 January 2020.

1278.8. Both Respondents therefore knew or ought reasonably to have known about the alleged disadvantage from that date.

1278.9. We will discuss any alleged adjustments stemming from this PCP later.

1279. **PCP 7: R2 Failing to provide counselling, occupational therapy or trauma-informed psychological support;**

1279.1. Whilst capable of being a PCP, this simply isn't made out on the facts for a number of reasons.

1279.2. First, it was not the decision of either R1 or R2 not to provide actual psychological support, but that of Phoenix Psychology.

1279.3. The Claimant was referred to a specialist trauma based service that could potentially have provided all three of these services but, as stated in the response letter following the Claimants initial assessment, at pages 615 – 616 in the bundle, Phoenix turned the Claimant down and said that she was best placed to utilise the services of the NHS, RSVP and RELATE who could provide the specialist input needed and provide this over a longer period of time with more sessions than Phoenix said they could.

1279.4. Secondly, the Claimant was referred to occupational health on a number of occasions. Some of those offers were taken up, on other occasions the OH assessment was refused by the Claimant or consent was withheld by the Claimant for the report to be shared once the assessment had happened.

1279.5. Consequently, in our view, R2 did all it reasonably could to provide this service, it was Phoenix Psychology who failed to provide it and, in our view, for what were acceptable reasons.

1279.6. In conclusion, R2 did not fail to provide these services. They attempted to provide them through external providers but were turned down for specific reasons related to the Claimant's specific case. There was no practice of failing to provide these services.

1279.7. Consequently, all adjustment claims stemming from this PCP fail and are

dismissed.

1280. **PCP 8 Not offering independent mediation (R1 January 2020) in the absence of a formal complaint (R2, January 2020);**

1280.1. Having reviewed the numerous emails about mediation and any other evidence we were taken to in the bundle, there is no evidence that R1 failed to offer mediation. In fact it was trying to arrange mediation, but this was delayed for a number of reasons including the fact that there were no trained mediators, the NHS was in a state of disarray because of the pandemic and also because of the Claimant's impending placement change in early 2020 and then the granting of her request for a period of 6 weeks to go to Australia with an added delay when flights were grounded meaning the Claimant could not return home until 4 April 2020.

1280.2. When considering R2, whilst Mrs Davis stated in an email that there was no formal complaint from the Claimant and therefore mediation was considered to be unsuitable, there was insufficient evidence and case advanced by the Claimant that the same decision would be taken again for others in similar circumstances. Indeed, the combination of factors at play here including the pandemic are in our view unique and would not have applied to others in the past and were unlikely to apply to others in the future based on the evidence we have reviewed.

1280.3. Consequently, this is a one off event that in our judgment cannot amount to a PCP after **Ishola.**

1280.4. To the extent that Ms Farrell found in her grievance outcome letter at page 2498, that the mediation should have been arranged sooner, after the guidance in both **Ishola** and **Carphone Warehouse,** this too would be a legal reason why suggested incompetence or unfair treatment, unless repeated in similar circumstances, cannot be a PCP.

1280.5. Consequently, all adjustment claims stemming from this PCP fail and are dismissed.

1281. **PCP 9: R1 Putting in place periods of medical suspension in the case of a trainee who is struggling with their mental health**

1281.1. We are persuaded there was clearly a practice that if there was what R1 considered to be a seriously unwell employee, and the Respondent considered it needed OH clearance or advice first before that employee was safe to be at work, then it would medically suspend employees. This was not disputed by the Respondent's HR team. Indeed, the practice was written into R1's processes and procedures, which was admitted by R1 and is present in its managing attendance policies.

1281.2. The Claimant has only specified a disadvantage at paragraph 261 in her statement where she says that it is commonly understood that

suspension increases or precipitates suicidality in employees. Having looked at the documents provided; we are not convinced that suspension does precipitate suicidality in the way the Claimant has suggested. What the CIPD guide to responding to suicide risk in the workplace says is that suspension in circumstances of disciplinary or redundancy procedures *"can"* have a detrimental impact on a person's mental health and consequently should be considered as a last resort at pages 2942 and 2943.

1281.3. We have heard no evidence to that effect from any medical professionals either about the Claimant or anyone else and indeed the documents referred to us by the Claimant in her statement, suggest that mental health is experienced by everyone in a different way because they are individuals, which also concurs with the Tribunal's industrial experience.

1281.4. However, on balance, given the past medical history and the behaviour of the Claimant documented throughout the period of November 2019 onwards, it was likely the Claimant's symptoms would be made worse by being suspended medically compared to non-disabled people.

1281.5. Mrs Potter was present at a meeting between the Claimant and Dr Walker on 17 December 2019 when the issue of medical suspension was first raised and discussed with the Claimant. Part of the reasoning for why both Dr Walker and Mrs Potter did not implement medical suspension at this meeting was because Dr walker was concerned that she would be *"precipitating a crisis in mental health if we persisted."*

1281.6. Given how open the Claimant was about her symptoms, condition and triggers for it in their first meeting on 22 November 2019, Both Dr Walker and Mrs Potter would have been aware of the disadvantage of the Claimant's suicidality getting worse at this meeting.

1281.7. Consequently, the Respondents had knowledge of this disadvantage from 22 November 2019 onwards.

1281.8. We therefore believe that the duty to make adjustments to reduce this risk was triggered. We discuss the alleged adjustment the Claimant relies on later.

1282. **PCP 10: R1 and R2: Allowing individuals (CW and AP) who have been found objectionable by a 'trainee in difficulty' to have continued involvement despite such objections;**

1282.1. This alleged PCP is very specific to the Claimant. No case and insufficient evidence was put forward to suggest that the Respondent's would behave the same way again. We are not persuaded that the guidance in **Ishola** is met. This was a one off act relevant only to the Claimant's circumstances.

1282.2. This was not a PCP and therefore any adjustment claims stemming from

it fail and are dismissed.

1283. **PCP 11: R1 Refusing to consider the transfer of a trainee in difficulty to a different training region outside of the West Midlands Deanery/ training region.**

1283.1. At page 2392, the Claimant acknowledges in an email *"As far as I can see, I don't meet the criteria for an IDT and there is substantial paperwork that I would not be able to prepare by the deadline as it requires signature by medical professionals."*

1283.2. In addition, the R1 is not in control of and does not have any involvement in inter deanery transfers. This was confirmed by Ms Szpakowska at paragraph 12. In addition, it was a national process of R2.

1283.3. Consequently, this alleged PCP was not applied to the Claimant by R1 and in any event the Claimant accepted in past correspondence she was not eligible for one even if she had applied for it via R2's process.

1283.4. Consequently, the Claimant has failed to prove this was a PCP applied to her and reasonable adjustments claims stemming from it fail and are dismissed.

1284. **PCP 12: R2 Discussing 'trainees in difficulty' and their health issues within and outside the organisation without their knowledge, consent or input including dissemination of incomplete/ unverified information or speculation**.

1284.1. It strikes us that the correct PCP here is discussing health issues of trainees in difficulty without their knowledge, consent or input. The remainder of the pleaded PCP is specific to the Claimant and would not in our view be applied generally.

1284.2. The Claimant says that this PCP put her at the disadvantage of making her health symptoms worse at Scott schedule box number 7.

1284.3. When considering the PCP there are various parts of it which are not made out on the facts. First, the Claimant had given consent for her health information to be discussed both impliedly and expressly. We say this because:

1284.3.1. There are information sharing agreements in place between R1 and the Claimant which the Claimant was asked to sign upon commencement of her employment. No copy of this was in the bundle so we do not know what it said, but we think it likely such a document would have covered sharing information so the interparty relationships between R1, R2 and any placement providers could function properly.

1284.3.2. It was common ground that the Gold Guide applied to the

Claimant, R1, R2 and the placement hosts. We were taken to various parts of it in cross examination and it was part of the reading list. In this guide there is a privacy notice at appendix 6 at page 3534 – 3537. This notice states as follows at various places as being reasons why data may be transferred between R2 and others:

1284.3.2.1. *"To manage your training programme"*

1284.3.2.2. *"To comply with legal and regulatory responsibilities including revalidation"*

1284.3.2.3. *"Personal data will be processed to determine future workforce planning targets"*

1284.3.2.4. *"Your personal data will be shared with NHS trusts when rotating through training placements."*

1284.3.3. In addition, there is the contract of employment. This includes rules about sickness absence reporting at clause 12 pages 594, which necessarily means that information will need to flow from the placement host back to both R1 as the employer and R2 as the training provider.

1284.3.4. In addition, there are the other clauses of the contract about the rules and procedures the Claimant agreed to follow and be bound by when she signed the contract of employment at page 579.

1284.3.5. Then there is the attendance management policy and procedure starting at page 2821 in the bundle. This required the Claimant to *"Take reasonable steps to maintain a good standard of general health and comply with the Trust Health and Safety Policy (Ref 7), in order to minimise absence from work. This includes informing their Line Manager of any situations that could lead to sickness absence so that proactive advice and assistance may be offered"* (at page 2827).

1284.3.6. HR business partners and HR advisors are obliged under this policy to:

"> Ensure that managers are provided with appropriate advice and guidance on this policy, including training and coaching as required.

> Provide support and advise line managers on particular absence issues and non-compliance of this policy as necessary.

> Be present in an advisory capacity at all formal meetings from Stage 2/Level 2 onwards and at all (except the first) welfare meetings.

> *Take responsibility for the monitoring of both overall sickness rates including any trends that may be identified and individual cases with the objective of minimising lost time due to sickness absence.*

> *Provide regular reports to line managers to highlight absence rates and performance indicators.*

> *In long term sickness cases ensure the notification of half and no pay sickness entitlements are sent to employees.*

> *Conduct absence reviews with managers to assist them in achieving their absence targets."*

1284.3.7. The Policy also includes numerous duties on both the Claimant and the employer to provide information to each other about sickness absence rules, the reasons for sickness absence and how this will be managed.

1284.3.8. R1 is also under a duty to undertake risk assessments about health issues and to consider adjustments and other measures to keep employees safe and to assist them in their work or trying to keep them at work.

1284.4. Consequently, given all the above we are not persuaded that the Claimant was generally unaware that her personal information about her general personal and health information would not be shared between placement hosts, R1 and R2 about the Claimant.

1284.5. Similarly, we are also not persuaded that the Claimant did not consent to this data being shared generally both by signing the contract of employment with R1, agreeing to sign up to the course with R2 or continuing to work and engage with both Respondents who were trying to support her.

1284.6. In addition, the Claimant voluntarily discussed her personal information very openly with Dr Wilkes, Ms Griffiths, Dr Walker, Mrs Potter, Mrs Davis and others. Consent to discuss this information with others in the team to comply with everyone's' duty of care, requirements to comply with health and safety law for undertaking risk assessments and/or to comply generally with the duty to make reasonable adjustments and support the Claimant was in our view therefore clearly implied. If the Claimant had not wanted any pieces of specific information disclosed, then we are sure she would have said so and we would have been taken to evidence at the time these conversations were happening where the Claimant expressly set limits on who this information should be discussed with. We were shown no such evidence.

1284.7. More specifically, the Claimant agrees that she consented for Dr Walker

to discuss the Claimant's situation with Birmingham City Council and she gave consent at paragraph 74 of her statement. In cross examination the Claimant then said she naively didn't realise that this would be ongoing and she would not be CC'd into correspondence about it. Having considered the fact that the Claimant is not new to the workplace, her age and general life experience as well as the fact that clearly the Claimant is an articulate and intelligent woman, we do not believe her evidence here. The Claimant knew full well that the conversations taking place between R1, R2 and any actual or potential placements would be about her health, her symptoms, the triggers for them, the support that could be offered, the impact and adjustments needed to the placement, workplace in general or training plan and any support services that could be offered. That was the general purpose and reason for these conversations taking place.

1284.8. Further, the fact that the Claimant was being invited to meetings to discuss these things and the Claimant was actively involved on phone calls, in person meetings, video meetings and emails about her health situation means she had an input to the provision of this information too.

1284.9. We are also not persuaded that the information was unverified, incomplete or speculative in the general sense of those words. The Claimant has failed to put forward sufficient evidence or examples to prove this was a general approach to employees that would be repeated in the same or similar circumstances.

1284.10. Consequently, this PCP fails and all alleged adjustment claims stemming from it are dismissed.

1284.11. In addition, given the findings above, the claims at paragraphs 4.20.1, 4.20.2, 5.2.9 (a-b) and 7.1.6 also fail on the facts and are dismissed. The Claimant knew and gave consent either expressly or impliedly for information about her health to be discussed amongst those directly supporting or responsible for the safety of the Claimant at R1, R2 and/or any placements.

1285. **PCP 13: R1 and R2 Adopting a judgemental/ paternalistic culture in respect of concerns around mental health;**

1285.1. No case has been put forward by the Claimant as to why she says this alleged culture existed. We were shown no examples to prove this alleged PCP either in evidence or in submissions. This appears to us to be simply the Claimant's opinion of the Respondents' thoughts behind their decisions.

1285.2. When considering a culture, this is often a thought process or belief system that is then put into practice through policies, procedures and behaviour. The culture itself is not a provision criterion or practice, but in our view merely the lens through which evidence is viewed and decisions are made. It is then the decision to do something, not do something or

put in place rules about something which would be the PCP.

1285.3. Consequently, given that this appears to be simply the Claimant's opinion of the Respondents' ideas, beliefs and thoughts, this is not a tangible PCP and even if we are wrong in that, there is insufficient evidence that this culture existed.

1285.4. Looking at all the evidence we have, we conclude the decisions made by both Respondents were made from a training or employment management point of view, not because of any adverse underlying culture.

1285.5. <u>This PCP therefore fails in both law and evidentially and consequently any alleged adjustment claims stemming from this PCP fail and are dismissed.</u>

<u>Conclusion about the PCPs and knowledge of disadvantage</u>

1286. PCP's 1, 2, 6 and 9 are made out and the Respondents knew or ought reasonably to have known about the disadvantages the Claimant has proven resulted from these.

1287. We now consider the specific Adjustments relied upon.

<u>The Law – reasonable adjustments</u>

1288. Section 20 of the Act provides as far as relevant:

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

(2) The duty comprises the following three requirements.

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

(4)…

(5)…

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7)A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled

person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8)…

(9)…

(10)…

(11)…"

1289. Section 21 provides:

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

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

1290. "Substantial" in this context means "more than minor or trivial" according to section 212(1) of the Act.

1291. The Tribunal must identify whether there were any reasonable steps which the Respondent could have taken to avoid the disadvantage which were not taken. What is required of a Respondent is not the taking of mental steps to remove or lessen any disadvantage, but the taking of practical steps to do so. Therefore if, a Claimant argues that before dismissal is considered it would have been a reasonable adjustment for the Respondent to have disregarded a previous warning, that would not be an adjustment the Equality Act requires a Respondent to take **Griffiths v Secretary of State for Work and Pensions [2016] IRLR 216.**

1292. In determining the reasonableness of any step regard should be had to its likely efficacy, practicability and cost, and the extent of the employer's resources, the nature or its activities and the size of its undertaking. So far as the efficacy of any proposed step is concerned it is only necessary to establish that there was a real prospect of the step avoiding or reducing the relevant disadvantage. A holistic approach should be adopted when considering the reasonableness of a number of proposed steps as described in **Thompson (above).**

1293. There must be a real prospect the step would have made a difference **First Group Plc v Paulley [2017] UKSC 4**.

1294. The reasonable adjustment relied upon by the Claimant or discovered as late as the final hearing, must be pleaded in a statement of case or the Respondent must be given the opportunity to search for and produce evidence as well as make submissions about the alleged reasonable adjustment it allegedly failed to make **Tarbuck v Sainsbury's Supermarkets Limited [2006] IRLR 664.**

1295. Reasonable adjustments need only be job related and the scope of the duty

does not cover adjustments to cater for an employee's personal needs **Kenny v Hampshire Constabulary [1999] IRLR 76.**

1296. The question is how the adjustment might have had the effect of preventing the PCP putting the Claimant at a substantial disadvantage compared with others. This is an objective test, and the Tribunal can substitute its own view for that of the Respondent.

1297. In **Bank of Scotland v Ashton [2011] ICR 632**, Langstaff J emphasised the importance in all cases of the Tribunal focusing on the words of the statute and considering the matter objectively:

"The Act demands an intense focus by an Employment Tribunal on the words of the statute. The focus is on what those words require. What must be avoided by a Tribunal is a general discourse as to the way in which an employer has treated an employee generally or (save except in certain specific circumstances) as to the thought processes which that employer has gone through."

1298. **Owen v Amec Foster Wheeler Energy Ltd [2019] EWCA Civ 822, [2019] ICR 1593** involved claims of direct disability discrimination, indirect disability discrimination and failure to make reasonable adjustments. The Claimant had a number of medical conditions which gave rise to a high risk of medical complications. His employers refused to send him on an overseas assignment because of this. In his claims of indirect discrimination and failure to make reasonable adjustments he complained of a PCP of there being a requirement to pass a medical examination to a certain level before being sent on an international assignment. Whilst this was accepted to amount to a PCP, the CA upheld the judgments of the ET and EAT that there was no reasonable adjustment which could be made to avoid that disadvantage. The Claimant's multiple medical conditions meant a medical assessment was necessary, and the procedure followed was found to be fair and reasonable.

1299. The surviving adjustments corresponded with PCP numbers as below. We consider each one in turn.

1299.1. **ADJ 1: R2 Allowing the Claimant to undertake Part A of the Public Health examination at a different time (HEE) ss.55(7)**

1299.2. The claim about this adjustment readily fails. It was common ground that the Claimant was allowed to defer her Part A exam. We therefore fail to see why this allegation has been pursued.

1299.3. **ADJ 2: R1 Adjusting the Attendance Management Policy to accommodate the Claimant (STHK)**

1299.4. Again, this claim readily fails. R1 did not instigate its absence management policy against the Claimant. It did not issue her with any warnings, have any absence management meetings or treat the Claimant in any negative way under its absence policy. It adjusted its policy by not using it.

