



# EMPLOYMENT TRIBUNALS

## Claimant

**Miss A Roberts**

## Respondent

**West London NHS Trust**

**Heard at:** London Central

**On:** 14, 16, 17, 20 – 24, 30 October 2025

In chambers: 15, 27 - 29, October 2025

**Before:** Employment Judge Lewis  
Mr J Carroll  
Ms D Keyms

## Representation

**For the Claimant:** Representing herself

**For the Respondent:** Miss J Whiteley, Solicitor Advocate

## JUDGMENT ON LIABILITY

The unanimous decision of the tribunal is that

1. The claims for failure to make reasonable adjustment are not upheld.
2. The claims for discrimination arising from disability under section 15 Equality Act 2010 are not upheld.
3. The claim for disability-related harassment is not upheld.

## SUMMARY

Miss Roberts is disabled with dyslexia and stress/anxiety. She was a Band 5 PWP for many years. The Trust could not allow her to continue in that role past 1 June 2023 because of national requirements that PWPs hold an accredited qualification. The Trust encouraged and supported Miss Roberts to apply for the competency Scheme which would have recognised her experience and given her

the necessary qualification. Unfortunately, Miss Roberts failed the exam part of that Scheme. Miss Roberts contends that she failed because she did not have her dyslexic software on her laptop. The tribunal did not agree. The tribunal believed she failed because of knowledge gaps, very possibly attributable to the fact that she had originally been trained nearly 20 years' previously. Miss Roberts also feels strongly that that was a factor. Miss Roberts then had the option of applying for a 1-year Trainee PWP course on partial day release. Had she applied in time for the May 2023 deadline and been accepted, she would have been kept as Band 5 in a Trainee PWP position. Unfortunately, she missed the deadline because she was off sick with a chest infection. Various other options were discussed, several of which were unavailable due to eligibility criteria imposed by external agencies. Miss Roberts reluctantly chose the option of working as a Band 4 Assistant PWP with the hope that she would still apply, be accepted for and pass the 1-year course. In the end, Miss Roberts decided to retire. The whole experience was understandably very distressing for Miss Roberts. However, the tribunal felt that it was all down to the knock-on effects of the NHS England introduction of the accreditation requirement. We felt that the Trust managers were very supportive, which Miss Roberts acknowledged at the time, but that retrospectively she holds the Trust responsible for matters outside their control. As far as reasonable adjustments for the exam are concerned, that was a matter for UCL and not in the Trust's power. In relation to dyslexic software on her laptop, the tribunal felt that Miss Roberts needed to do more to bring it to the Trust's attention if and when it was not working and if she needed it.

## **REASONS**

### **Claims and issues**

1. The claim is for failure to make reasonable adjustments, discrimination arising from disability under section 15 of the Equality Act 2010 and disability-related harassment.
2. The respondent ('the Trust') accepts that Miss Roberts was disabled at the relevant time.
3. The issues were agreed as follows:

### **Time-limits**

- 3.1. Were the claims made within the time-limit in section 123 of the Equality Act 2010? Specifically:
  - 3.1.1. Was the claim made to the tribunal within 3 months (plus early conciliation extension) starting with the act to which the complaint relates?

- 3.1.2. If not, was there conduct extending over a period?
- 3.1.3. If so, was the claim made within 3 months (plus early conciliation extension) of the end of that period?
- 3.1.4. If not, were the claims made within a further period that the tribunal thinks is just and equitable?

### Failure to make reasonable adjustments

3.2. Did the Trust apply the following provision, criterion or practice ('PCP')

3.2.1. PCP A:

The practice of putting trainee PWP's through the fast-track course in July 2022 (ie the Scheme)?

3.2.2. PCP B:

The increased involvement of Lucy Squire in the day-to-day management of Miss Roberts from July 2022 when the course began? (The Trust accepts it applied this PCP.)

3.2.3. PCP C:

Requiring Miss Roberts to attend work from 2 October 2023?

3.3. Did the application of such PCP put Miss Roberts at a substantial disadvantage in relation to a relevant matter in comparison with people who are not disabled in that:

3.3.1. Re PCP A – due to Miss Roberts needing more time to process information and learn due to her dyslexia?

3.3.2. Re PCP B – due to the increasing likelihood of stress and anxiety

3.3.3. Re PCP C – Because Miss Roberts' ability to attend work was reduced due to her disabilities?

3.4. Did the Trust take such steps as were reasonable to avoid the disadvantage? Miss Roberts says the Trust should have made the following reasonable adjustments:

3.4.1. Re PCP A –

3.4.1.1. Miss Ilavska, Miss Squire and Ms Tasnim removing her from the fast-track course (the Scheme) and placing her on the 1-year course.