1299.5. **ADJ 6: R1 Providing appropriate support promptly and without requiring multiple assessments, referring the Claimant to the same clinician for follow-up, (Dr Goodall) having a compassionate understanding of the impact on the Claimant of attending multiple assessments ss 55(7)**

1299.6. In our view, given the severity of the behaviour the Respondents perceived was because of her disabilities, such as for example the suicidal ideation, there was no choice for the Respondents but to seek professional and expert assessments of the Claimant. They had a duty to get the best advice available so they could make safe decisions that would, hopefully, not make matters worse and may indeed make matters better.

1299.7. What the Claimant means by "appropriate support" is not clear. Given how she has managed her case so far, and the factual backdrop to this case, we believe she means that the Respondent should have listened to her and only gone with her suggestions for how to deal with managing her and her training.

1299.8. We find that R1 and R2 did everything they reasonably could to support the Claimant. They suggested numerous avenues of support through specialists, OH, well-being, an EAP service, counselling and invested a significant amount of management time attempting to support the Claimant.

1299.9. The fact the Claimant behaved how she did, meant in our view medical assessments were a requirement and necessity for the Respondents, otherwise they would not have been able to make safe decisions.

1299.10. If they had not attempted to ask the Claimant to see her GP, attend OH assessments, get psychological and psychiatric reviews or go to A&E when she was displaying behaviours that appeared to be symptomatic of her mental health to quite a severe degree, they would have undoubtedly been heavily criticised for not suggesting these things if the Claimant had then gone on to harm herself. Indeed, they may have been negligent in not doing so.

1299.11. Consequently, in our judgment, it would not have been reasonable for the Respondent to have simply avoided asking or requiring the Claimant to be assessed by medical professionals. In fact, there would have been no reasonable adjustment that could have avoided the disadvantage of the Claimant's symptoms getting worse when being asked to undergo medical assessments similar to the **Owen** case.

1299.12. It was also not possible for the Claimant to have been referred back to Dr Goodall. Dr Goodall had already rejected the Claimant's referral saying effectively that she was better off waiting for the NHS and other local support to step in and assist because they could provide support

over a long er period of time. A referral back to Dr Goodall would in our view have been ineffective and not practicable applying **Thompson.**

1299.13. We also accept the Respondents' submission that the people involved in trying to support the Claimant did act with significant patience and compassion. Not once did they give up on the Claimant. Even whilst she was medically suspended, Dr Cooper and Professor Whallett were still trying to source an appropriate placement for her. Dr Walker was still trying to find out what a decent working environment looked like for the Claimant and was trying to avid setting her up to fail as her letter to the OH Doctor of 10 January 2020 sent in April 2020 documents.

1299.14. Either way, it strikes us that requiring the adjustment to be compassionate is a mental step and not a practical step that would have changed anything after **Griffiths.**

1299.15. Consequently, the adjustment's the Claimant suggests should have been in place were either put in place, weren't possible or weren't reasonable for either Respondent to have made.

1299.16. **ADJ 9: R1 and R2 Not placing the Claimant on medical suspension and constructively discussing with her how to support her to remain in work (HEE and StHK); ss 55(7).**

1299.17. When looking at this case objectively, when the Claimant was placed on medical suspension, R1 had a potentially suicidal employee who had covertly entered a placement, allegedly behaved strangely at the placement and who had a long history of enduring mental ill health because of what they knew was a sexual abuse trauma.

1299.18. By this time, the Respondents had tried a phased return to work, which had failed.

1299.19. The Claimant was not producing any work and was not progressing in her training, which she was employed to do. There was documented suicidal ideation on at least three separate occasions.

1299.20. The Respondents both had duties of care and reasonably perceived the Claimant to be going through a significant episode of mental ill health.

1299.21. The Claimant was causing significant disruption and was causing significant distress to colleagues at R1, R2 and her placements whether it was R4 or the few days she was present at PHE.

1299.22. The Claimant had also failed to identify the significance of her showing up at work in the middle of lockdown after flying back to the UK from Australia in apparent breach of the corona virus rules.

1299.23. Consequently, when the Respondents were faced with this combination of factors made even worse by being at the very start of an unprecedented pandemic with very little guidance on how to handle the corona virus outbreak, It would not be reasonable to expect the Respondents to keep the Claimant at work or on a training placement. We accept the Respondents' submission that the only other alternative they had would have been to suspend the Claimant on conduct grounds. Either way, the disadvantage the Claimant was subjected to would have happened any and therefore there would have been no difference in the result as per **Paulley.**

1299.24. When considering the second part of the adjustment claimed, we find the Respondents did have constructive meetings with the Claimant to discuss her training, work, adjustments and placements. These took place with Dr Walker, Mrs Potter and Dr Cooper on at least three separate occasions.

1300. Consequently, all the reasonable adjustment claims fail and are dismissed.

DISCRIMINATION ARISING IN CONSEQUENCE OF DISABILITY

1301. Section 15 EQA says:

"15 Discrimination arising from disability

(1)A person (A) discriminates against a disabled person (B) if—

(a)A treats B unfavourably because of something arising in consequence of B's disability, and

(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

1302. As to what constitutes "unfavourable treatment", the Supreme Court in **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230** held that it is first necessary to identify the relevant treatment and it must then be considered whether it was unfavourable to the Claimant.

1303. The Court said that little was likely to be gained by differentiating unfavourable treatment from analogous concepts such as "detriment" found elsewhere in the Act, referring to a relatively low threshold of disadvantage being needed. One could answer the question by asking whether the Claimant was in as good a position as others.

1304. What caused the unfavourable treatment requires consideration of the mind(s) of alleged discriminator(s) and thus that the reason which is said to arise from

disability be more than just the context for the unfavourable treatment. There need only be a loose connection between the unfavourable treatment and the alleged reason for it, and it need not be the sole or main cause of the treatment, though the reason must operate on the alleged discriminators' conscious or unconscious thought processes to a significant extent **Charlesworth v Dronsfield Engineering UKEAT/0197/16.**

1305. By analogy with **Igen**, "significant" in this context must mean more than trivial. Whether the reason for the treatment was "something arising in consequence of the Claimant's disability" could describe a range of causal links and is an objective question, not requiring an examination of the alleged discriminator's thought processes.

1306. The approach to complaints of discrimination arising from disability was considered in detail by the Employment Appeal Tribunal in **Pnaiser v NHS England [2016] IRLR 170:**

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

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

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

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

…

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

…

…

*(i) As Langstaff P held in **Weerasinghe**, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the Claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the Claimant's disability.*

……...

Alternatively, it might ask whether the disability has a particular consequence for a Claimant that leads to "something" that caused the unfavourable treatment."

1307. A case of relevance in alleged failures to comply with grievance procedures is that of **Robinson v Department of Work and Pensions [2020] EWCA Civ 859.** Here the Claimant alleged that the failure to properly respond to the grievance in a timely way was both direct discrimination and unfavourable treatment for s15 claim. This case emphasised the need for the Tribunal to focus its mind on the because of test, where less favourable or unfavourable treatment is made out. In that case, unless the failure to properly deal with the grievance was because of the disability or its symptoms, then without more, there was no prima facie case of discrimination.

1308. Another case of relevance is that of **Dunn v Secretary of State for Justice and HMIP [2018] EWCA Civ 1998.** In this case, an ill health retirement procedure was admittedly handled poorly by the Respondent because it was overly bureaucratic and lengthy. Again, it was not the fact that "but for" the disability or the something arising in consequence of it, the unfavourable treatment or less favourable treatment wouldn't have happened. The Tribunal needs to engage with the real reason why the alleged discriminator made the choices, decisions and/or omissions that they did.

Justification

1309. A complaint of discrimination arising from disability will be defeated if the Respondent can show that the unfavourable treatment was a proportionate means of achieving a legitimate aim, which lawyers often refer to as "justification" or the "Justification defence".

1310. The Tribunal draws the following principles from the relevant case law, some of which concerned justification of indirect discrimination but the defence is the same for both types of discrimination:

1310.1. The burden of establishing this defence is on the Respondent.

1310.2. The Tribunal must undertake a fair and detailed assessment of the Respondent's business needs and working practices, making clear findings on why the aims relied upon were legitimate, and whether the steps taken to achieve those aims were appropriate and necessary.

1311. What the Respondent does must be an appropriate means of achieving the legitimate aims and a reasonably necessary means of doing so. In **Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15** it was said, approving Mummery LJ in **R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293**, that what is required is:

1311.1. first, a real need on the part of the Respondent;

1311.2. secondly, that what it did was appropriate – that is rationally connected – to achieving its objectives; and

1311.3. thirdly, that it was no more than was necessary to that end.

1312. In **Hardy & Hansons plc v Lax [2005] ICR 1565** it was said that part of the assessment of justification entails a comparison of the impact upon the affected person as against the importance of the aim to the employer. It is not enough that a reasonable employer might think the treatment justified. The Tribunal itself has to weigh the real needs of the Respondent, against the discriminatory effects of the aim. A measure may be appropriate to achieving the aim but go further than is (reasonably) necessary in order to do so and thus be disproportionate:

"33. The statute requires the employment Tribunal to make judgments upon systems of work, their feasibility or otherwise, the practical problems which may or may not arise from job sharing in a particular business, and the economic impact, in a competitive world, which the restrictions impose upon the employer's freedom of action. The effect of the judgment of the employment Tribunal may be profound both for the business and for the employees involved. This is an appraisal requiring considerable skill and insight. As this court has recognised in ***Allonby v Accrington & Rossendale College [2001] IRLR 364*** *and in* ***Cadman v Health and Safety Executive [2004] IRLR 971 CA****, a critical evaluation is required and is required to be demonstrated in the reasoning of the Tribunal. In considering whether the employment Tribunal has adequately performed its duty, appellate courts must keep in mind, as did this court in Allonby and in Cadman, the respect due to the conclusions of the fact finding Tribunal and the importance of not overturning a sound decision because there are imperfections in presentation. Equally, the statutory task is such that, just as the employment Tribunal must conduct a critical evaluation of the scheme in question, so must the appellate court consider critically whether the employment Tribunal has understood and applied the evidence and has assessed fairly the employer's attempts at*

justification."

1313. It is also appropriate to ask whether a lesser measure could have achieved the employer's aim – **Essop and Naeem v Home Office (UK Border Agency) and Secretary of State for Justice [2017] UKSC 27**.

1314. The more recent case of **Gray v University of Portsmouth (2021) UKEAT 242/20/OO** summarised the relevant principles as below.

*"38…..the relevant approach to justification was summarised at paragraph 10 in **MacCulloch v ICI UKEAT/0119/08** as follows:*

*"(1) The burden of proof is on the Respondent to establish justification: see **Starmer v British Airways [2005] IRLR 862** at [31].*

*(2) The classic test was set out in **Bilka-Kaufhaus GmbH v Weber Von Hartz (Case 170/84) [1984] IRLR 317** in the context of indirect sex discrimination. The ECJ said that the court or Tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (para 36). This involves the application of the proportionality principle […]. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see **Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26** per Lord Keith of Kinkel at pp 142-143.*

*(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: **Hardys & Hansons plc v Lax [2005] IRLR 726** per Pill LJ at paras 19-34, Thomas LJ at 54-55 and Gage LJ at 60.*

*(4) It is for the employment Tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no 'range of reasonable response' test in this context: **Hardys & Hansons plc v Lax [2005] IRLR 726, CA**."*

1315. In summary, the Respondent's aims must reflect a real business need; the Respondent's actions must contribute to achieving it; and this must be assessed objectively, regardless of what the Respondent considered at the time. Proportionality is about considering not whether the Respondent had no alternative course of action, but whether what it did was reasonably necessary to achieving the aim.

<u>Knowledge of the somethings for s15 claims and whether they arose in consequence of the disability</u>

1316. As discussed in the case of **Pnaiser** one question for the Tribunal to answer is whether the something alleged by the Claimant arose in consequence of the disability. This was held to be an objective test that may have more than one

causal link between the disability and the something arising in consequence of it. The something does not have to be "because of" the disability. It simply needs to arise in consequence of it.

1317. It may then be relevant to consider whether the Respondent's decision makers knew of the something and if so when.

1318. The Claimant alleged that the following somethings arose from her disability. We make our conclusions to whether we agree they arose in consequence of her disability below:

> *"5.1.1 Rumination and difficulty concentrating,*
>
> *5.1.2 Low mood and motivation, fatigue, difficulty being alone;*
>
> *5.1.3 Suicidality, post-traumatic hyper arousal and retraumatisation;*
>
> *5.1.4 Discussions with colleagues about her situation;*
>
> *5.1.6 Difficulty in studying for Part A examination and working alone;*
>
> *5.1.7 Difficulty in attending work and maintaining routine, whilst attempting to do so;*
>
> *5.1.8 Needing extra time for written work;*
>
> *5.1.9 Not having taken/ passed the Part A examination;*
>
> *5.1.10 Not having signed off any competencies;"*

1319. We are persuaded that the above somethings had arisen in consequence of her disability for the following reasons:

1319.1. The report of Dr Goodall at Phoenix psychology refers to the following symptoms as described to him by the Claimant:

1319.1.1. Low mood;

1319.1.2. Anger;

1319.1.3. Problems with sleep;

1319.1.4. Poor motivation;

1319.1.5. Tearfulness;

1319.1.6. Feeling sad;

1319.1.7. Loss of interest in activities the Claimant used to enjoy;

1319.1.8. Loss of appetite;

1319.1.9. Nightmares were experienced weekly;

1319.1.10. Past experience of suicidal thoughts that have never been acted upon;

1319.1.11. That after completing questionnaires, the Claimant was experiencing moderate symptoms of depression and these were markedly impacting the Claimant's work, home management and social leisure activities.

1319.1.12. Flashbacks causing re-traumatisation of the Claimant when they happen are also reported in various medical documents already discussed above.

1319.2. When referencing suicidality, we find the Claimant case here is as described by Dr Goodall, namely suicidal thoughts.

1319.3. When considering whether the suicidal thoughts in turn caused the communications to be sent out later on in the timeline during events of 27 November 2019 and 11 February 2020, we find that although the Claimant's evidence was that these emails were sent out of frustration at how she was being treated, we conclude that if the suicidal thoughts were not there, the communications about them would not be there.

1319.4. Consequently, whilst we draw a distinction between the suicidal thoughts the Claimant says her condition caused her and the way they are communicated, they both arise in consequence of the disability despite the fact that the communications threatening suicide and blaming colleagues for it were conscious, lucid choices made to both vent and manipulate those receiving them into changing their decisions or how they were doing things, they still all arise in consequence of the Claimant's disabilities.

1319.5. The Claimant accepts that her behaviour has been poor in emails at various relevant times to her claim. Instead of describing to friends that her employer and others are causing her to feel suicidal, instead she uses phrases like, for example:

1319.5.1.1. "Got on my tits a bit" at page 3687
1319.5.1.2. "I'm getting annoyed with work" at page 3687
1319.5.1.3. "I think they forget I'm a 37 year old woman and capable of making my own decisions sometimes" at page 3687.

1319.6. All of this evidence fits with the communications about suicide being episodes of venting her feelings after becoming angry or frustrated. The communications are still linked together from the disability to the communication and therefore arise in consequence of the disability even if the communications themselves are not "because of" the disability.

1319.7. The above somethings were precisely the reasons why Dr Wilkes had put in place the adjustments he did in late 2019, why Ms Griffiths was providing extra personal support for the Claimant in an informal way.

1319.8. When Dr Walker and Mrs Potter became involved in October and November 2019, we believe these issues were being widely discussed with the Claimant and the above somethings informed the plans of both Mrs Potter and Dr Walker to plan and request the Claimant be placed on medical suspension because of a combination of the above issues.

1319.9. Both Respondents therefore knew of these things by 27 November 2019.

5.1.5 Decreased ability to handle workplace conflict and 5.1.11 Inability to access support due to limited service provision resulting in the Respondents perceiving the Claimant as unco-operative;

1319.10. When considering thing 5, we are not persuaded that this arose in consequence of the Claimant's disability.

1319.11. We have not seen sufficient evidence that the Claimant had a decreased ability handle workplace conflict. The Claimant seemed well able at all material times to express herself, stand up for herself against perceived aggression or confrontation and make arguments both verbally at meetings and in writing via emails etc.

1319.12. Likewise, we have not seen sufficient evidence that the Claimant had an inability to access support.

1319.13. She accessed at various times her GP, occupational health, RSVP, Healthy Minds, psychiatric reviews, the police and the professional support unit of R2. In addition, we do not find that the Respondents generally perceived the Claimant to be unco-operative. It is a fact that the Claimant did not co-operate on occasion. However, we are not persuaded the view of the Respondents was that the Claimant was uncooperative generally.

5.1.12 The Claimant's complaints about the handling of her situation.

1319.14. Finally, there is thing number 12. Clearly here, if the disability and its consequences weren't there then we do not believe the Claimant's complaints about it would be there. We therefore have no hesitation in finding that the complaints the Claimant made in her grievance and informally arose in consequence of her disability when looking at all the circumstances objectively.

1319.15. Knowledge of this thing will need to be determined based upon what particular complaint or complaints the Claimant says was/were relevant at the time of the unfavourable treatment alleged.

1319.16. Consequently, all of the somethings are proven as arising in consequence of the Claimant's disability except for things 5 and 11.

Unfavourable treatment

1320. The first allegation of unfavourable treatment we must now deal with is that at 5.2.2 of the list of issues namely that Dr Walker and Dr Cooper from the second Respondent blocked the Claimant from undertaking a placement at PHE.

1321. It is correct to say that they did effectively block the placement at PHE with Dr Cooper having the final say about where the Claimant should be placed.

1322. However, we are not persuaded that this was unfavourable treatment. There was insufficient evidence that this was, somehow, an inferior placement, one that was likely to mean the Claimant failed her qualification or because it was somehow substandard in any way. It was simply not the placement the Claimant wanted.

1323. Consequently, when considering **Williams,** we are content the Claimant was in as good a position as others in all the circumstances. There was no disadvantage to this placement. In fact, it was more likely to be advantageous to the Claimant given the difficulties she was then experiencing.

1324. To the extent the Claimant considered it to be to her detriment, we are unanimous in our view that the Claimant's view was not a reasonable one to have for these reasons.

1325. Consequently, claim 5.2.2 in the list of issues fails and is dismissed.

1326. Then we come onto claim 5.2.10, namely that Drs Walker, Cooper Djuric, Miss Livesey and Ms Proudlove planned to and then placed the Claimant on medical suspension.

1327. We have already concluded that these things did factually happen with Dr Walker, Mrs Potter and Ms Proudlove involved in the planning of the Medical suspension and Ms Proudlove and Miss Livesey jointly made the decision to actually suspend the Claimant later.

1328. It is now well established, that although suspensions can have positive attributes as well as negative ones, removing an employee from the workplace is not a neutral action and can involve a stigma even if it is done properly and for the right reasons.

1329. We are therefore persuaded that the Claimant's suspension on medical grounds was therefore unfavourable treatment.

1330. We must then consider the reason why this decision was made. We could consider each and every something put forward in turn. However, there is no need to.

1331. The real reason why the decision was made to medically suspend the Claimant included, as a minimum, consideration of the fact the Claimant exuded suicidal ideation, had emailed colleagues about suicidal thoughts, the fact that she was having difficulties in progressing with her training and her difficulties in attending work, all of which are correctly argued as being things that arise in consequence of her disability.

1332. This is therefore discrimination, unless it can be justified by R1. We consider this later.

1333. Similarly, the next allegation at 5.2.11, namely that the Respondent prevented the Claimant from undertaking her representative responsibilities, voluntary work or attending a conference meeting, were all part and parcel of the same thing, namely the medical suspension, and were decisions taken and made by Dr Cooper and Miss Livesey for similar reasons, at least in part.

1334. These decisions too are therefore discrimination unless they can be justified, which we consider later on.

1335. Then there are the allegations against Ms Farrell about the items she did not consider as part of the grievance process, at allegations 5.2.12 (c) and (d). These were Dr Varney's email to his staff and the PHE incident on 8 April 2020.

1336. As we discussed earlier in the judgment, there was confusion at the grievance stage about what the terms of reference were. In our view, the Claimant caused the confusion by agreeing that the additional issues, including the PHE incident and Dr Varney's email, would be handled by a separate process and then going back on this later on. The Claimant caused the same confusion at the final hearing before us by her counsel arguing these points should have been part of the grievance process, then changing her mind and agreeing, like she did originally, that they should be dealt with separately.

1337. In addition, Ms Hunt then offered to investigate these concerns anyway and the Claimant refused. Then Ms Farrell says this could be brought as part of the appeal process to stage 2.

1338. Consequently, in answering the question about whether Ms Farrell's failure to address the PHE issue and the issue about Dr Varney's email is unfavourable treatment, we say that it wasn't in these circumstances. The Claimant wanted these issues dealt with separately and that is what Ms Farrell then acquiesced to. That is not unfavourable treatment placing the Claimant at some sort of disadvantage. She got what she wanted. These issues would be handled by a separate procedure meaning the ability to have them addressed was still present and they could also be, and indeed were, addressed at stage 2 and stage 3.

1339. This was not therefore unfavourable treatment in these circumstances, the Claimant was in as good a position as other employees would have been and

to the extent the Claimant thought she was at a disadvantage or had been subjected to a detriment, that was not a reasonable view to have in light of her previous requests.

1340. Consequently, allegations 5.2.13 (c) and (d) fail and are dismissed.

1341. We move on to allegation 5.2.16, namely that OH referral forms were not sent to the Claimant prior to the referrals being made in December 2019 and March 2020.

1342. We are content that this constituted unfavourable treatment because it was not in line with R1's policy and procedure for OH referrals as shown by the forms themselves.

1343. However, we have also already found that this was simply a procedural oversight by R1's HR team. After **Dunn** and **Robinson,** this failure was not done because of any of the pleaded things the Claimant says arose in consequence of her disability. There is insufficient evidence that an active decision was made. We conclude this was a passive mistake with no thought process being performed by R1.

1344. Consequently, claim 5.2.16 of the list of issues fails and is dismissed.

1345. Then there are the final two allegations under s15, namely 5.2.18 (j) and 5.2.18 (u) that mirror the harassment allegations at 7.1.15 (j) and 7.1.15 (u). These are about the factual inaccuracies in the grievance outcome letters of Ms bunce and Mr. Khashu about failing to follow psychologist advice and how the Respondents discovered the Claimant had commenced a placement at PHE.

1346. It is clearly unfavourable treatment for factual inaccuracies to be present in decision made by the Claimant's employer. The Claimant would not be in as good a position as others if her employer has failed to get the facts correct even if those failures are honest mistakes and relatively minor in the grand scheme of things.

1347. We must then consider why these inaccuracies happened and, if a conscious or subconscious decision was made, what the real reasons was for those inaccuracies.

1348. Whilst we accept the inaccuracies happened in the backdrop of dealing with complaints that have clearly arisen in consequence of the Claimant's disabilities, we are not persuaded the inaccuracies happened because of any of the things the Claimant has pleaded. This is not a case where Ms Bunce and/or Mr Khashu thought, for example, "because she has raised complaints, we will make inaccurate findings" or "because she was having difficulty with her training and attendance, we will get the facts wrong".

1349. We have no hesitation in concluding that Ms Bunce and Mr Khashu made those findings because they had an honest but mistaken belief that the

evidence they had seen proved to them the Claimant had not followed the psychology advice in question or that the first time the Respondents became aware the Claimant was working at PHE, was when she was discovered in the building.

1350. Therefore, applying **Dunn** and **Robinson**, the minds of Mr. Khashu and Ms Bunce were in no way whatsoever affected by the things the Claimant pleaded when they made the factual mistakes they did.

1351. Consequently, claims 5.2.18 (j) and (u) fail and are dismissed.

Justification of allegations 5.2.10 and 5.2.11

1352. First, we revisit the decisions made in these allegations, these were:

1352.1. Planning to place the Claimant on medical suspension (R1 and R2);

1352.2. Placing the Claimant on medical suspension (R1);

1352.3. Preventing the Claimant from undertaking work related activity including voluntary work at the Respondents (R1);

1352.4. Preventing the Claimant from presenting at a meeting about inclusion and discrimination (R1);

1352.5. Preventing the Claimant from undertaking her duties as a registrar representative (R2).

1353. We have born in mind that the burden of proof here is on the Respondent.

1354. After we must first consider whether the Respondent's pleaded aims were legitimate and that means that there was a real business need for them.

1355. For the sake of simplicity, it is only necessary to refer to two of the legitimate aims contended, namely:

"5.3.3. compliance with training obligations and professional standards;

5.3.4. managing employment matters such as health, attendance and performance of employees;"

1356. Of course, R1 needs to ensure that its trainees are provided with appropriate training for their role and R2 needs to ensure that it delivers it and to the correct professional standards.

1357. It is also clearly a legitimate aim for R1 to appropriately manage employment matters such as the health, attendance and performance of its employees.

1358. Therefore, R2 can rely upon 5.3.3 and R1 can rely upon both 5.3.3 and 5.3.4.

1359. None of what we have found so far was challenged or in dispute.

1360. Following **Rainey** and **Weber Von Hartz,** we must then look at what the Respondents did and assess whether what the Respondents did was reasonably necessary. There must be a real need for the measures, the measures must have been necessary and they must have been appropriate to achieve the aims relied upon.

Planning the medical suspension

1361. First, there was planning to place the Claimant on medical suspension. Both Respondents were involved in that planning. In our view there was a real need for the planning to take place for the following reasons:

1361.1. Both Respondents have duties to risk assess situations, comply with their duty of care towards individuals and not leave employees or trainees open to foreseeable and preventable harm. These are part and parcel of comply with training obligations, maintaining professional standards and managing employees in our view.

1361.2. In this case, it is not only that harm the Claimant might have been open to that was in issue. We have already found that the Claimant's behaviours by their nature were also causing harm to others such as the Claimant's colleagues at the time the suspension was being planned. This harm included the stress that colleagues had when the Claimant discussed her problems with them, made threats of suicide and the Claimant's propensity to vent at people and say that if she committed suicide, it would be their fault as she did to Mrs Davis for example.

1361.3. It was therefore necessary for the Respondents to look into all their options about how to manage such a situation to ensure that they were both safe, professional and complied with their obligation to provide the training when balancing those with the Claimant's well-being and any other factors important to the Respondents such as the risk to them as organisations as well as the risks to the Claimant and other employees.

Medically suspending the Claimant and preventing the Claimant from attending meetings, doing voluntary work or attending representative meetings.

1362. Then there was the decision to actually medically suspend the Claimant. There was also a real need to do that for the following reasons:

1362.1. The Claimant had reiterated that she was going to commit suicide, communicated how she planned to do it and said she would blame the Respondents and individual people employed by them, as a result of not getting the placement she wanted. This caused significant distress to those involved and also caused the Respondents to perceive that the Claimant was severely mentally unwell.

1362.2. If the Claimant had discussed this with others in the workplace, it was

likely to cause alarm, possible distress and may have affected the mood of other employees negatively. That was a perfectly reasonable view to have and a proven real risk the Respondents were facing and trying to manage.

1362.3. If the worst had happened and the Claimant had attempted self-harm whilst at work or succeeded in what she communicated she would do, that would be an unacceptable risk to other employees or students.

1362.4. Both Respondents were without full advice as to what a safe working or training environment looked like for the Claimant given her symptoms, and they formed a view it was necessary to have that advice before they placed the Claimant into a work or training environment that could have made matters worse for her.

1362.5. Both needed to comply with their duty of care and the Respondents clearly could not do that with the Claimant at work when by this time, she was behaving erratically, deceitfully, emotionally and unpredictably. They have to make sure they fulfil their obligations to keep everyone safe, maintaining good quality placements and not destabilising the work and/or teaching environment.

1362.6. At the time this decision was made, PHE did not have a supervisor available to oversee the Claimant, her work or act as a welfare point of contact. There was a supervisor at University of Birmingham, but at that time without appropriate advice, the Respondents did not know what support plan would have been needed to guide the new placement so her ES could supervise and support the Claimant as a trainee appropriately and safely.

1362.7. If the Claimant was allowed to undertake any voluntary work without an appropriate risk assessment or medical advice, that could have harmed the Claimant and/or others if the Claimant behaved how she had done previously such as shouting at people, informing them she was suicidal, and/or blaming others for possible suicide if they made decisions she did not like for example.

The impact on the Claimant

1363. The impact on the Claimant would have been as follows:

1363.1. The Claimant's training progress would be delayed;

1363.2. She would lose the ability to talk through her problems and offload her feelings with her colleagues in being away from the workplace;

1363.3. The Claimant would in all likelihood ruminate more often or for longer periods of time, which may have made her symptoms worse;

1363.4. There was the potential for colleagues to wonder why the Claimant was

absent from work or training leading to others possible coming to incorrect conclusions about why the Claimant was not present;

1363.5. The Claimant would be more isolated than before;

1363.6. The Claimant was undoubtedly upset, angry and felt humiliated by the decision given the circumstances leading to the medical suspension.

Were these decisions proportionate

1364. When considering the planning of the medical suspension and the suspension itself, in our view these were decision taken proportionately for the following reasons:

1364.1. Neither of these decisions were done and made without the Respondents at least attempting to seek advice, assessing the situation and trying to find less drastic options.

1364.2. This is readily proven by the fact that:

1364.2.1. the Respondents worked together to try to formulate work plans first with amended duties, expectation and timescales first.

1364.2.2. The Claimant's attendance was initially flexible and then simply monitored with no adverse consequences from poor attendance.

1364.2.3. The Claimant was allowed to delay her Part A exam without penalty;

1364.2.4. The Claimant was granted extended annual leave to assist with her recovery;

1364.2.5. At all times the Claimant was consulted about the situation and all the possible solutions being considered. She might not have liked being consulted or agreed with the decisions made, but she was still kept reasonably fully informed;

1364.2.6. Suspensions was implemented only as a last resort by R1. It was not a decision made in haste, made on assumptions or made without there being an assessment of what impact this might have.

1364.2.7. It was a temporary measure whilst the Respondents tried to risk assess the situation and seek appropriate advice about both the workplace and the training environment. This is proven by some of Ms Proudlove's and other correspondence where the suspension was extended by a matter of a few weeks when the Claimant was not content with how things were being managed.

1364.2.8. After **Essop,** in our judgment there was nothing short of suspension that would have complied with the Respondents' aims of managing

the Claimant's employment and/or training appropriately and to required standards or in line with their obligations to keep the Claimant safe. The Respondents had exhausted lesser options.

1364.2.9. The Respondents had exhausted options of medical support for example from Phoenix psychology.

1364.2.10. R2's PSU had effectively exhausted all the support it could offer other than becoming akin to a general advice line for the Claimant.

1364.2.11. The Respondents did not ever give up trying to keep the Claimant in her job or on the training course. There was no discussion of her leaving the training or being dismissed by R1.

1364.3. When considering all three decisions not to allow the Claimant to do voluntary work within the Respondents, attend meetings or attend to her representative duties, the same considerations apply.

1364.4. Until they had confirmation of what a safe working environment looked like, it would not have been appropriate for either Respondent to have allowed this work to take place.

1364.5. Miss Livesey first tried to risk assess the situation about meetings and voluntary work, to see if there was anything the Claimant could do, meaning the situation did not start out with a flat "no". However, when the Claimant attempted to control the situation and dictate how the meeting was going to be run and what would be discussed, she unreasonably failed to engage any further, despite Miss Livesey agreeing that the discussion would cover both the Claimant's agenda items and R1's risk assessment. This effectively forced Miss Livesey to be cautious and say no to voluntary work etc.

1364.6. R2 had exhausted its TPDs with each and every one of them being complained about by the Respondent when each new TPD tried their best to find solutions that would work for the Claimant.

Balancing the Claimant's and Respondents' needs

1365. After **Hardy & Hansons,** in our view when considering all the circumstances, we find that there was nothing else either Respondent could do but to prevent the Claimant from attending to any work related activities and keep her away from the workplace until they understood the full medical picture, what a safe working and/or training environment looked like, the Claimant's behaviour had become more stable and whether it was possible for any advice to be implemented when balancing the risks to the organisations, regulatory requirements and the risks to others and the Claimant.

1366. Whilst in different contexts, the aims of the Respondents had significant overlap and interdependence.

1367. The risk to the Respondents and their legitimate interests of managing the Health issues of the Claimant in her employment and complying with training obligations if they got the Claimant's situation wrong and when trying to manage the impact the Claimant's situation was having on other people, in our view, outweighed the negative impact on the Claimant of planning and then suspending her.

1368. It therefore follows, that the decisions the Respondents made about planning to suspend, suspending her and then preventing the Claimant from undertaking any work related activities such as voluntary work at the Respondents, attending meetings and/or undertaking her registrar representative meetings were necessary and appropriate in all the circumstances.

1369. Both Respondents' justification defences therefore succeed.

1370. Consequently, the Claimant's claims at paragraphs 5.2.10 and 5.2.11 fail and are dismissed.

1371. This means that all the discrimination because of something arising in consequence of the Claimant's disabilities claims fail.

CONSTRUCTIVE DISMISSAL

1372. We finally consider the alleged constructive dismissal and whether this was then either unfair and/or tainted with discrimination. The statutory wording in both s95 Employment Rights Act 1996 and s39 Equality Act 2010 is similar.

1373. For a resignation to amount to a dismissal under section 95 employment rights act 1996, the following must be answered following the case of **Kaur v Leeds Teaching Hospitals [2018] EWCA Civ 978:**

1373.1. What was the most recent act on the part of the employer which the Claimant alleges caused her resignation?

1373.2. Has the contract been affirmed since that date?

1373.3. If not, was it a repudiatory breach of contract?

1373.4. If not, was it part of a sequence of events that collectively breached trust and confidence?

1373.5. Did the employee resign in response to that breach within a reasonable time?

1374. After **Williams v Alderman Davis Church in Wales Primary School [2020] IRLR 589,** the EAT decided that even if the last straw was not part of the sequence of events so long as it formed part of the reason to resign then there could still be a constructive dismissal. It must be decided:

1374.1. Whether the earlier course of conduct was repudiatory;

1374.2. That there has been no affirmation by the Claimant of that repudiatory breach; and

1374.3. The final matter at least contributed to the eventual decision to resign.

1375. After **Humby v Barts Health NHS Trust [2024] EAT 17**, the Tribunal must consider both breaches of implied and express terms for determining whether a repudiatory breach has happened.

1376. There is an implied term of mutual trust and confidence that exists in every employment contract **Malik v R4I SA (in Liquidation) [1998] AC 20.**

1377. In a case where the breach of the implied term of mutual trust and confidence is alleged, this clause will only be breached where, following the case of **Gogay v Hertfordshire County Council [2000] IRLR 703:**

1377.1. A party behaves in a way that has the purpose and/or effect of breaching mutual trust between the parties; and

1377.2. That behaviour was without reasonable and proper cause.

1378. A series of events, which may amount to minor issues may amount to a cumulative breach of the implied term when looked at as a whole and the employee has resigned in response to the last act or "last straw" **Lewis v Motorworld Garages limited [1986] ICR 157.**

1379. The last straw must be at least part of the reason for the resignation **Omilaju v Waltham Forest London Borough Council [2004] EWCA Civ 1493.**

1380. When considering breaches of express terms, normal contractual principles apply. First, we must decide if there has been a breach as a matter of fact (rather than opinion).

1381. Then we must decide if that was a breach serious enough to warrant the innocent party to consider the contract at an end as indicated by their resignation. This is an objective test to be determined when considering the impact on the contractual relationship of the parties.

1382. For there to be a constructive dismissal, there must first be a breach of the contract. Unreasonableness is not enough. There must be an actual breach **Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA.** Lawful conduct under the contract can therefore never give rise to a constructive dismissal.