3.4.2. Re PCP B –

3.4.2.1. Miss Squire taking a more empathetic approach from mid-October 2022.

3.4.2.2. Changing Miss Roberts' PWP supervisor at the end of September 2022.

3.4.2.3. Removing Miss Roberts from the fast-track course and placing her on the 1-year course on or around 20 September 2022.

3.4.3. Re PCP C –

3.4.3.1. Allowing Miss Roberts to complete a phased return to work from 2 October 2023 as suggested in the OH report of 18 August 2023.

3.5. Did the Trust know or could the Trust be reasonably expected to know that Miss Roberts was likely to be placed at a disadvantage because of these PCPs?

3.6. If so, was it reasonable in all the circumstances for the Trust to make those adjustments?

### Discrimination arising from disability (section 15)

3.7. Did any of the following alleged actions amount to unfavourable treatment of Miss Roberts:

3.7.1. Treatment A -

Not placing software to assist her at work onto her new laptop on 5 March 2020?

3.7.2. Treatment B -

Deciding to downgrade her from a Band 5 Trainee PWP to a Band 4 Assistant PWP in June 2023?

3.7.3. Treatment C -

Asking her to sign a new contract / contract variation on 4, 11 and 18 October 2023?

3.8. Was that treatment because of something arising in consequence of either or both of her disabilities? Miss Roberts says the 'something arising' is:

3.8.1. For Treatment A - The need for software to assist her at work.

3.8.2. For Treatment B – Miss Roberts' failure to obtain accreditation / professional registration.

3.8.3. For Treatment C – Miss Roberts’ failure to obtain accreditation / professional registration.

3.9. If so, can the Trust show that the treatment was a proportionate means of achieving a legitimate aim? The Trust relies on –

3.9.1. For Treatment A – Fairness amongst staff / appropriate management of reported IT issues.

3.9.2. For Treatment B and C – To comply with the national professional registration requirements of PWPs by 1 June 2023 in order to work as a PWP.

### **Disability-related harassment**

3.10. The alleged harassment is Anna Krusikiewicz sending Miss Roberts 7 emails chasing her to fill in a form asking her to reapply for the accreditation course. The emails were dated 20.4.23 (with attached letter), 5.5.23, 11.5.23, 15.5.23, 15.5.23, 18.5.23 and 22.5.23.

3.11. Was this unwanted conduct?

3.12. Did the conduct relate to Miss Roberts’ disabilities?

3.13. Did it have the purpose of violating Miss Roberts’ dignity and/or creating a hostile, degrading, humiliating or offensive environment for her?

3.14. If it did not have that purpose, did it have that effect, taking into account Miss Roberts’ perception, the other circumstances of the case and whether it was reasonable to have that effect?

### **Procedure**

4. The tribunal heard from Miss Roberts. For the Trust, we heard evidence from Afsara Tasnim, Lucy Squire, Anna Krusikiewicz and Kamila Ilavska. There was an agreed trial bundle of 952 pages; a bundle of witness statements; an opening skeleton argument from Miss Roberts and from Miss Whiteley; final submissions from Miss Whiteley; an email with final submissions from Miss Roberts; a bundle of authorities from Miss Whiteley and from Miss Roberts; a key documents list; a chronology; and a ‘concessions and agreed facts’ document.