1383. Similarly, an employer is unable to argue that its unlawful conduct was justified by the circumstances it faced, even if they are severe and might reasonably justify the breach **Wadham Stringer Commercials (London) Limited and another v Brown [1983] IRLR 46.**

1384. The parties to contract are entitled to precise and exact performance within the terms of the contract agreed between the parties. Such principles of contract law are to be applied in their ordinary way and not with a more flexible approach because the case is in the employment context **Hooper v British Railways Board [1988] IRLR 517 CA.**

1385. When considering the burden of proof, the burden usually rests with the person who is asserting something to be a factual allegation and the standard of proof is on the balance of probabilities as summarised by HHJ Auerbach in **Hovis Limited v Louton [2021] UKEAT/1023/20/LA.**

Breach of contract

1386. The Claimant relies on a number of breaches of contract either as individual serious breaches or cumulatively amounting to breaches of contract.

1387. We list each of these below with our findings about them.

9.1.1 The excessive scrutiny and targeting of her following disclosure of her health issues to HEE staff, including investigating her performance and attendance and misconduct, placing her on a formal plan, preparing an appraisal – all of which were conducted without her knowledge and outside of regular policy or procedure with the effect of setting her up to fail;

1388. We have already decided that, in our judgment, R1 did not behave in this way.

9.1.2 The unprofessional tone in which she was addressed in meetings on 17 December 2019 and 15 January 2020, and the subsequent refusal to provide mediation or take steps to address her distress around this, the continued escalation of behaviour that she found retraumatising despite at times desperate requests for a more compassionate approach, the subsequent failure to acknowledge the failings of the organisation in this regard and the retraumatising impact upon her;

1389. The only part of this allegation that might be factually made out is that Mrs Potter made comments at a welfare meeting the Claimant interpreted as unprofessional. None of the other conduct alleged happened. There was not a continual escalation of behaviour, except form the Claimant culminating in the PHE incident and there is also insufficient evidence that the Claimant was retraumatised by the circumstances.

1390. When looking at the impact the unprofessional tone had on the contractual relationship, we find that issue to be a minor one on its own, but accept that it may form part of an accumulation of conduct that could give rise to a constructive dismissal.

9.1.3 Lack of candour surrounding the letter written to OH, the handling of her

PHE placement, the continued involvement of CW, information being shared with future supervisors and colleagues, discussions that were being held about her and her health within and across organisations;

1391. We find as a fact that here was no lack of candour about any issues.

1392. There was no contractual obligation on R1 to seek the Claimant's permission every time it wanted to make an internal phone call, send an email or have a catch up amongst managers about important issues affecting the Claimant and her employment or training. Employers are entitled to plan and make decisions without involving an employee every step of the way. Indeed, if there was an obligation such as the Claimant is attempting to impose, then that would make the performance of any employment contract by any employer impossible.

9.1.4 The failure to provide appropriate support (an ES with capacity/ independence and/ or counselling and/or occupational therapy) despite her clear vulnerability;

1393. The Claimant was provided with multiple avenues of support at all times. There was no contractual obligation binding R1 to provide an ES at all times.

9.1.5 The inappropriate steps taken by Clare Walker (HEE) and her undue influence upon StHK;

1394. We are not persuaded Dr Walker took any inappropriate steps when dealing with the Claimant's situation.

1395. Similarly, there was no undue influence on R1 by Dr Walker and, in any case, R1 will not be in breach of contract due to the actions of Dr Walker or R2 because they did not have privity of contract when considering the contract of employment.

9.1.6 The mishandling of her private health data and other data and lack of transparency around this, including but not limited to the sharing of information with OH without her knowledge with the stated intention that she be found unfit for work, and indiscriminate data-sharing across and within organisations;

1396. Again, we find that R1 was contractually entitled to handle the Claimant's information and data where that is relevant and necessary for the performance of the employment contract and all other legal duties associated with it. If there was no such entitlement, either express or implied, in this era of electronic information and instant access, contracts of employment and the employment relationship itself could not work. Employers would be endlessly vexed with constructive dismissal complaints, grievances and excessive control of employees over whom the employer is supposed to have control. Employees

could say to an employer with the threat of a successful constructive unfair dismissal complaint, “you cannot make a decision about me without first going through every piece of information about me and where it is being sent and for what purpose and who you are discussing it with.” That state of affairs, as effectively argued by the Claimant, simply cannot be right.

9.1.7 The handling of her PHE placement including the lack of candour in the decision to prevent her undertaking this placement, the inaccurate allegation that she had entered the building fraudulently (amongst other inaccurate allegations), her aggressive removal from the PHE building despite her known vulnerability as a traumatised victim of sexual and psychological abuse, the denial of the opportunity for training and progression, the differential treatment in comparison with her peers in this regard;

1397. There was no lack of candour about the placement decision. The Claimant was asked about her views on the placement on more than one occasion and communication was clear when she was informed that permission to go to PHE for her placement was denied.

1398. The only lack of candour we could identify was the Claimant’s when she dishonestly attempted to undermine R2’s decision about the placement with partial success.

1399. Neither Respondent made any allegation that the Claimant had been fraudulent when trying to access the PHE building. There was no denial of training or progression. In fact, quite the opposite took place and any differential treatment was lawful.

9.1.8 The failure to make reasonable adjustments to facilitate her progression and training;

1400. We have already concluded there was no failure to make reasonable adjustments.

9.1.9 Medical suspension and other steps taken prevent her from engaging in any meaningful activity - causing her to lose skills, feel isolated and deteriorate her mental health;

1401. R1 had reasonable and proper cause for suspending the Claimant. That reasonable and proper cause was based upon the Claimant’s threats of suicide, her general health and well-being the fact that it was awaiting OH advice and that at the time of the suspension the Claimant’s behaviour had been unpredictable. It also needed to comply with its duty of care for both the Claimant and others.

9.1.10 The failure to investigate and address the origins of an email sent to her

entire former team at Birmingham City Council advising them to shun her, and other steps taken to isolate her and prevent people from speaking to her in a city to which she had moved solely to undertake her registrar role;

1402. When considering this issue through a contractual lens, there was no obligation on R1 to investigate and address concerns about a third party, namely R4. The organisation with that responsibility was R4 itself.

9.1.11 Harassment and the facilitation of a hostile workplace, the sharing of misleading and damaging claims about her, the significant damage to her professional reputation, the characterisation of her as a difficult problem and the discussion of her in unprofessional tones;

1403. We have already concluded that none of the above conduct happened with the exception of two errors made during the grievance process by Mr Khashu and Ms Bunce, neither of which was serious enough to amount to a breach of contract, but we accept could have contributed to an accumulation of minor conduct relied upon by the Claimant.

9.1.12 The failure to adequately consider evidence that supported her position with regards to all of the above during the grievance process; and 9.2.3 failed to consider evidence appropriately, and/ or disregarded evidence that supported the Claimant's position;

1404. We have already concluded that there was insufficient evidence that R1 failed to consider evidence in support of the Claimant's position.

9.1.13 The deeply retraumatizing impact of all behaviour complained about due to the Claimant being a victim of sexual and psychological abuse and a complainant in a live rape investigation, something the Respondent was aware of and which was highlighted to the Respondent during the grievance process.

1405. We are not persuaded that the Respondent's conduct has deeply retraumatised the Claimant. There is insufficient evidence of this, especially in light of the fact we are not persuaded a lot of the conduct alleged happened either at all, in the way the Claimant alleges or without reasonable grounds for behaving in the way it did.

9.2.1. failed to comply with their obligations under the EqA 2010; and 9.2.6. allowed her to be subjected her to unlawful discrimination on the grounds of her disability;

1406. We are not persuaded there have been any breaches of the Equality Act 2010 or that R1 allowed any to take place.

9.2.2. unreasonably exposed the Claimant to an unnecessary and unreasonable risk to her health and safety (breaching the implied to duty to provide a safe and supportive place of work); failed to address concerns about data protection and confidentiality (including those referred to at 8.12.6 above);

1407. We are not persuaded R1 has acted in this way based on our previous findings above.

9.2.4. trivialised her concerns about workplace harassment; and 9.2.5. trivialised her concerns around lack of candour;

1408. R1 has not trivialised any concerns raised by the Claimant. They undertook a detailed and thorough review of all concerns when looked at in the round, which must have taken them hundreds of hours complete.

9.2.7. allowed unreasonable restrictions to be imposed upon her (including not allowing the Claimant to make decisions about her training and Part A timetable, requiring the Claimant to undertake a placement at the University of Birmingham, blocking the Claimant attending a placement at PHE, preventing the Claimant from presenting at a meeting in September 2020, and from undertaking her registrar representative role, not providing the Claimant with an independent educational supervisor;

1409. R1 did not impose any unreasonable restrictions. It had reasonable and proper cause for imposing the restrictions based upon the Claimant's health, behaviour and its effect on others when balancing its other legal duties and obligations.

9.2.8. required her to agree to a series of unreasonable management requests;

1410. The Claimant has failed to identify what management requests she riles upon here. This allegation is hopelessly vague.

9.2.9. allowed her to be unreasonably denied opportunities for training and progression; and

1411. The Claimant has not been denied any opportunities for training or progression based on the evidence we have seen.

9.2.10. allowed her to be undermined in respect of the dealings she had with colleagues and partner organisations (including BCC, PHE and University of Birmingham).

1412. We are not persuaded the Claimant has in any way been undermined by the behaviour of R1. In any case, she has failed to identify which colleagues she is

referring to and what specific conduct she says undermined her.

Implied terms

1413. The Claimant also alleges that a number of implied terms have been breached. We consider each in tern below.

9.3.1 Breach of data protection and confidentiality;

1414. We have only considered confidentiality here in line with the Claimant's agreement during the hearing to not consider data protection act breaches.

1415. We are not persuaded that there has been any breach of confidentiality. The Claimant agreed for information to be processed about her employment and training when she signed the contract of employment and signed up for the training course provided by R2.

9.3.2 Breach of duty of care;

1416. We are not persuaded that R1 has breached its duty to take care at all. In fact, it has at all times behaved in a way to comply with its duty.

9.3.3 Breach of implied duty to protect health and safety in the workplace;

1417. Similarly, we can identify no breach of health and safety given our findings about the discrimination claims and all other matters so far.

9.3.4 Breach of implied duty not to expose Claimant to a hostile or discriminatory environment;

1418. There is insufficient evidence that any such environment existed.

9.3.5 Breach of duty to make reasonable adjustments.

1419. R1 has not failed in its duty to make reasonable adjustments as already found above.

Cumulative conduct

1420. Based on all the findings in this case so far, the only issues that have survived to be considered for the constructive dismissal allegation are:

1420.1. some minor procedural oversights when occupational health referrals had been made but the forms weren't sent to the Claimant beforehand in December 2019 and March 2020;

1420.2. a couple of minor unprofessional comments by Mrs Potter in a welfare meeting in January 2020;

1420.3. two erroneous factual findings in the grievance process by Ms Bunce and Mr Khashu on 21 December 2020 and 9 September 2021; and

1420.4. An allegation that R1 did not get back to the Claimant via ACAS quickly enough in November 2021.

1421. In our judgment, none of the above are breaches of any express clause of the contract of employment in the bundle, and we have heard no submissions about what express clauses are said to have been breached.

1422. Applying **Kaur,** we find as follows:

1422.1. The last straw was the failure by R1 to get back to the Claimant via ACAS quickly enough or in the way she wanted it to.

1422.2. The contract was not affirmed after that event. The Claimant resigned in response only a few days later.

1422.3. We are not persuaded that R1 was in any way bound to respond to an offer via ACAS at all or in the way the Claimant wanted when litigation was being threatened and was indeed already underway.

1422.4. We are equally not persuaded that the four issues identified above including the ACAS last straw that triggered the resignation cumulatively amount to a breach of the implied term of trust and confidence. We say this because:

1422.4.1. When considering the Claimant not being sent OH referral forms before they were sent out, the Claimant was demonstrably not concerned by those incidents at the time. This is demonstrated by the fact she attended most of the assessments and did not specifically complain about those issues until months after they occurred. Consequently, applying **Gogay,** we do not consider them to have had the purpose or effect of undermining this implied term as alleged and we do not think the Claimant was genuinely as concerned about them as she now claims to be.

1422.4.2. Similarly, the unprofessional comments made by Mrs Potter in the January 2020 welfare meeting were resolved very quickly at the meeting by both participants talking through the issues and agreeing to be more professional for the rest of the meeting. This is a minor issue that had no material impact on the contractual relationship and appeared to be resolved fairly quickly.

1422.4.3. We conclude that the Claimant affirmed both the issue with the OH forms and the conduct of Mrs Potter by continuing to work at the Respondent for years before her resignation.

1422.4.4. When looking at all the circumstances, the mistakes made by Ms

Bunce and Mr Khashu are minor, but are the most serious of the remaining issues the Claimant takes issue with.

1422.4.5. The cumulative grouping of issues leading to the resignation therefore appears to us to be the stage 2 and 3 grievance outcomes combined with R1's ACAS response.

1422.4.6. That grouping is not serious enough to amount to a repudiatory breach of contract by R1 when viewed objectively. We consider its impact on the scheme of things to be minor and to have taken place in the context of the Respondent diligently looking onto the Claimant's concerns during the grievance procedure.

1422.5. To the extent that the last straw may have revived the issues of Mrs Potters comments at the welfare meeting and/or the OH form issues, we are still not persuaded that the cumulative effect of all four issues would be serious enough to warrant an employee to resign in response and say there had been a cumulative fundamental breach over all.

1423. Consequently, the Claimant was not constructively dismissed. She reigned. He claims at point 9 of the list of issues for unfair dismissal or a discriminatory dismissal therefore fail and are dismissed.

DISPOSAL

1424. Having found against the Claimant, it is academic to consider whether any of the claims were out of time.

1425. We have taken all the authorities into account we were referred to in submissions whether the authority is mentioned in this judgment or not. We have similarly considered all the written submissions of both sides in coming to our decision whether a specific submission point is referred to or not.

1426. The Claimant was not discriminated against in any way. The Claimant was not dismissed. The Claimant has therefore failed to succeed in any of her claims and her claims are therefore dismissed. That concludes these proceedings.

_____
EMPLOYMENT JUDGE SMART
30 September 2024

Judgment sent to the parties on

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For the Tribunal Office

ANNEX 1 – LIST OF ISSUES AGREED AND UPDATED AT THE START OF THE FINAL HEARING

THE CLAIMS

The Claimant has presented the following claims:

1. Direct Discrimination (pursuant to section 13 of the Equality Act 2010) in relation to paragraphs 1, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 15.

2. Discrimination arising from Disability (pursuant to section 15 of the Equality Act 2010) in relation to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

3. Harassment (pursuant to section 26 of the Equality Act 2010) in relation to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

4. Failure to make Reasonable Adjustments (pursuant to sections 20 and 21 of the Equality Act 2010) in relation to paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15 and 16.

5. Victimisation (pursuant to section 27 of the Equality Act 2010).

6. Constructive dismissal (95 (1) (c) of the Employment Rights Act 1996).

1. LIMITATION

1.1. In respect of the First Respondent, have any claims been presented to the employment Tribunal which relate to matters occurring more than three months prior to the start of the ACAS early conciliation processes i.e. 21 April 2020?

1.2. If the Claimant has presented claims to the employment Tribunal which relate to matters occurring earlier than 21 April 2020, do the matters complained of amount to conduct extending over a period within the meaning of section 123(3)(a) Equality Act 2010?

1.3. If not, is it just and equitable to extend time for the claims to be heard?

1.4. In respect of the Second Respondent, have any claims been presented to the employment Tribunal which relate to matters occurring more than three months prior to the start of the ACAS early conciliation process i.e. 12 June 2020?

1.5. If the Claimant has presented claims to the employment Tribunal which relate to matters occurring earlier than 12 June 2020, do the matters complained of amount to conduct extending over a period within the meaning of section 123(3)(a) Equality Act 2010?

1.6. If not, is it just and equitable to extend time for the claims to be heard?

2. DISABILITY

2.1. For the purposes of her claims, the Claimant seeks to rely upon the following impairments: depression and post-traumatic stress disorder (PTSD). It is accepted by the First and Second Respondent that the Claimant was, at the material times, a disabled person by reason of the conditions of depression and PTSD.

2.2. Did the First and Second Respondent know, or could they reasonably have been expected to know that the Claimant was a disabled person by reason of the above disabilities?

2.3. From what date did the First and Second Respondents have knowledge of the Claimant's disabilities (if at all)? If STHK and HEE did not have knowledge, from what date could they have reasonably been expected to have knowledge of the Claimant's disabilities (if at all)?

2.4. Did each of the Respondents know or could they reasonably have been expected to know that each PCP (where applicable) would put the Claimant to a substantial disadvantage in comparison to non-disabled persons?

3. **PRELIMINARY ISSUES**

3.1. The Claimant asserts that the conduct set out in paragraphs 4, 5.1, 5.2, 5.3, 5.4, 5.5, 6.2, 7.1-7.3, 8.1, 8.2, 9.1, 11.1, 12, 13, 14.1, 14.4, 14.5, 14.6, 15.1 and 15.2 of her scott schedule amounts to direct discrimination and harassment. However, the same facts cannot give rise to findings of both direct discrimination and harassment by virtue of section 212(1) and (5) of the Equality Act 2010 (EqA). The Claimant has confirmed that these allegations are pleaded in the alternative.

3.2. **Jurisdiction regarding the Second Respondent:**

3.2.1. The Claimant makes her claim against the Second Respondent on the basis that it is an employment service provider under sections 55 and 56 EqA. In particular, the Claimant contends that the Second Respondent was an employment service provider within the meaning of sections 55 (1) and 56 (2) (a), (b) and/or (c) EqA?

3.2.2. The Tribunal is therefore required to decide the following:

a. Was the Second Respondent an employment service provider within the meaning of sections 55 (1) and 56 (2) (a), (b) and/or (c) EqA?

3.2.3. If yes, the Tribunal is then required to decide whether the Second Respondent committed any conduct prohibited by section 55 of the EqA that the Claimant has alleged. These breaches of specific sub-sections of s.55 of the EqA are listed below where prohibited conduct is alleged against the Second Respondent.

3.3. References in square brackets [ ] are to the corresponding paragraphs in the Claimant's Scott Schedule. Unless the individual or individuals concerned are expressly identified in the issues, the individual or individuals alleged to have done, or have omitted to do, the relevant act are identified in bold in square brackets.