### **Reasonable adjustments**

5. At the start of the hearing, we discussed and agreed the following adjustments to help Miss Roberts manage the hearing, given her dyslexia and her anxiety. A tribunal clerk was available to help her connect with CVP and he gave her his direct telephone line. During the hearing, in addition to our usual longer breaks, we gave further 5 – 10 minute breaks approximately every 30 minutes. Miss Roberts could also request a break any time. We took the hearing at a slow pace. The Judge talked slowly. When any document was referred to, we waited patiently for Miss Roberts to find the place and paragraph. We asked whether Miss Roberts would like us to read out the relevant passage to her or whether she would like to read it herself. Miss Roberts preferred to read to herself.
6. The witness statements had been put together into a single bundle by the Trust's solicitors. Miss Roberts preferred to work with the witness statements as separate documents. We therefore suggested that if she was asked to look at a paragraph in a witness statement, she would be told the page number of the individual witness statement rather than the page number of the bundle as a whole.
7. We also confirmed that Miss Roberts would prefer to give her evidence first, before the Trust's witnesses. As far as evidence from the Trust's witnesses was concerned, we had a break between the end of each witness and the start of the next to give Miss Roberts time to switch her focus.
8. We explained the procedure to Miss Roberts, and we told her to feel free to ask us to repeat any explanation or for any other assistance as we went along. Miss Roberts said she was very happy with the arrangements.
9. When Miss Whiteley started asking Miss Roberts questions, it became clear that Miss Roberts was having difficulty finding the page number in the trial bundle. This was because, in order to help with her dyslexia, she had rearranged the pages into separate groups for each witness who she was going to question. She offered to put the pages back into date order, but that seemed a lot of extra work for her. At our request, the Trust's solicitors very kindly arranged for a courier to bring another clean copy of the bundle over to Miss Roberts' house, so she could use that while Miss Whiteley was asking her questions.
10. We also told Miss Roberts that we were relaxed with the use of first names in the tribunal for the various managers.
11. As far as we could tell, Miss Roberts functioned very well with these adjustments and was able to argue her case and ask her questions fully.

## **Amendment application**

12. At the start of the hearing, Miss Roberts asked to amend to add a claim for unfair constructive dismissal. She had originally made this request in May 2025, shortly before the original date for this final hearing. Employment Judge

Baty had said the application should be made on the first day of the hearing. When the May 2025 hearing was postponed, neither side came back to the tribunal to ask for a decision to be made. It was therefore raised again on day 1 of this hearing.

13. The Trust objected to the amendment.
14. We thought about whether we should allow the amendment. We applied the legal considerations set out in a well-known case called Selkent. This is what we thought -
15. The facts involved in the suggested new claim for unfair constructive dismissal did overlap with the facts in the disability discrimination claims to a large extent. However, we were worried that the claimant mentioned some reasons why she resigned which were not part of the disability discrimination claim, eg being blocked for every role she applied for, plus a general allegation of harassment which potentially could cover more than what is itemised in the disability discrimination claim and list of issues. We could end up unexpectedly having to get into evidence about more incidents than were covered by the existing witness statements.
16. The timing of the application was very late, ie on the first day of the final hearing. We did take into account why that had happened. Miss Roberts is representing herself and also suffers from anxiety and dyslexia. We also took into account that the decision that the amendment should be considered on the first day of the final hearing was made in May 2025, when the original final hearing had been scheduled. It is unfortunate that neither Miss Roberts nor the Trust's solicitors came back to the tribunal between May and October 2025 to ensure the amendment issue was decided well in advance.
17. On the other hand, Miss Roberts had attended two long preliminary hearings. The letter confirming the discussion in the preliminary hearing on 28 March 2024 refers at paragraph 12 to the possibility of Miss Roberts putting in a new claim form for unfair dismissal based on her early retirement being triggered by the Trust's behaviour. The letter confirming the discussion at the preliminary hearing on 17 June 2024 says at paragraph 6 that Miss Roberts would not be bringing an unfair dismissal claim about the termination of her employment and that she conceded the termination of her employment was by mutual agreement. We therefore think that in March and June 2024 Miss Roberts was told enough to know or find out that she had a possible claim for unfair dismissal based on her decision to go for early retirement. She should not have left this until May 2025, shortly before the original dates of the final hearing. Miss Roberts' retirement date was 30 April 2024, so any unfair constructive dismissal claim was significantly out of time even at the date of her request, let alone the date of our decision.
18. We then considered the 'balance of hardship', ie the hardship to the Trust if we allowed the amendment and the hardship to Miss Roberts if we did not. The problem for the Trust is that the request was made so late. It would have to get at least 1 new witness to deal with what happened around the early

retirement. There would need to be a search for and disclosure of extra relevant documents. It would be necessary either to start the hearing whilst all the information was not present or a potential delay. There would also be the uncertainty regarding what extra allegations of unfairness might emerge which were not covered by the existing witness statements.