4. **DIRECT DISCRIMINATION COMPARATOR(S)**

4.1. The Claimant confirms that for each allegation, unless specified, the comparators relied upon are: other public health registrars within the same intake year in the West Midlands Deanery and/ or other public health registrars in the West Midlands Deanery and/or a hypothetical comparator without the Claimant's disability.

Allegations of direct discrimination against First Respondent / STHK contrary to Section 39(2) Equality Act 2010

4.2. [3] Did StHK fail to follow Occupational Health advice or fail to seek further occupational Health (OH) opinion when a change of direction was proposed including by:

4.2.1. planning (December 2019) and making (April 2020) a decision to medically

suspend without OH involvement [**DL, HP**];

4.2.2. not seeking OH advice before having the Claimant removed from PHE under threat of forcible removal by security [**RC, CW**];

4.2.3. not seeking OH advice before taking steps resulting in isolation of the Claimant; those steps are said to be:

a. planning in December 2019 and putting the Claimant in April 2020 on a period of medical suspension **[DL, HP**]

b. excluding the Claimant from undertaking work related activity during her period of medical suspension [**DL, HP, MS**]

c. preventing the Claimant from undertaking volunteering [**DL**]

d. initially refusing mediation [**HP, DL**]

e. refusing to involve a third party in the Claimant's complaints until she wrote to the CEO [**HP, DL**].

4.2.4. ignoring the OH report of Jan 2020 that recommended the Claimant remain in work [**HP, DL**]

4.3. [5] Was the Claimant excessively scrutinised and set up to fail? Specifically, did Anne Potter instigate a performance and attendance management plan between December 2019 and February 2020 following an investigation conducted by CW (HEE, the Second Respondent) during November 2019 and December 2019, without:

4.3.1. informing the Claimant;

4.3.2. following policies namely the First Respondent's: Attendance Management Policy and Procedure, Disciplinary Policy and Performance Management Policy; and

4.3.3. making reasonable adjustments.

4.4. [8] Did the First Respondent plan to put the Claimant on medical suspension in December 2019? [**DL, HP**]

4.5. [8] Was the Claimant placed on medical suspension in April 2020? [**DL, HP**]

4.6. [9] Under the terms of the medical suspension, was the Claimant prevented by Debbie Livesey and Malise Szpakowska (STHK) from:

4.6.1. undertaking voluntary work around September 2020;

4.6.2. presenting at a meeting she was invited to in September 2020;

4.6.3. undertaking her duties as a registrar representative as communicated to the Claimant in September 2020, effectively giving her no option but to resign this position?

4.7. [11] Did STHK staff (including Anne Potter, Hayley Proudlove, Debbie Livesey and Malise Szpakowska) fail to deal with the Claimant's concerns about the behaviour of CW and AP in

meetings on 17 December and 15 January 2020. It is said this approach continued until May 2020.

4.8. [12] Did STHK [**DL, AP, HP**] permit CW to send a letter to occupational health in April 2020 without her knowledge or consent including misleading and distorted claims about the Claimant, including that:

4.8.1. she generally refused to see her GP and only spoke to her GP after they called her;

4.8.2. she had not completed any work for R4 since October 2019;

4.8.3. during December 2019 and early January 2020, she experienced 'optimum circumstances';

4.8.4. she lacked insight and was not making appropriate attempts to access support;

4.8.5. she was misleadingly able to present as 'upbeat and competent';

4.8.6. she became ferociously angry at being asked not to attend work;

4.8.7. she attended R4 to seek support and distressed other staff in doing so;

4.8.8. her attending R4 to seek support and distressing other staff was the reason that Justin Varney felt unable to support the Claimant.

4.9. [ET1] Did StHK (Anne Potter) arrange an OH referral without the Claimant's knowledge or consent (around 23 March 2020), fail to share or discuss the referral in advance, mis-state facts within the referral (around 4 December 2019 and 23 March 2020) and/ or contact OH (AP and Hayley Proudlove) to request an unauthorized discussion with the OH assessor knowing the Claimant had not consented (around 23 April 2020);

4.10. [13] Did Anne Potter (AP) behave aggressively towards the Claimant during meetings on 17 December 2019 and 16 January 2020 specifically by:

4.10.1. lacking empathy for the Claimant's situation as a traumatised victim of serious abuse and a complainant in a live rape investigation experiencing significant suicidality as a result of these two factors and, despite this, blindsiding her with a combative discussion for which she was unprepared;

4.10.2. adopting a contemptuous and cynical tone in response to the Claimant and her actions, pulling apart what she said to find errors and inconsistencies, misrepresenting her position, implying the Claimant was not credible and lacked insight, and that overall her opinion or perspective was not valid – including on her own health and its management ('How do you know if you're fit for work?');

4.10.3. attempting to direct the Claimant in the management of her healthcare, criticising the Claimant for not having adhered to previous direction, criticising the Claimant for having rescheduled an OH assessment, criticising the Claimant for not wishing to undertake a 3 hour daily commute as a 'reasonable adjustment', admonishing her as if she was a naughty child;

4.10.4. accusing the Claimant of going to the office only for socialising and seeking support;

4.10.5. accusing the Claimant of not attempting to prepare for the Part A examination when she had actually tried to but realised it was too difficult with her symptoms;

4.10.6. accusing the Claimant of not authorising adjustments (that had actually been agreed by DW (R4) in October 2019) and purposefully not reporting absences (the Claimant had been following the same process she had used since August 2018);

4.10.7. expressing irritation with the Claimant for having a condition that did not have a linear healing trajectory or allow her to predict with certainty how she would feel each day, and had been adversely affected by circumstances out of her control which the Claimant had not anticipated (police failings, lack of services, diabetes misdiagnosis);

4.10.8. stating that the Claimant should either be fit for work and therefore doing the full duties of her role or should be signed off sick if not able to;

4.10.9. suggesting that the Claimant had handled things in the way she had because she was trying to do a part-time role but get paid full-time, pressuring the Claimant into part-time work;

4.10.10. interpreting any disagreement the Claimant had with their portrayal of events as the Claimant being in denial and/ or difficult, portraying the Claimant as the cause of all difficulties within the working relationship;

4.10.11. complaining about the Claimant's 'attitude' when the Claimant became visibly distressed by them, criticising the Claimant for taking sickness absences between 19 December 2019 and 7 January 2020; and

4.10.12. criticising the Claimant for suggesting she might request an extension of time to complete dissertation related work for the University of Birmingham due to her participation in a police interview as a rape complainant on 13 January 2020 ('On what basis do you think you deserve a further extension?').

4.11. [14] Did StHK staff make or allude to misleading or distorted claims about the Claimant including that:

a. she lacked insight and was not making appropriate attempts to access support (Hayley Proudlove in an email sent on 16 December 2019);

b. she declined to act on the advice given by the psychologist and seek an appropriate referral (Nicola Bunce in the Second Stage Hearing Outcome in November 20220 and repeated in Stage Three Grievance Outcome in September 2021 (by Nikhil Khashu);

c. she eluded security protocols and used false names to enter PHE fraudulently (Hayley Proudlove in a letter dated 5 May 2020) [Comparator – other public health registrars within the same intake year, most specifically Rebecca Russell] on 6 April 2020];

d. she had taken sick leave following the meeting on 15 January 2020 (Hayley Proudlove in a letter dated 5 May 2020);

e. she had received an email from AP shortly after 3 March 2020

explaining that she would be required to attend an OH assessment before returning to work (Hayley Proudlove 5 May 2020);

f. that she had a tendency to react angrily and this was justification for their subsequent behaviour towards her (by Nikhil Khashu in Stage 3 grievance outcome)

g. that she did not inform HEE or STHK of her PHE placement and they only became aware when they saw her in the building (Nicola Bunce in Second Stage Hearing Outcome in November 2020 and repeated by Nikhil Khashu Stage Three Grievance Outcome in September 2021)

4.12. [5, 14] From around December 2019, did StHK subject the Claimant to extra scrutiny by documenting criticisms of the Claimant's alleged behaviour (as alluded to in the grievance outcome letters [**AP, DL, HP**]) without making her aware of these claims (STHK).

4.13. Does the above conduct at paragraphs 4.2 to 4.12 amount to less favourable treatment?

4.14. If so, did STHK subject the Claimant to this treatment because of her disability?

Allegations of direct discrimination against Second Respondent/HEE (now NHSE) contrary to section 55(2) Equality Act 2010

4.15. [1] [Comparator – other public health registrars within the same intake year, most specifically Rebecca Russell] Did CW and Rob Cooper (RC) do the following:

4.15.1. make decisions about the Claimant's placement and training without her input *ss.55(2)(a) &/or (d)*

4.15.2. block the Claimant from undertaking a placement at Public Health England (PHE) on or around the 11 February 2020 *ss.55(2)(b) &/or (d)*; and

4.15.3. attempt to place the Claimant at a placement at the University of Birmingham to the detriment of her progression through training and her mental health *ss.55(2)(a) &/or (d).*

4.16. [3] Did CW, RC and Andy Whallett fail to follow OH advice or seek further opinion when change of direction was proposed including by:

4.16.1. making decisions about the Claimant's placement without reference to the OH report of January 2020 [**CW, RC**];

4.16.2. influencing STHK in planning (December 19) and making (April 20) a decision to medically suspend without OH involvement [**CW, RC**];

4.16.3. not seeking OH advice before having the Claimant removed from PHE under threat of forcible removal by security [**RC, CW**];

4.16.4. proposing the Claimant undertake her health protection placement at Kidderminster [**CW**];

4.16.5. not seeking OH advice before taking steps resulting in the isolation of the Claimant, those steps including:

a. placing the Claimant on a period of medical suspension in April 2020
b. disclosing information to PHE, UoB, R4 and other staff at HEE and STHK to portray the Claimant as difficult and dangerous and with the purpose of influencing communications to be sent to PHE and R4 staff that they should not communicate with the Claimant [**CW, RC**]
c. preventing the Claimant from attending the School Board [**CW, RC**]
d. Andy Whallet (or someone else at HEE) not permitting anyone independent of HEE to provide support to the Claimant and discouraging people from speaking to the Claimant

4.16.6. ignoring the OH report of Jan 20 that recommended the Claimant remain in work [**RC, CW**]? *All ss 55(2)(d)*

4.17. [4] [Comparator – other public health registrars within the same intake year, most specifically Rebecca Russell] Did CW and RC arrange for the Claimant to be escorted from PHE premises on 8 April 2020, with her attendance classified as a security incident and her photograph placed in reception? *ss 55(2)(d)*

4.18. [5] Was the Claimant excessively scrutinised and set up to fail? Specifically, the Claimant alleges that following her disclosure to CW (regarding her health) made on 22nd or 23 November 2019:

4.18.1. CW investigated the Claimant's performance, attendance and conduct between November and December 2019 without;

a. following HEE's and STHK's policies;

b. consulting the Claimant's former supervisor;

c. providing the Claimant with the information about claims presented about her; and

d. giving the Claimant opportunity to respond.

4.18.2. CW instigated a performance and attendance management plan between December 2019 and February 2020, without:

a. informing the Claimant;
b. following HEE's and STHK's policies when dealing with this issue and
c. making reasonable adjustments.

4.18.3. CW contacted the Claimant's university tutors on 19 December 2019 and 15 January 2020 to gather evidence against her without her knowledge / consent;

4.18.4. CW and RC contacted Justin Varney (R4) to prepare the Claimant's annual appraisal around 25 February 2020 outside the regular timetable or procedure, including without the Claimant's knowledge / consent with a view to passing judgement on the Claimant or implementing a PCP without making reasonable adjustments; and

4.18.5. RC asked PHE for evidence of the Claimant's unusual behaviour during her placement on or around 8 April 2020. All ss. 55(2)(d)

4.19. [6] On around 8 April 2020 did HEE take steps to prevent the Claimant's colleagues from communicating with her by:

4.19.1. advising the Claimant's colleagues including but not limited to Jane Parry employed by University of Birmingham and Gordana Djuric (HEE) not to communicate with the Claimant [**individual behind decision not known to Claimant**];

4.19.2. facilitating communication with Justin Varney with the result of him sending an email on 8 April 2020 to the Claimant's former team at R4, which advised them to shun the Claimant as she represented a risk to them [**CW, RC**];

4.19.3. communicating with PHE resulting in them advising their staff to ignore any communication from the Claimant [**CW, RC**]? *All ss.55 (2)(d)*

4.20. [7] Between November 2019 and May 2020 did the following occur and did they occur with the Claimant's knowledge/ consent:

4.20.1. Doreen Davis (DD), CW and RC disclosed, or planned to disclose, information in relation to the Claimant's health to Clare Walker, Jayne Parry, Russell Smith, Gordana Djuric, Helen Carter, School Board, Rob Cooper, Justin Varney, Elizabeth Griffiths and others;

4.20.2. DD, CW, RC, AW and Russell Smith and/ or others had discussions about the Claimant's health and made decisions about appropriate treatment of her medical condition without the Claimant's knowledge/ consent or feedback around November 2019 to March 2020;

4.20.3. In February 2020, CW implied to Jayne Parry that the Claimant was a difficult problem requiring close management, and planned to disclose information regarding the Claimant's health to her future colleagues. CW also made the same disclosures to PHE staff (including but not limited to Helen Carter and Carol Chatt) in April 2020. *All ss. 55(2)(d)*

4.21. [8] Between December 2019 and April 2020, did CW, RC and GD request the First Respondent put the Claimant on a period of a medical suspension? Ss. 55(2)(b) &/or (d)

4.22. [9] Did CW and RC prevent the Claimant from undertaking her duties as a registrar representative; ss. 55(2)(d)

4.23. [11] Did HEE staff (including CW, RC, AW GD and RS) fail to deal with the Claimant's concerns about the behaviour of CW and AP in meetings on 17 December and 15 January 2020, and the overall approach ss 55(2)(d);

4.24. [11] Did Ankush Mittal and Andrew Whallett (HEE) fail to be transparent when asked by the Claimant what information had previously been provided about her in emails on or around 6 July 2020 (AM), and 16 February 2021 (AW) ss. 55(2)(d);

4.25. [12] Did CW write to occupational health in January 2020 and April 2020 without the Claimant's knowledge or consent with the intention of influencing the OH assessor to conclude the Claimant was unfit for work and required further assessment (known to be against the wishes of the Claimant)? Ss 55(2)(b) &/or (d)

4.26. [12] In December 2019, did CW misleadingly claim to the First Respondent that the

Claimant was not making appropriate attempts to access support and lacked insight into her health concerns? Ss 55(2)(d)

4.27. [13] Did CW behave aggressively in meeting with the Claimant on 17 December 2019 and 16 January 2020 including by;

4.27.1. lacking empathy for the Claimant's situation as a traumatised victim of serious abuse and a complainant in a live rape investigation experiencing significant suicidality as a result of these two factors and, despite this, blindsiding her with a combative discussion for which she was unprepared;

4.27.2. adopting a contemptuous and cynical tone in response to the Claimant and her actions, pulling apart what she said to find errors and inconsistencies, misrepresenting her position, implying the Claimant was not credible and lacked insight, and that overall her opinion or perspective was not valid – including on her own health and its management;

4.27.3. attempting to direct the Claimant in the management of her healthcare, criticising the Claimant for not having adhered to previous direction, criticising the Claimant for having rescheduled an OH assessment, criticising the Claimant for not wishing to undertake a 3 hour daily commute as a 'reasonable adjustment', admonishing her as if she was a naughty child;

4.27.4. becoming angry and shouting at the Claimant 'where is my fit note?' before having to leave the room due to her anger;

4.27.5. accusing the Claimant of not authorising adjustments that had been agreed by DW (HEE) in October 2019 and purposefully not reporting absences (the Claimant had been following the same process she had used since August 2018);

4.27.6 accusing the Claimant of not attempting to prepare for the Part A examination when she had actually tried to but realised it was too difficult with her symptoms;

4.27.7. expressing irritation with the Claimant for having a condition that did not have a linear healing trajectory or allow her to predict with certainty how she would feel each day, and had been exacerbated by circumstances out of her control which the Claimant had not anticipated (police failings, lack of services, diabetes misdiagnosis);

4.27.8. interpreting any disagreement the Claimant had with their portrayal of events as the Claimant being in denial and/ or difficult, portraying the Claimant as the cause of all difficulties within the working relationship;

4.27.9. complaining about the Claimant's 'attitude' when the Claimant became visibly distressed by them, criticising the Claimant for taking sickness absences between 19 December 2019 and 7 January 2020; and

4.27.10. criticising the Claimant for requesting an extension of time to complete dissertation related work for the University of Birmingham. All Ss. 55(2)(d)

4.28. [14] Did CW and RC make or allude to misleading or distorted claims about the Claimant, including but not limited to, that:

a. she generally refused to see her GP and only spoke to her GP after they called her (letter from CW to OH written in January 2020 and sent in April