19. From Miss Roberts' point of view, if we did not allow the amendment, she would still have her disability discrimination claims, which would look into how the Trust behaved on most of the key matters concerning her. We accept there is a risk that she could have won a claim for unfair constructive dismissal and not win a claim for disability discrimination. We also accept that it is less certain whether we would award loss of future earnings for disability discrimination than for unfair dismissal, although she would still have an argument for that. On the other hand, it may be difficult for her to win an unfair constructive dismissal claim given that it was a mutual termination and not a resignation, and also that she had floated applying for early retirement before the events she is complaining about. Finally, we note that Miss Roberts told us she was happy with whichever decision we made – although we did take into account that she may not be aware of all the implications.
20. Balancing all this, and mainly because the application was made and decided so late; because of the potential uncertainty of the scope of evidence we would be entering into; because an extra witness and disclosure would be needed at such a late stage, and taking into account the balance of hardship, we refused the application to amend.
21. Even though we did not allow the amendment, we could see that Miss Roberts might still make a claim for loss of earnings if she won certain of her disability claims. If so, it may well be relevant to consider the value of her early retirement pension and the effect of leaving when she did rather than staying on, if she say she would otherwise have stayed. This could involve a complex calculation. We therefore agreed at the outset that this hearing would only deal with liability, ie whether Miss Roberts wins or loses any claims. If she does win any claims, a new date will need to be fixed to deal with remedy (compensation) so that there is time to prepare.

### **Amendment re software claim**

22. At the start of the second day of cross-examination of Miss Roberts, we confirmed with Miss Roberts that her complaint about the dyslexia software was that she did not have her packages in place and working during the course (the Scheme). She was not making a more general complaint about the delay in getting the software back onto her new computer.
23. We said to the parties that we felt the appropriate legal claim for what Miss Roberts was saying was one for failure to make a reasonable adjustment, ie failing to provide an 'auxiliary aid' by way of working dyslexic packages on Miss Roberts' new computer by the time she was on the Scheme.



24. If amendment was needed, we would give permission to amend to add such a claim. This does not change in any significant way the relevant evidence and considerations.
25. In our view, the framing of this as a section 15 claim did not reflect the complaint which Miss Roberts was making. It is a common legal mistake which even lawyers sometimes make to frame a reasonable adjustment claim as a section 15 claim. To put it simply - the Trust did not fail to provide software because of something arising from disability (the need for software). The need for software gives rise to the potential reasonable adjustment claim.
26. Miss Whiteley confirmed prior to final comments that the Trust had no objection to an amendment to add a reasonable adjustment claim regarding non-provision of the dyslexia packages in time for the Scheme. Miss Roberts confirmed that the section 15 claim was also about not placing the software on her laptop in time for the start of the course. We therefore gave permission to amend the claims so that the section 15 claim and a new reasonable adjustment claim both related to non-provision of working dyslexia packages on Miss Roberts' laptop in time for the start of the Scheme.

### **Scope of harassment claim**

27. In the agreed List of Issues, the harassment claim is described as Miss Krusikiewicz sending her 7 emails chasing her to fill in a form asking her to reapply for the accreditation course. The dates of the emails are set out and run from 24 April 2023 to 22 May 2023. This was consistent with what is in the ET1 Claim form, where Miss Roberts says she received more than 30 emails pressurising her to fill in another application for accreditation when she was off sick from April 2023. She is referring in the claim form to the application prior to June 2023. The number 30 had originally been put in the List of Issues, but that was crossed out and replaced with 7. Miss Roberts says the Trust's solicitors made her do that because there were only the 7 emails on this topic. Miss Roberts did not identify any other emails chasing her to apply while she was off sick in this period.
28. When she was being cross-examined, after going through the 7 listed emails, Miss Roberts started talking about the emails she received in June and July 2023. These were when she was feeling very stressed due to family health matters. These later emails were nothing to do with applying for the course because the course deadline had by then closed. Miss Roberts was therefore getting onto a subject which was not set out as part of her case and which had not been prepared for as a claim in its own right.
29. Miss Roberts said she was happy not to add these different emails to her claim. We also considered that it was not appropriate to add them at this late stage.

## **Fact findings**

### Disability: introduction

30. This is a disability discrimination claim. The Trust admits that at all relevant times (5 March 2020 – 18 October 2023) Miss Roberts was disabled within the legal meaning of the Equality Act 2010 with dyslexia and with stress and anxiety. The Trust also accepts it knew Miss Roberts had these conditions.
31. The Trust was aware of many of the difficulties that Miss Roberts had as a result of these conditions. However, it does not necessarily accept that it knew or should have known all her difficulties.

### Miss Roberts' role

32. Miss Roberts started working for Ealing Primary Care Trust in September 2005 as a Graduate Mental Health Worker. In 2013, she transferred under TUPE to the West London Mental Health Team. She worked as a Psychological Wellbeing Practitioner ('PWP') in Ealing's IAPT service (Improving Access to Psychological Therapies).
33. PWPs provide 'Step 2' assessment and support for individuals with mild to moderate depression and anxiety disorders. Step 2 is a level of treatment entailing low-intensity CBT based interventions. Individuals can self-refer or, as a Step 1, are seen and referred by their GP.
34. PWPs carry out 'trriages', ie an initial assessment, usually in a 40-minute telephone call or appointment. The interview follows the format of a template which needs to be completed afterwards. The decision as to treatment is not part of this. That decision is taken subsequently in a supervised debrief
35. PWPs can then deliver four to six 30-minute sessions of guided self-help. After this, a patient might be discharged or referred for therapy or more specialised treatment as a 'Step 3'.

### Dyslexia software packages

36. In 2015, an Access to Work assessment of Miss Roberts' needs had been carried out and she had been provided with a laptop with special dyslexic packages (voice to text etc) including headphones and a Dictaphone. This was particularly to help Miss Roberts with paperwork, which she was slow on.
37. Following a long period of sickness absence, in 2020 Miss Roberts was given a new laptop which did not have her Dragon voice-activated software

and 'Write Clear' installed on it. This was raised by Dr Khan in his OH report of 10 June 2020.

38. The OH report set out that Miss Roberts had told Dr Khan that the lack of packages made it much slower for her to write her reports and she was only achieving 14/week. The report said, 'Please can we see if we can provide her with the same software support that she had previously.' Dr Khan said it was unrealistic to expect Miss Roberts to manage the same amount of work as she had done previously without the same software support. It would also be unrealistic to expect her to manage any more work because of her dyslexia.
39. The Trust says this is the first time Miss Roberts had mentioned that she did not have the working dyslexia packages on her new laptop. Miss Roberts disagrees. She says she would have mentioned it orally to her supervisors and managers. However, there is no written record of her raising this prior to 10 June 2020 and she did not describe any specific occasions when she had raised it. We therefore find that she did not raise it before 10 June 2020.
40. On 17 September 2020, Miss Roberts emailed the IT service desk saying she would like to get her dyslexic software installed onto her new laptop. She said she was working from home and limited due to not having the software. Miss Roberts referred to an email from her then line manager, Vasili Magnis. We were not shown that email and we do not know the date. We do not have any evidence about what was discussed between 10 June 2020 and 17 September 2020 regarding getting the software.
41. Through September and October 2020 there were exchanges of email between the IT service desk and Miss Roberts about how to install the software. The emails from IT are generally helpful and friendly. On 4 November 2020, Miss Roberts confirmed that she now had the packages installed on her laptop. She said she did not get the Dictaphone or headphones that she usually plugged in to talk. The period of 6 weeks in getting the software installed looks perfectly reasonable when we see the content and timing of the email exchanges. Different steps were tried out, information was exchanged, and Miss Roberts did not always immediately reply.
42. Although Miss Roberts did not have her Dictaphone or headphones, we were told it is possible to use the software without those items.
43. Miss Roberts says that even after the packages were put onto her computer, they were not working properly. However, her evidence on this was very vague. In any event, she did not tell anyone that they were not working or that she needed a Dictaphone and headphones to operate the software.
44. Our strong impression from the evidence was that Miss Roberts became tired with dealing with the IT department. She decided to find strategies to cope without the software, essentially obtaining a lower caseload from her managers.

45. The first time after 4 November 2020 that Miss Roberts told a supervisor / manager that her software was still not working was when she raised it with Ms Tasnim on 21 October 2022. We will talk about that below.

### Early retirement- initial interest

46. On 6 May 2020, Miss Roberts emailed the Payroll Contract Manager to say that she was now back from long-term sick. She had had a chance to think about her future since they last met, and she would like to apply for early retirement. She asked how she could fill in the necessary forms. Miss Roberts did not pursue early retirement at this point.