2020);

b. she had not completed any work for R4 since October 2019(letter from CWto OH written in January 2020 and sent in April 2020);

c. during December 2019 and early January 2020, she experienced 'optimum circumstances'(letter from CW to OH written in January 2020 and sent in April 2020);

d. in December 2019 she consulted her GP as she was 'unable to work to the plan' prepared by CW and AP (CW in an email to RC on 16 April 2020);

e. she lacked insight and was not making appropriate attempts to access support (letter from CW to OH written in January 2020 and sent in April 2020);

f. she was misleadingly able to present as 'upbeat and competent'(letter from CW to OH written in January 2020 and sent in April 2020);

g. she became ferociously angry at being asked not to attend work (letter from CW to OH written in January 2020 and sent in April 2020);

h. she attended R4 to seek support and distressed other staff in doing so (letter from CW to OH written in January 2020 and sent in April 2020);

i. her attending R4 to seek support and distressing other staff was the reason that Justin Varney felt unable to support the Claimant (letter from CW to OH written in January 2020 and sent in April 2020);

j. [Comparator – other public health registrars within the same intake year, most specifically Rebecca Russell] on 6 April 2020 she eluded security protocols and used false names to enter PHE fraudulently (RC in a conversation with HC and/or CW on 8 April 2020 and documented in his notebook);

k. that she did not provide the full history of her difficulties and was broadly deceptive and untrustworthy (claimed by CW (HEE) in an email sent to RC on 16 April 2020;

l. that she had displayed challenging behaviours in her previous placements that had led to her Educational Supervisor requesting her to be removed from the placement (CW in conversation with HC and by HC in written report dated 8 April 2020);

m. that she had a history of contacting staff stating that she was going to commit suicide and making significant serious personal disclosures (CW in conversation with HC and by HC in written report dated 8 April 2020;

n. that she was receiving multiple forms of support through occupational health (CW in conversation with HC and by HC in written report dated 8 April 2020;

o. that she had a tendency to react angrily and this was justification for their

subsequent behaviour towards her (RC during interview for grievance on 17 June 2020 and in grievance outcome letters and by CW in an email to other TPDs on 17 January 2020)

p. that she insisted on attending R4 against their wishes, only wanted to work on her dissertation and did not want to complete work for R4 (by CW in an email to other TPDs on 17 January 2020);

q. that her complaints about the behaviour of CW and AP were in reality complaints about being asked to do work (by CW in an email to other TPDs on 17 January 2020);

r. that she did not inform HEE or STHK of her PHE placement and they only became aware when they saw her in the building (NB and NK in the Stage 2 and Stage 3 grievance outcome)

s. that she had attended the PHE placement in breach of covid guidelines and had put others at risk (RC in a conversation with HC and/or CW on 8 April 2020 and documented in his notebook); and

t. that she had been dishonest to PHE in arranging her placement (RC in a conversation with HC and/or CW on 8 April 2020 and documented in his notebook). *All ss.55(2)(d)*

4.29. [15] Did CW portray the Claimant as disingenuous, difficult, or untrustworthy specifically by:

a. criticising the Claimant for being unable to complete work or stick to a timetable (in January 2020) that had been proposed in Christmas 2019; and

b. on 16 April 2020 by;

1. interpreting the occupational health report through a lens that the Claimant was dishonest;

2. blaming the Claimant for the fact that CW had not received the occupational health report; and

3. speculating the Claimant had not submitted a fit note. *All ss. 55(2)(d)*

4.30. Did CW, RC and others at HEE fail to take the Claimant's complaints seriously, believe them to be a reflection of her mental state and her desire not to do work? Ss, 55(2)(d)

4.31. Does the above conduct in paragraphs 4.15 to 4.30 amount to less favourable treatment?

4.32. If so, did HEE subject the Claimant to this treatment because of her disability?

5. DISCRIMINATION ARISING FROM DISABILITY contrary to Section 39(2) Equality Act 2010 (First Respondent) and Section 55(2) Equality Act 2010 (Second Respondent)

5.1. The Claimant identifies the following things arising in consequence of her alleged disabilities:

5.1.1. Rumination and difficulty concentrating;
5.1.2. Low mood and motivation, fatigue, difficulty being alone;
5.1.3. Suicidality, post-traumatic hyper arousal and retraumatisation;
5.1.4. Discussions with colleagues about her situation;
5.1.5. Decreased ability to handle workplace conflict;
5.1.6. Difficulty in studying for Part A examination and working alone;
5.1.7. Difficulty in attending work and maintaining routine, whilst attempting to do so;
5.1.8. Needing extra time for written work;
5.1.9. Not having taken/ passed the Part A examination;
5.1.10. Not having signed off any competencies;
5.1.11. Inability to access support due to limited service provision resulting in the Respondents perceiving the Claimant as unco-operative;
5.1.12. The Claimant's complaints about the handling of her situation.

5.2. Did the First and Second Respondent treat the Claimant unfavourably because of something arising in consequence of the Claimant's disability by:

5.2.1. [1] making decisions about the Claimant's placement and training without her input [**CW, RC**]; *ss.55(2)(a) &/or (d)*

5.2.2. [1] blocking the Claimant from undertaking a placement at Public Health England (PHE) on or around the 11 February 2020 [**CW, RC**] *ss.55(2)(b) &/or (d)*; and

5.2.3. [1] attempting to place the Claimant in a placement at the University of Birmingham to the detriment of her progression through training and her mental health without reference to the OH report of January 2020 (HEE) [**CW, RC**]; *ss.55(2)(a) &/or (d)*

5.2.4. [2] refusing or delaying mediation (HEE and STHK, January to May 2020) [**CW, AP, RC**] *ss 55(2)(d)*

5.2.5. [3] failing to follow OH advice or seek further Occupational health opinion when a change of direction was proposed with regards to placement planning and medical suspension (Jan 2020 – Apr 2020) [**DL, HP, RC, CW, MS, AW**] ss 55(2)(d);

5.2.6. [4] arranging for the Claimant to be escorted from PHE premises on 8 April 2020, with her attendance at work classified as a security incident and her photograph placed in reception (HEE) [**CW**, **RC**] *ss 55(2)(d)*

5.2.7. [5] excessively scrutinising the Claimant and setting her up to fail (HEE and STHK) specifically by;

a. conducting an investigation into her performance, attendance and conduct in November – December 2019 (HEE} [**CW]**;

b. instigating a performance and management plan (HEE and STHK) [**CW**,**AP**];

c. contacting the Claimant's university tutors to gather evidence about her (HEE) [**CW**];

d. asking Justin Varney (R4) to prepare an annual appraisal outside of the regular timetable or process (HEE) [**CW, RC**]; and

e. asking PHE for evidence of the Claimant's unusual behaviour in her

PHE placement (HEE) [**RC, CW**]. *All ss.55(2)(d)*

5.2.8. [6] taking steps to prevent the Claimant's colleagues from communicating with her by:

a. advising the Claimant's colleagues, including but not limited to Jane Parry employed by University of Birmingham and Gordana Djuric (HEE) **[individual behind decision not known to Claimant**], not to communicate with the Claimant;

b. facilitating communication with Justin Varney with the result of him sending an email on 8 Apr 2020 to the Claimant's former team at R4, which advised them to shun the Claimant as she represented a risk to them [**CW**];

c. communicating with PHE with the result of them advising their staff to ignore any communication from the Claimant [**CW, RC**]? *All ss. 55(2)(d)*

5.2.9. [7] between November 2019 and May 2020, without the Claimant's knowledge/ consent:

a. Doreen Davis (DD), CW and RC disclosing, or planning to disclose, information in relation to the Claimant's health to Clare Walker, Jayne Parry, Russell Smith, Gordana Djuric, Helen Carter, School Board, Rob Cooper, Justin Varney, Elizabeth Griffiths and others;

b. DD, CW and RC and/ or others having discussions about the Claimant's health and making decisions about appropriate treatment of her medical condition without the Claimant's knowledge/ consent/ input around November 2019 to March 2020;

c. In February 2020, CW implying to Jayne Parry that the Claimant was a difficult problem requiring close management, and planning to disclose information regarding the Claimant's health to her future colleagues; CW also making the same disclosures to PHE staff (including but not limited to Helen Carter and Carol Chatt) in April 2020 *All ss.55(2)(d)*;

5.2.10. [8] planning and then placing the Claimant on medical suspension (contrary to an OH report that recommended the Claimant remain in work); (HEE and STHK) **[CW, RC, GD, DL, HP**] *Ss. 55(2)(b) &/or (d)*;

5.2.11. [9] under the terms of the suspension, preventing the Claimant from undertaking any work-related activity including voluntary work, presenting at a meeting she was invited to and undertaking her duties as a registrar representative (STHK and HEE) [**CW, RC, DL, MS**]; *ss 55(2)(d)*

5.2.12. [10] in December 2019, removing the Claimant's reasonable adjustments made with DW in October 2019 (AP and CW); ss 55(2)(d)

5.2.13. [11] failing to properly deal with the Claimant's grievance and other concerns specifically by;

a. not taking complaints about the behaviour and approach of CW and AP seriously (HEE and STHK – [**RC**],), allowing both AP and CW continued involvement in the management of the Claimant, misleading the Claimant

about CW's ongoing involvement (HEE [**RC**]) ss. 55(2)(d)

b. misleadingly claiming that mediation was not arranged due to operational pressure and lack of staff (STHK – [**HP**]);

c. failing to investigate the origin of an email sent to R4 (STHK – [**AF, NB, NK**]);

d. failing to address concerns around the handling of the Claimant's PHE placement (STHK – [**AF, NB, NK**]); and

e. failing to consider evidence appropriately and/ or disregarding evidence that supported the Claimant's position (STHK) [**AF, NB, NK**];

f. failing to address the Claimant's concerns about harassment and hostility towards her in the workplace [**AF, NB, NK**].

5.2.14. [11] failing to be transparent when asked by the Claimant what information had been provided about her in emails on or around 6 July 2020 (Ankush Mittal, HEE), and 16 February 2021 (Andy Whallet, HEE) *ss 55(2)(d)*

5.2.15. [12] in April 2020, writing to OH assessor without the Claimant's knowledge or consent in order to influence the outcome of the OH review (HEE – [**CW**] ss 55(2) (b) &/or (d) and STHK – [**AP, HP**]);

5.2.16. [ET1] arranging an OH referral without the Claimant's knowledge or consent (around 23 March 2020), fail to share or discuss the referral in advance, mis- state facts within the referral [AP] (around 4 December 2019 and 23 March 2020) and/or contact OH to request an unauthorized discussion with the OH assessor knowing the Claimant had not consented [**HP, AP**] (around 23 April 2020);

5.2.17. [13] behaving aggressively in meetings with the Claimant on 17 December 2019 and 16 January 2020 (STHK – [**AP**], and HEE – [**CW**]) *ss 55(2)(d)*;

5.2.18. [14] making/ alluding to distorted or misleading claims about the Claimant, including;

a. she generally refused to see her GP and only spoke to her GP after they called her (CW in a letter to OH prepared in January 2020 and send in April 2020);

b. she had not completed any work for R4 since October 2019 (CW in a letter to OH prepared in January 2020 and send in April 2020);

c. during December 2019 and early January 2020, she experienced 'optimum circumstances (CW in a letter to OH prepared in January 2020 and send in April 2020);

d. in December 2019 she consulted her GP as she was 'unable to work to the plan' prepared by CW and AP (CW in an email to RC 16 April 2020 and CW in an email to other TPDs on 17 January 2020);

e. she lacked insight and was not making appropriate attempts to access

support (CW in a letter to OH prepared in January 2020 and sent in April 2020 and HP in an email sent December 2019 seeking approval for medical suspension;

f. she was misleadingly able to present as 'upbeat and competent (CW in a letter to OH prepared in January 2020 and sent in April 2020);

g. she became ferociously angry at being asked not to attend work CW in a letter to OH prepared in January 2020 and sent in April 2020);

h. she attended R4 to seek support and distressed other staff in doing so(CW in a letter to OH prepared in January 2020 and sent in April 2020);

i. her attending R4 to seek support and distressing other staff was the reason that Justin Varney felt unable to support the Claimant CW in a letter to OH prepared in January 2020 and sent in April 2020);

j. she declined to act on the advice given by the psychologist and seek an appropriate referral (Nicola Bunce in Second Stage hearing outcome November 2020 and repeated in Stage Three Grievance Outcome September 2021);

k. on 6 April 2020 she eluded security protocols and used false names to enter PHE fraudulently (RC in a conversation with HC/CW on 8 April 2020 and documented in his notebook and HP in a letter dated 5 May 2020);

l. she had taken sick leave following the meeting on 15 January 2020 (HP in a letter dated 5 May 2020);

m. she had received an email from AP shortly after 3 March 2020 explaining that the Claimant would be required to attend an OH assessment before returning to work (HP in a letter dated 5 May 2020);
n. that she did not provide the full history of her difficulties and was broadly deceptive and untrustworthy (CW in an email to RC 16 April 2020);

o. that she had displayed challenging behaviours in her previous placements that had led to her Educational Supervisor requesting her to be removed from the placement (CW (HEE) in conversation with Helen Carter (PHE) and subsequently documented by HC in a written report);

p. that she had a history of contacting staff stating that she was going to commit suicide and making significant serious personal disclosures (CW (HEE) in conversation with Helen Carter (PHE) and subsequently documented by HC in a written report);

q. that she was receiving multiple forms of support through occupational health (CW (HEE) in conversation with Helen Carter (PHE) and subsequently documented by HC in a written report);

r. that she had a tendency to react angrily and this was justification for their subsequent behaviour towards her (RC (HEE) during interview for grievance on 17 June 2020 and in grievance outcome letters and CW in an email to other TPDs on 17 January 2020);

s. that she insisted on attending R4 against their wishes, only wanted to work on her dissertation and did not want to complete work for R4 (CW in an email to other TPDs on 17 January 2020);

t. that her complaints about the behaviour of CW and AP were in reality complaints about being asked to do work(CW in an email to other TPDs on 17 January 2020);

u. that she did not inform HEE or STHK of her PHE placement and they only became aware when they saw her in the building (Nicola Bunce in Second Stage hearing outcome November 2020 and repeated in Stage Three Grievance Outcome September 2021) (STHK); and

v. that she had attended the PHE placement in breach of covid guidelines and had put others at risk (HEE) (RC in a conversation with Helen Carter and/or CW on 8 April 2020 and documented in his notebook);

w. that she had been dishonest to PHE in arranging her placement (RC in a conversation with Helen Carter and/or CW on 8 April 2020 and documented in his notebook). *All ss 55(2)(d)*

x. [15] portraying the Claimant as disingenuous, difficult or untrustworthy (HEE) specifically by:

y. criticizing the Claimant for being unable to complete work or stick to a timetable proposed in December 2019 (HEE [**CW**]); and

z. interpreting an OH report on 16 April through a lens that the Claimant is dishonest, blaming the Claimant for CW not receiving an OH report and wrongly speculating the Claimant had not submitted a fit note [**CW**]. *All ss 55(2)(d)*

5.2.19. [16] failing to provide adequate support including educational supervision and counselling/ occupational therapy (HEE [**CW, RC, DD**]). *Ss 55(2)(d)*

5.3. Can STHK and HEE show the treatment to be a proportionate means of achieving a legitimate aim? The Respondents' legitimate aims were:

5.3.1. the effective and efficient use of training resources;
5.3.2. the effective and efficient use of employment resources;
5.3.3. compliance with training obligations and professional standards;
5.3.4. managing employment matters such as health, attendance and performance of employees;
5.3.5. the maintenance of educational and professional standards

6. FAILURE TO MAKE REASONABLE ADJUSTMENTS (SECTION 20) contrary to section 21 Equality Act 2010 (First Respondent) and Sections 21, and 55(7) Equality Act 2010 (second Respondent)

6.1. Did First Respondent (STHK) and/ or Second Respondent (HEE) apply the following PCPs, if so when was the PCP applied:

6.1.1. Requirement to prepare and/ or complete Part A of the Public Health examination in the second year of training (HEE);

6.1.2. Requirement to fulfil the conditions of the First Respondent's Attendance Management Policy (STHK);

6.1.3. Putting 'trainees in difficulty' in a placement at the University of Birmingham (HEE);

6.1.4. Failing to provide an Educational Supervisor with capacity and independence to support the Claimant (HEE, November 2019 – November 2021).

6.1.5. Removing adjustments agreed with Dennis Wilkes (HEE and STHK)

6.1.6. Requiring the Claimant to attend multiple assessments and recount traumatic events to multiple individuals whilst not providing support, labelling her as difficult for not wishing to do this (HEE and StHK);

6.1.7. Failing to provide counselling, occupational therapy or trauma-informed psychological support (HEE);

6.1.8. Not offering independent mediation (STHK, January 2020) in the absence of a formal complaint (HEE, January 2020);

6.1.9. Putting in place periods of medical suspension in the case of a trainee who is struggling with their mental health (STHK);

6.1.10. Allowing individuals (CW and AP) who have been found objectionable by a 'trainee in difficulty' to have continued involvement despite such objections (HEE and StHK);

6.1.11. Refusing to consider the transfer of a trainee in difficulty to a different training region outside of the West Midlands Deanery/ training region (StHK);

6.1.12. Discussing 'trainees in difficulty' and their health issues within and outside the organisation without their knowledge, consent or input (HEE), including dissemination of incomplete/ unverified information or speculation;

6.1.13. Adopting a judgemental/ paternalistic culture in respect of concerns around mental health (HEE (and StHK);

6.2. Did the above PCPs put the Claimant at a substantial disadvantage when compared to someone without the Claimant's specific disabilities?

6.3. Did the Respondents know, or could they reasonably have been expected to know that the Claimant was likely to be placed at the above disadvantage(s)?

6.4. Did the Respondents fail to make the following reasonable adjustments;

6.4.1. Allowing the Claimant to undertake Part A of the Public Health examination at a different time (HEE) ss.55(7) ;

6.4.2. Adjusting the Attendance Management Policy to accommodate the Claimant (STHK);

6.4.3. Putting the Claimant in a training placement in the West Midlands in agreement with her and what she would have found helpful for her health condition (HEE – [**CW, RC**]) and/ or allowing the Claimant to continue her training placement at PHE [**CW, RC**]; *ss 55(7)*

6.4.4. Providing an independent Educational Supervisor with capacity to support the Claimant following the departure of Dennis Wilkes and ongoing during suspension (HEE, [**CW, RC, AW**]) *ss 55(7);*

6.4.5. Retaining the adjustments agreed with DW *ss 55(7);*

6.4.6. Providing appropriate support promptly and without requiring multiple assessments, referring the Claimant to the same clinician for follow-up, (Dr Goodall) having a compassionate understanding of the impact on the Claimant of attending multiple assessments *ss 55(7)*

6.4.7. Providing counselling and/ or occupational therapy and/or psychological support as requested in November 2019 (HEE – [**DD**]); *ss, 55(7)*

6.4.8. Providing mediation, especially to prevent further deterioration of the Claimant's symptoms (StHK – [**DL, HP**] and HEE – [**AW, RS**])**;** *ss 55(7)*

6.4.9. Not placing the Claimant on medical suspension and constructively discussing with her how to support her to remain in work (HEE and StHK); *ss 55(7)*

6.4.10. Ceasing CW and AP's involvement with the Claimant's training and placement [**RC, AW**]; ss 55(7)

6.4.11. Transferring the Claimant's training to another location outside the West Midlands (HEE [**RS, AW**]), making enquiries of HEE as to the possibility and/or supporting the Claimant in this process (STHK – [**MS, DL**]); ss 55(7)

6.4.12. Being transparent about information sharing, giving the Claimant the opportunity to rectify inaccurate information (StHK and HEE); ss.55(7)

6.4.13. Adopting a compassionate and collaborative approach, or providing mediation to facilitate this. ss(55)(7)

7. **HARASSMENT contrary to section 40 Equality Act 2010 (First Respondent) and section 55(3)(b) Equality Act 2010 (Second Respondent)**

7.1. Did STHK and HEE do the following things?:

7.1.1. [1] make decisions about the Claimant's placement without her input, block the Claimant from undertaking a placement at Public Health England (PHE) on or around the 11 February 2020; and attempt to place the Claimant at a placement at the University of Birmingham to the detriment of her progression through training and her mental health [**CW,RC**];

7.1.2. [2] Refuse or delay mediation between January 2020 and May 2020 (STHK and HEE) [**CW, AP, RC**];

7.1.3. [4] On 8 April 2020, arrange for the Claimant to be escorted from PHE's premises, with her attendance at work classified as a security incident and her photograph placed in reception (HEE) [**CW**, **RC**];

7.1.4. [5] Excessively scrutinise the Claimant and set her up to fail by;

a. upon learning of her health issues, between November 2019 to December 2019 conducting an investigation into the Claimant's performance, attendance and conduct without following policy, without consulting her former supervisor, without providing the Claimant with the information about claims presented about her and without giving the Claimant opportunity to respond (HEE [**CW**] and STHK [**AP**]);

b. instigating a performance and attendance management plan between December 2019 and February 2020 without informing the Claimant or following policy and without making reasonable adjustments; (HEE [**CW**] and STHK [**AP**]);

c. contacting the Claimant's university tutors to gather evidence against her (HEE) in December 2019 without her knowledge or consent [**CW**];

d. contacting Justin Varney (R4) at the end of February 2020 to request him to prepare an annual appraisal outside of the regular timetable and process (HEE) [**CW, RC**]; and

e. prompting PHE to gather evidence of the Claimant's unusual behaviour in her PHE placement (HEE) around 8th April 2020. **[CW, RC].**

7.1.5. [6] Take steps to prevent the Claimant's colleagues from communicating with her as set out above (HEE);

7.1.6. [7] Disclose information regarding the Claimant's health without her knowledge or consent as set out above (HEE);

7.1.7. [8] Plan to place the Claimant on medical suspension without OH involvement, believing her to lack insight (HEE and STHK, December 2019), and place her on medical suspension in April 2020, contrary to the OH report of Jan 2020 that recommended the Claimant remain in work **[CW, RC, GD, DL, HP]**;

7.1.8. [9] Prevent the Claimant from undertaking any work-related activity between April 2020 – November 2021 under the terms of the medical suspension [**CW, RC, DL, MS**];

7.1.9. [10] Remove reasonable adjustments without consultation with the Claimant and criticise the Claimant for having utilised them (CW and AP, Dec 2019);

7.1.10. [11] Fail to properly deal with the Claimant's concerns about the behaviour and approach of AP (STHK) and CW (HEE) as set out above; allow CW continuous involvement whilst misleading the Claimant about this (HEE, January to June 2020); allow AP to continually contact the Claimant (STHK, January – April 2020);

7.1.11. [11] Fail to properly deal with the Claimant's grievance, including by (STHK):

a. misleadingly claiming that mediation was not arranged due to

operational pressure and lack of staff [**HP**];

b. failing to investigate the origin of an email sent to R4 staff [**AF, NB, NK**];

c. failing to address the Claimant's concerns about harassment, the hostile workplace and the damage to her professional reputation **[AF, NB, NK**];

d. failing to address concerns around the handling of the Claimant's PHE placement [**AF, NB, NK**];

e. failing to fully address concerns that the Claimant had not been managed in line with policy [**AF, NB, NK**];

f. failing to address the Claimant's concerns about transparency, candour and data-sharing [**AF, NB, NK**];

g. failing to address the Claimant's concerns about the sharing of her private data, including health data; [**AF, NB, NK**];

h. failing to address the Claimant's concerns about misleading allegations that had been made about her[**AF, NB, NK**];

i. failing to interview witnesses to her behaviour in R4 and PHE including her removal from the PHE building [**AF, NB, NK**];

j. failing to consider evidence appropriately, and/ or disregarding evidence that supported the Claimant's position [**AF, NB, NK**];

k. [Letter k is an error in the formatting of the list sent to the Tribunal]

l. failing to deal with the Claimant in a sufficiently transparent manner throughout the grievance and related processes, thereby causing the Claimant stress and aggravating her disability. [**AF, NB, NK**]

7.1.12. [12] Write to OH without the Claimant's knowledge or consent to influence the OH assessor to find the Claimant unfit to work and requiring further assessment (known to be against the wishes of the Claimant) (HEE, facilitated by STHK) [**CW, HP, AP**];

7.1.13. [ET1] Arrange an OH referral without the Claimant's knowledge or consent (around 23 March 2020), fail to share or discuss the referral in advance, mis- state facts within the referral (around 4 December 2019 and 23 March 2020) and/ or contact OH to request an unauthorized discussion with the OH assessor knowing the Claimant had not consented (around 23 April 2020) [**HP, AP**];

7.1.14. [13] Behave aggressively in meetings with the Claimant on the 17 December 2019 and 16 January 2020 and (STHK and HEE) as set out at paragraph 5.2.17;

7.1.15. [14] Make or allude to misleading or distorted claims about the Claimant (HEE & STHK) including but not limited to that:

a. she generally refused to see her GP and only spoke to her GP after they

called her (CW in a letter to OH prepared in January 2020 and sent in April 2020);

b. she had not completed any work for R4 since October 2019(CW in a letter to OH prepared in January 2020 and sent in April 2020);

c. during December 2019 and early January 2020, she experienced 'optimum circumstances'(CW in a letter to OH prepared in January 2020 and sent in April 2020);

d. in December 2019 she consulted her GP as she was 'unable to work to the plan' prepared by CW and AP(CW in an email to RC on 16 April 2020 and CW to other TPDs on 17 January 2020);

e. she lacked insight and was not making appropriate attempts to access support (CW in a letter to OH prepared in January 2020 and sent in April 2020 ad HP in an email sent on 16 December 2019;

f. she was misleadingly able to present as 'upbeat and competent(letter from CW to OH written in January 2020 and sent in April 2020;

g. she became ferociously angry at being asked not to attend work(letter from CW to OH written in January 2020 and sent in April 2020;

h. she attended R4 to seek support and distressed other staff in doing so(letter from CW to OH written in January 2020 and sent in April 2020;

i. her attending R4 to seek support and distressing other staff was the reason that Justin Varney felt unable to support the Claimant(letter from CW to OH written in January 2020 and sent in April 2020);

j. she declined to act on the advice given by the psychologist/ Doreen Davis and seek an appropriate referral (Nicola Bunce in Second Stage hearing outcome in November 2020 and repeated by Nikhil Khashu in Stage Three grievance outcome in September 2021);

k. on 6 April 2020 she eluded security protocols and used false names to enter PHE fraudulently (RC in a conversation with HC and/or CW on 8 April 2020 and documented in his notebook and HP in letter to Claimant 5 May 2020);

l. she had taken sick leave following the meeting on 15 January 2020 (HP in a letter to Claimant 5 May 2020;

m. she had received an email from AP shortly after 3 March 2020 explaining that she would be required to attend an OH assessment before returning to work(HP in a letter to Claimant 5 May 2020;

n. that she did not provide the full history of her difficulties and was broadly deceptive and untrustworthy (CW in an email to RC 16 April 2020);

o. that she had displayed challenging behaviours in her previous placements that had led to her Educational Supervisor requesting her to be

removed from the placement (CW in conversation with HC and by HC in written report dated 8 April 2020;

p. that she had a history of contacting staff stating that she was going to commit suicide and making significant serious personal disclosures(CW in conversation with HC and by HC in written report dated 8 April 2020;

q. that she was receiving multiple forms of support through occupational health(CW in conversation with HC and by HC in written report dated 8 April 2020;

r. that she had a tendency to react angrily and this was justification for their subsequent behaviour towards her (RC during interview for grievance on 17 June 2020 and in grievance outcome letters and by CW in an email to other TPDs on 17 January 2020);

s. that she insisted on attending R4 against their wishes, only wanted to work on her dissertation and did not want to complete work for R4(by CW in an email to other TPDs on 17 January 2020);

t. that her complaints about the behaviour of CW and AP were in reality complaints about being asked to do work(by CW in an email to other TPDs on 17 January 2020);

u. that she did not inform HEE or STHK of her PHE placement and they only became aware when they saw her in the building (Nicola Bunce in Second Stage hearing outcome November 2020 and repeated in Stage Three Grievance Outcome September 2021) (STHK);

v. that she had attended the PHE placement in breach of covid guidelines and had put others at risk (HEE) (RC in a conversation with Helen Carter and/or CW on 8 April 2020 and documented in his notebook); and

w. that she had been dishonest to PHE in arranging her placement (RC in a conversation with Helen Carter and/or CW on 8 April 2020 and documented in his notebook).

7.1.16. [14] Document criticisms regarding the Claimant's alleged behaviour (as alluded to in the grievance outcome letters) without making her aware of these claims (STHK);

7.1.17. [15] Portray the Claimant as disingenuous, difficult or untrustworthy (HEE) by:

a. criticizing the Claimant for being unable to complete work or stick to a timetable proposed in December 2019 [**CW**]; and

b. on 16 April 2020 interpreting an OH report through a lens that the Claimant was dishonest, blaming the Claimant for CW not receiving an OH report and wrongly speculating that the Claimant had not submitted a fit note [**CW**].

7.2. Did any of the conduct at paragraphs 7.1.1 to 7.1.15 amount to unwanted conduct related to the Claimant's disabilities?

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

7.4. If the conduct did not have that purpose, did it have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

7.5. Was it reasonable for the conduct to have any such effect?

8. **VICTIMISATION Contrary to Section 39(4) Equality Act 2010 (First Respondent) and Section 55(5) Equality Act 2010 (Second Respondent)**

8.1. Did the Claimant do a protected act by:

8.1.1. Making a claim to the Employment Tribunal on 6 July 2020?

8.2. Did the Second Respondent (RC and CW) believe the Claimant had done a protected act by:

8.2.1. Raising a grievance about CW in April 2020?

8.2.2. Making a claim to the Employment Tribunal prior to April 2020?

8.3. Did STHK and HEE subject the Claimant to a detriment because of the protected act(s) by:

8.3.1. [4] Arranging for the Claimant to be escorted from Public Health England (PHE) premises (HEE).[**CW,RC**] ss. 55(5)(d)

8.3.2. [4] Classifying the Claimant's attendance at work as a security incident (HEE). [**CW,RC**] ss. 55(5)(d)

8.3.3. [4] placing the Claimant's photograph in reception (HEE). Ss. 55(5)(d) [**CW,RC**]

8.3.4. [11] Failing to properly deal with the Claimant's grievance by adequately considering evidence in support of the Claimant's position. [**AF, NB, NK**]

9. **CONSTRUCTIVE UNFAIR DISMISSAL**

9.1. Has the STHK breached the Claimant's contract of employment? The Claimant seeks to rely on the totality of the issues and matters complained about within the Claimant's grievance and disability discrimination claim. The most significant issues relied upon by the Claimant are the failure to address her concerns around:

9.1.1. The excessive scrutiny and targeting of her following disclosure of her health issues to HEE staff, including investigating her performance and attendance and misconduct, placing her on a formal plan, preparing an appraisal – all of which were conducted without her knowledge and outside of regular policy or procedure with the effect of setting her up to fail;

9.1.2. The unprofessional tone in which she was addressed in meetings on 17 December 2019 and 15 January 2020, and the subsequent refusal to provide mediation or take steps to address her distress around this, the continued escalation of behaviour that she found retraumatising despite at times desperate requests for a more

compassionate approach, the subsequent failure to acknowledge the failings of the organisation in this regard and the retraumatising impact upon her;

9.1.3. Lack of candour surrounding the letter written to OH, the handling of her PHE placement, the continued involvement of CW, information being shared with future supervisors and colleagues, discussions that were being held about her and her health within and across organisations;

9.1.4. The failure to provide appropriate support (an ES with capacity/ independence and/ or counselling and/or occupational therapy) despite her clear vulnerability;

9.1.5. The inappropriate steps taken by Clare Walker (HEE) and her undue influence upon StHK;

9.1.6. The mishandling of her private health data and other data and lack of transparency around this, including but not limited to the sharing of information with OH without her knowledge with the stated intention that she be found unfit for work, and indiscriminate data-sharing across and within organisations;

9.1.7. The handling of her PHE placement including the lack of candour in the decision to prevent her undertaking this placement, the inaccurate allegation that she had entered the building fraudulently (amongst other inaccurate allegations), her aggressive removal from the PHE building despite her known vulnerability as a traumatised victim of sexual and psychological abuse, the denial of the opportunity for training and progression, the differential treatment in comparison with her peers in this regard;

9.1.8. The failure to make reasonable adjustments to facilitate her progression and training;

9.1.9. Medical suspension and other steps taken prevent her from engaging in any meaningful activity - causing her to lose skills, feel isolated and deteriorate her mental health;

9.1.10. The failure to investigate and address the origins of an email sent to her entire former team at Birmingham City Council advising them to shun her, and other steps taken to isolate her and prevent people from speaking to her in a city to which she had moved solely to undertake her registrar role;

9.1.11. Harassment and the facilitation of a hostile workplace, the sharing of misleading and damaging claims about her, the significant damage to her professional reputation, the characterisation of her as a difficult problem and the discussion of her in unprofessional tones;

9.1.12. The failure to adequately consider evidence that supported her position with regards to all of the above during the grievance process;

9.1.13. The deeply retraumatizing impact of all behaviour complained about due to the Claimant being a victim of sexual and psychological abuse and a complainant in a live rape investigation, something the Respondent was aware of and which was highlighted to the Respondent during the grievance process.

9.2. The behaviours complained of collectively or individually amounted to a breach of the Claimant's contract of employment. StHK allowed the Claimant to be treated in a way that was contrary to the policies set out in her contract. StHK failed to comply with its implied duty of

mutual trust and confidence, including the duty to act fairly, reasonably and honestly, and provide a safe place of work as it:

9.2.1. failed to comply with their obligations under the EqA 2010;

9.2.2. unreasonably exposed the Claimant to an unnecessary and unreasonable risk to her health and safety (breaching the implied to duty to provide a safe and supportive place of work);failed to address concerns about data protection and confidentiality (including those referred to at 8.12.6 above);

9.2.3. failed to consider evidence appropriately, and/ or disregarded evidence that supported the Claimant's position;

9.2.4. trivialised her concerns about workplace harassment;

9.2.5. trivialised her concerns around lack of candour;

9.2.6. allowed her to be subjected her to unlawful discrimination on the grounds of her disability;

9.2.7. allowed unreasonable restrictions to be imposed upon her (including not allowing the Claimant to make decisions about her training and Part A timetable, requiring the Claimant to undertake a placement at the University of Birmingham, blocking the Claimant attending a placement at PHE, preventing the Claimant from presenting at a meeting in September 2020, and from undertaking her registrar representative role, not providing the Claimant with an independent educational supervisor;

9.2.8. required her to agree to a series of unreasonable management requests;

9.2.9. allowed her to be unreasonably denied opportunities for training and progression; and

9.2.10. allowed her to be undermined in respect of the dealings she had with colleagues and partner organisations (including R4, PHE and University of Birmingham).

9.3. The failure of the Respondent to resolve these concerns overall amounted to a breach of trust and confidence, and also amounted to the breach of specific implied terms:

9.3.1. Breach of data protection and confidentiality;
9.3.2. Breach of duty of care;
9.3.3. Breach of implied duty to protect health and safety in the workplace;
9.3.4. Breach of implied duty not to expose Claimant to a hostile or discriminatory environment;
9.3.5. Breach of duty to make reasonable adjustments.

9.4. The Claimant contends that the final straw was the Respondent's rejection of key parts of her grievance thereby failing to address issues of concern to the Claimant, and/ or expecting her to a return to a hostile working environment without protection or support and/or failing to consider a transfer to another deanery.

9.5. If so, do the breaches amount to a repudiatory breach of contract which entitled the

Claimant to resign?

9.6. Did the Claimant resign in response to the Respondent's alleged breach? Or did the Claimant by her conduct waive such breach?

9.7. The Claimant contends that she did not waive the breach or affirm the contract by allowing discussions between the parties to try and resolve the issues. During this time period (September 2021 – November 20210) the Claimant was also unwell and had a change of medication.

9.8. Was the dismissal fair or unfair in the circumstances?

END

ANNEX 2 – GLOSSARY OF TERMS AND DEFINITIONS

Acronym / Abbreviated Word	Definition
ARCP	Annual Review of Competency Progression
R4	Birmingham City Council
DFPH	Formerly the ***Part A*** exam which is taken during phase 1 of training
ES	Educational Supervisor
Gold Guide	Reference Guide for Postgraduate Specialty Training in the UK and is applicable to all postgraduate doctors in training on taking up appointments in specialty (including GP and Foundation)
HEE (now NHSE)	Health Education England
HEWM	Health Education West Midlands
HWWB	Health and Workplace Wellbeing
HRBP	HR Business Partner
Kidderminster	Health Protection team
Lead Employer (LE)	Mersey and West Lancashire Teaching Hospitals NHS Trust
MFPH	Formerly ***Part B*** exam taken during second phase of study
MPH	Masters in Public Health
NHSE	NHS England (formerly HEE)
OH	Occupational Health
PHE	Public Health England
PDP	Personal Development Plan
PSU (now PSW)	Professional Support Unit
PSW	Professional Support and Wellbeing
RSVP	Rape and Sexual Violence Project
ST1	Trainee in first year
ST2	Trainee in second year
SuppoRTT	Supported Return to Training
TPD	Training Programme Director

END

ANNEX 3 – OUTCOME OF PART HEARD HEARING

EMPLOYMENT TRIBUNALS

Claimant: **B**

Respondent 1: **Mersey and West Lancashire Teaching Hospitals NHS Trust**

Respondent 2: **NHS England**

Respondent 3: **No longer a party to the proceedings**

Respondent 4: **Birmingham City Council (Claims against this Respondent had settled).**

OUTCOME OF HEARING

Heard at: **Birmingham (Midlands West) Tribunal (Hybrid hearing)**

- **The Judge and Mr. Liburd were in person.**
- **Mr. Woodall was present via CVP.**
- **The parties were, including their counsel, in person as were most witnesses.**
- **There were a number of observers both via CVP and in person on and off throughout the hearing.**

On: **12 – 16, 19 – 23 and 26 – 28 February 2024 (13 days)**

Before: **Employment Judge Smart**

Mr. T Liburd

Mr. S Woodall (via CVP)

Claimant: **B**

Respondent 1: **Mersey and West Lancashire Teaching Hospitals NHS Trust**

Respondent 2: **NHS England**

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OUTCOME OF HEARING

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On: **12 – 16, 19 – 23 and 26 – 28 February 2024 (13 days)**

Before: **Employment Judge Smart**

Mr. T Liburd

Mr. S Woodall (via CVP)

Appearances:

For the Claimant: Mr. Raoul Downey (Counsel)

For Respondent 1 and 2: Ms Laura Gould (Counsel)

Introduction and note of hearing

1. The case was listed for a full merit hearing originally for 15 days until 1 March 2024. However, the Judge was taking annual leave for the last two days of the listing window, which had not been communicated to the parties before the hearing.

2. At a case management hearing Judge Dimbylow had ordered that the case remain as listed, but that all issues relevant remedy would be discussed at a later date if necessary. It was decided to determine liability at this stage only by consent.

3. The 3rd Respondent was removed from this case by order of Judge Perry earlier in the proceedings because the claim against R3 was a discreet point that could be dealt with separately. R3 took no part in these proceedings and neither side raised any issues about how that case was determined or its impact on the hearing we presided over.

4. By the time we heard the case, the clams against R4 had settled. R4 took no part in the proceedings. However, the remaining Respondents wanted the

Tribunal to take the witness statement of R4's only witness, Justin Varney, into account.

5. This statement was unsworn. Mr. Varney was not called as a witness by any party. Only one witness (Dr Claire Walker) was referred to the statement in cross examination and only to one paragraph. The Respondents did not refer Mr. Varney's statement to any witnesses in cross examination or re-examination. We will therefore attach appropriate weight to the statement when making our decision in this context.

6. Even with Remedy and R4 now removed, the case was still under listed because it did not allow time for deliberations and judgment. We were therefore only able to hear the evidence of the witnesses. There was eventually no time for oral submissions.

Disability

7. By the time of the final hearing, both remaining Respondents had conceded that the Claimant met the definition of a disabled person in accordance with section 6 of the equality Act 2010 for the impairments of depression and Post Traumatic Stress Disorder ("PTSD").

Adjustments

8. The Claimant did not make any specific requests for adjustments other than for regular breaks or potential breaks if she became upset discussing some of the issues in her case.

9. Breaks were had approximately every hour on every day of the hearing. On average the Tribunal sat late every day until an average time of 16.30.

10. At one point in the case, the Tribunal heard evidence that the Claimant receiving a written outcome of a meeting without warning had caused her distress. We made no findings of fact about that other than for the purposes of the Equal Treatment Bench Book, the Tribunal's safeguarding responsibilities and making reasonable adjustments for the hearing and case procedure, taking that evidence at face value.

11. We canvassed with the Claimant whether it would cause her distress or potential harm if we were to send out a reserved judgment. Via Counsel, the Claimant confirmed that she was well enough now to receive a reserved judgment without warning or any other adjustments needing to be made.

12. At all times during the hearing, we maintained observation of the Claimant as best we could to ensure that she was not becoming visibly distressed or unwell during the hearing. There were no reported problems other than the Claimant felt particularly tired after sitting until 17.00 one day whilst under cross examination. The Claimant had consented to sitting that late on the day, but as is often the case, the effects of this did not become apparent to the Claimant until the day after. We did not sit that late again whilst hearing the Claimant's evidence.

Anonymity order

13. An anonymity order was in place for the Claimant. The listing information upon entry to the physical Tribunal room was checked at the beginning of the hearing and had the anonymised name for the Claimant written on it. The Judge also asked the clerk to the that an anonymity order was in place on the listing sheet, which was placed, as amended, in the glass document wallet by the hearing door.

14. At the start of the hearing the rules of the anonymity order were read out and the consequences of breach were made known to all parties and observers.

15. Whenever a new name appeared via CVP or a member of the public entered the physical Tribunal room, the anonymity order rules and consequences of breach were read out on each occasion.

16. Whenever a new witness who had not attended the hearing as an observer was called to give evidence, the rules of the order and consequences of breach were again publicly revisited.

17. We are satisfied that we did all we reasonably could do to publicise the anonymity order throughout the hearing and there was not a single hearing day where the rules of the order and consequences of breach were not revisited.

Claims and issues

18. The Claimant has raised extensive and numerous claims against the Respondents, which come to some 33 pages. The total number of discreet claims comes to around 250 individual complaints in total.

19. At the start of the hearing, it was not clear to the Tribunal under what section(s) of part 5 of the Equality Act 2010 the claims were brought under. The parties agreed that the Claims were being brought under section 39 for R1 as the Claimant's employer, and under section 55 as interpreted by **Blackwood v Birmingham and Solihull Mental Health Trust [2016] EWCA Civ 607.**

20. It was also clear from the list of issues that the specific perpetrators were not identified in a lot of the claims and were equally unclear from the Claimant's Scott schedule.

21. We therefore asked the parties to update the list of issues to fully reflect how the case was being brought and who the alleged perpetrators were of every claim so we could identify which Respondent was fixed by way of vicarious liability with what allegations of discrimination should the Claimant succeed in any of her claims. With 33 pages of issues, this was not going to be a quick task and the amended list of issues was completed by end of day two of the hearing.

22. We have not yet heard submissions, so the extent of which the relevant elements of the sections of Part 5 are proven by the Claimant is yet to be determined.

The hearing timetable

23. At the start of the hearing with 22 witnesses and 33 pages of issues, it was clear that the timetabling of the case to keep it within this hearing window in terms of, at least the evidence, was going to be challenging, but not impossible.

24. A draft timetable had been produced by counsel and agreed. However, that took the witness evidence to over 10 days when day one of the hearing would be a housekeeping and reading day, day two would be a reading day and the final day of the hearing needed to be reserved for submissions.

25. The parties were therefore directed to agree a new timetable that would reduce cross examination time by 20 – 25%. Supplemental questions could only be asked by application.

26. To their credit, both counsel then produced a new updated and agreed timetable by the end of day 3. The timing of arrival of the new timetable being agreed had no impact on the hearing because the Claimant's evidence was already estimated to take place over a few days.

27. The hearing happened as follows, which largely complied with the revised hearing timetable agreed between counsel:

27.1	**Day 1**:	Housekeeping, any preliminary issues and reading time ended 11.10 am.
27.2	**Day 2:**	Reading day.
27.3	**Day 3 am:**	Discussing timetable, cast list and witness issues
27.4	**Day 3 pm – day 5:**	Claimant's evidence
27.5	**Weekend 1:**	(Claimant remained under oath by consent)
27.6	**Day 6 – 15.30:**	Claimant's evidence
27.7	**Day [6] remainder:**	Dr. Adrain Phillips and Mrs Angela Cartwright evidence
27.8	**Day 7:**	Ms Doreen Davis and Dr. Russell Smith evidence
27.8.1	**Day 8:**	Dr. Dennis Wilkes, Mrs Anne Potter, Ms Amanda Farrell evidence
27.8.2	**Day 9:**	Dr Clare - Louise Walker and Dr. Gordana Djuric evidence
27.8.3	**Day 10:**	Ms Jamie - Rae Tanner, Ms Nicola Bunce and Ms Hayley Proudlove evidence
27.8.4	**Weekend 2:**	

27.8.5 **Day 11:** Dr. Robert Cooper, Ms Seeta Reddy, Miss Debbie Livesey evidence

27.8.6 **Day 12:** Dr. Ankush Mittal, Ms Viki Hunt and Prof. Andrew Whallett evidence

27.8.7 **Day 13 am:** Dealing with R1/R2's application for written submissions and Melise Szpakowska evidence.

27.8.8 **Day 13 pm:** Mr. Nikhil Khashu evidence.

The evidence and documents

28. At the start of the hearing, we had the following documents and confirmed the Claimant had the same:

    28.1 Respondent's reading list of 12 pages
    28.2 Claimant's additional reading list of 3 pages
    28.3 Agreed Chronology of 10 pages
    28.4 Particulars of the Claimant's unfair dismissal complaint of 3 pages
    28.5 Claimant's disability discrimination Scott Schedule of 16 pages
    28.6 Witness statement bundle of 408 pages containing all witness statements except for Dr. Robert Cooper
    28.7 An agreed evidence bundle of 3867 pages (4 lever arch files in hard copy)
    28.8 The Claimant's additional bundle paginated at the hearing as pages 3868 – 3910 in a separate clip file

29. By the end of day 3, we had the following additional documents:

    29.1 An agreed updated amended List of Issues
    29.2 Cast list

30. By the end of day 12, we had the following additional documents:

    30.1 Email chain between Viki Hunt, Dr. Cooper and Diana Lewis dated 28 July 2020 ending at 3.53pm;

    30.2 Email chain between Diana Lewis, Viki Hunt, Darren Hall and the Claimant dated 5 July 2020 ending at 11.45pm.

31. At the start of the hearing we had the following witness statements:

    31.1 For the Claimant:

        31.1.1 Mrs B undated
        31.1.2 Litera report of amendments to the Claimant's statement. (Respondent's counsel used this document to cross examine the Claimant.)
        31.1.3 Jamie-Rae Tanner
        31.1.4 Dennis Wilkes

31.1.5 Adrian Phillips

31.1.6 Angela Cartwright

31.1.7 Seeta Reddy

31.2 For the First Respondent:

31.2.1 Anne Potter
31.2.2 Amanda Farrell
31.2.3 Nicola Bunce
31.2.4 Gordana Djuric

31.2.5 Hayley Proudlove

31.2.6 Debbie Livesey
31.2.7 Viki Hunt

31.2.8 Malise Szapakowska

31.2.9 Nikhil Khashu (also called jointly for the second Respondent)

31.3 For the Second Respondent:

31.3.1 Clare-Louise Walker
31.3.2 Doreen Davis

31.3.3 Russell Smith

31.3.4 Andrew Whallett

31.3.5 Ankush Mittal

32. When considering the statement of Dr Cooper, he was called as a witness by a joint witness order application from both Respondents. His witness statement was not available until day 3 of the hearing. The Claimant raised no objection about this and had time to prepare questions before his evidence was heard on day 11.

Evidence from foreign jurisdictions

33. Only one statement was provided via CVP from a foreign jurisdiction, namely New Zealand. This was from Ankush Mittal. For the comfort of the witness, we sat early starting at 9am (11pm New Zealand time). Appropriate permission was obtained before evidence was given.

Applications for evidence to be given by CVP and interposing witnesses

34. The usual evidence schedule would have included the Claimant's case first then the Respondents'. However, because of various issues with availability of both Claimant and Respondent witnesses, to their credit, the parties took a pragmatic view. Evidence was heard to an agreed schedule where some witnesses fell outside of the usual running order. This was agreed by consent between the parties after discussion and agreement of the updated timetable.

35. Some of the witnesses with shorter statements were effectively “floating” and ready to be called upon to give evidence when an opportunity arose.

36. A number of witnesses gave evidence by CVP for various reasons. Applications were made on both sides and these were granted by consent. The following witnesses gave evidence via CVP:

    36.1 Dr. Robert Cooper
    36.2 Ms Melise Szpakowska
    36.3 Dr Gordana Djuric
    36.4 Dr Dennis Wilkes
    36.5 Ms Nicola Bunce
    36.6 Dr [Ankush Mittal]

The Claimant’s evidence over the weekend of 17 – 18 February 2024

37. Because of how the timetable fell, there was a discussion about the arrangements for the Claimant given her evidence had not been completed by day 5. The Claimant initially objected to not being able to discuss her evidence over the weekend because she said it would impact on her mental health. The Respondent objected to the Claimant being released and then re-sworn in over the weekend and suggested an alternative approach with safeguards. In the end, the Claimant withdrew her objection after it was explained to her that the restriction on discussing the case over the weekend was limited to discussing her evidence, not the case in general so far as that was unrelated to her evidence. The Claimant therefore remained under oath over the weekend. No issue was reported about this.

Allegation of a Tribunal member sleeping during the hearing

38. Late on day 12, Counsel for the Respondent stated she needed to raise a sensitive issue. She said that her client’s witnesses on CVP, and she, had noticed that Mr. Woodall was allegedly falling asleep on a number of occasions. Counsel had only noticed this on day 3 of the proceedings but had then noticed this again on day 12 along with her client. However, counsel wanted to inform us “just to let us know” and made no application for recusal. Counsel stated at the time she noticed the issue, no evidence was being discussed and the submissions being made data issues came to nothing anyway (see below).

39. The Judge asked Counsel for the Claimant for his comments. He stated he had not noticed this.

40. The Judge had not noticed this. Mr Liburd had not noticed this. A brief adjournment was called. During the adjournment, the Judge asked Mr. Woodall for his comments. He denied the allegation and said that he had well over a hundred pages of notes and showed them to the Judge and Mr. Liburd on camera.

41. When we reconvened, the Judge explained the position to the parties and stated that the comments from the Respondents had been noted but we were

continuing with the hearing. There was insufficient evidence of Mr. Woodall sleeping. No further issues were raised of this nature again.

Additional documents on day 12 and data protection

42. On day 3 of the hearing, questions appeared to be being asked by Counsel for the Claimant about breaches of the Data Protection Act 2018.

43. When asked about the relevance of these questions to the proceedings and whether the Tribunal had jurisdiction to hear them, Counsel for the Claimant conceded that the Tribunal had no jurisdiction to decide about breaches of the Data Protection Act and that he would limit his questions to breaches of confidentiality in the general sense of the term when considering the Claimant's data.

44. On day 12, confusion started to creep into the case because of late disclosure by the First Respondent of two emails and the Claimant of one overlapping email. This was an issue because there appeared to be a dispute about whether the Claimant had raised a breach of data protection in her grievance and whether this should have been dealt with at her first grievance meeting before Amanda Farrell.

45. This issue was discussed and the following was agreed by consent between the parties:

    45.1 It was an agreed fact that the complaint about data protection was agreed between the parties as being dealt with separately to the grievance procedure.

    45.2 It was agreed that references to complaints about misuse of data in the documents were a reference to a misuse of "information" and those words should be used interchangeably. The word "data" is not a reference to the definition of data contained in data protection legislation.

    45.3 The Claimant agreed that the discrimination claims brought about her data are simply alleging that the misuse of her information amounted to discrimination where mentioned in the list of issues not that there was a breach of data protection that amounted to discrimination.

    45.4 The parts of the list of issues where it is alleged that the Respondents have breached the Equality Act or the Claimant's contract of employment about misusing the Claimant's data/information are limited to:

        45.4.1 7.1.11 (g) harassment
        45.4.2 9.1.6 constructive dismissal
        45.4.3 9.1.12 constructive dismissal
        45.4.4 5.2.13 (f) harassment
        45.4.5 8.3.4 Victimisation.

    45.5 To the extent the list of issues may differ to what was discussed and listed above, the discussion and this order take precedence.

45.6 The two newly disclosed emails could then be (and were) admitted into evidence by consent.

45.7 The two new emails were those described above about documents by the end of day 12.

Application for written submissions and case management orders

46. By the start of day 13, it was clear to both the parties and the Tribunal, that oral submissions were going to be challenging and, in a case like this, where no deliberation time had been factored into the hearing length, written submissions augmented by oral ones might be a better way forward. This was discussed at length.

47. The Tribunal ordered the following to happen after hearing submissions from all parties:

47.1 **On of before 15 March 2024,** all parties are to exchange their full written submissions about fact and law with each other and send their submission to the Tribunal;

47.2 **Continuation of the hearing will commence on 15 May 2024 at 10am**. The parties will appear via CVP to give oral submissions speaking to their written ones.

47.3 **The Tribunal will then deliberate with a view to giving oral judgment on the afternoon of 28 May 2024 at 14.00.**

47.4 If insufficient progress has been made by 14.00 on 28 May 2024, the judgment will be reserved.

47.5 **On or before 14 days prior to the reconvened hearing,** the parties are to agree a joint bundle of authorities or submit separate bundles to accompany their written submissions.

47.6 **On or before 14 days prior to the reconvened hearing**, as agreed by the Respondents during the hearing, they are to send to the Tribunal a list of abbreviations and acronyms referred to in all witness statements and which came up during witness evidence.

47.7 **In any event 7 days prior to the reconvened hearing,** the Respondents shall upload the acronym list to the document upload centre and a joint authorities bundle if collated. Each party will upload its written submissions to the document upload centre as well as any individually prepared authorities bundles if a joint one wasn’t collated.

About these orders

48. These orders must be complied with even if this document is received after the orders were discussed at a hearing and the date for compliance has now passed.

49. If any of these orders are not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.

50. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Useful information

51. All judgments and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-Tribunal-decisions* shortly after a copy has been sent to the Claimants and Respondents.

52. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:

    https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions

53. The Employment Tribunals Rules of Procedure are here:

    https://www.gov.uk/government/publications/employment-Tribunal-procedure-rules

54. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: *https://www.gov.uk/appeal-employment-appeal-Tribunal*

Recording and Transcription

55. Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

    https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Employment Judge Smart
01/10/2024

Public access to employment Tribunal decisions: Note that both judgments and reasons for the judgments are published in full online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the parties. Recording and Transcription: Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/