### PWP registration

47. In June 2020, the Trust was told that a new national requirement was being introduced whereby individuals working as a PWP would need the appropriate qualification and registration for the role. At that time, there were a small number of individuals across the NHS working in PWP roles who did not have the qualification.
48. On 10 July 2020, NHS England & NHS Improvement ('NHSE / NHSI') informed the Trust that there would be a time-limited opportunity for staff already working in IAPT services delivering Step 2 interventions to undertake an assessment of competence as an alternative to undertaking the full PWP training course. Anyone who failed the competency assessment scheme twice would have to carry out the full PWP training course in order to continue to practise at Step 2. After the competency assessment scheme closed, services would be expected to remove unqualified PWPs from practising as PWPs. The scheme would be delivered by an accredited PWP course provider in partnership with the NHSEI and HEE Mental Health Teams. The provider delivering the scheme for any region would be agreed nationally by NHSEI and HEE. The Trust was asked to provide by 24 July 2020 names of staff who would meet the criteria and who wished to apply for the scheme.
49. Miss Roberts was the only eligible PWP at Ealing IAPT. At that point, it was not clear when the assessment scheme would be introduced.
50. In November 2020, Mr Magnis, Miss Roberts' line manager, emailed Lucy Smith and Kamila Ilavska to ask for an update. He said that Miss Roberts was becoming increasingly anxious. This shows that Mr Magnis must have been discussing the position with Miss Roberts. We therefore think it more likely than not that he told her the position as set out in the 10 July 2020 letter.
51. Ms Smith was the Implementation Lead for Mental Health & Wellbeing and Miss Ilavska was Clinical Lead for Ealing IAPT.

52. Ms Smith contacted NHSE / NHSI. On 17 November 2021, she emailed Mr Magnis to say she had been told that commissioning for providers to administer the competency assessment scheme had started and providers should be online in the new year. Meanwhile, practitioners who had been put forward for the competency assessment scheme could continue working as usual.
53. On 5 February 2021, Mr Magnis emailed Ms Smith and Miss Ilavska to say Miss Roberts had decided to take early retirement and would be leaving in June so she would not be taking part in the PWP top-up training when it launched. By 'top-up training', Mr Magnis meant the competency assessment scheme.
54. On 10 May 2021, Mr Magnis emailed them again to say that Miss Roberts had changed her mind, so they were exploring possibilities for her. He asked if the top-up course had started, whether it was too late for her to join, and whether there would be another top-up course later in the year.
55. NHSE / NHSI said they were continuing to source providers.
56. On 10 June 2021, it was announced that both the British Psychological Society ('BPS') and the British Association for Behavioural and Cognitive Psychotherapy ('BABCP') had been approved by NHSE to provide individual registration schemes for PWPs.
57. Registration for PWPs was eventually mandated by NHS England from 10 June 2022.

### The PWP competency assessment scheme

58. The competency assessment scheme ('the Scheme') focused on assessing competence through practice outcomes and assignments. The assessments included a Practice Outcomes Portfolio; an online exam; an online treatment OCSE (objective structured clinical examination); a video recorded Diversity Case presentation and a Reflective Account.
59. To be eligible for the Scheme, practitioners needed to have been employed delivering IAPT Step 2 assessments and treatment at least since 1 January 2020 under the supervision of an approved supervisor. Anyone wanting to apply for the Scheme had to complete the registration form by 5 pm on 19 April 2022.
60. The full Trainee PWP training course ('the 1-year Trainee PWP course') was spread over a 9 - 10 month academic year. It involved about 45 days of training with 1 day/week academic work and supervised practice. There were as many supervision sessions as on the Scheme.
61. There was no guarantee of a place on the 1-year Trainee PWP course as it was a competitive process involving application, shortlisting and interview.

62. Miss Roberts refers to the Scheme as a 'fast-track' scheme. That is not correct. It was not teaching the content of the 1-year Trainee PWP course in 2 months. It was entirely different. It was an assessment of competencies which individuals were assumed to already have because they had been carrying out the role.

### Adjustments to help Miss Roberts on the Scheme

63. By this time, Miss Roberts had a new line manager, Afsara Tasnim. Ms Tasnim took over in late 2021. Mr Magnis told Ms Tasnim on the handover that Miss Roberts had dyslexia. He did not say anything specifically about her dyslexia software packages or any problems getting them onto her laptop.
64. Mr Magnis told Ms Tasnim that Miss Roberts did not have the necessary PWP qualification. He said he had discussed with her the various possibilities of early retirement, the competency Scheme for which she was eligible and the full Trainee PWP course.
65. On 7 April 2022, Ms Tasnim discussed with Miss Roberts the content of the competency Scheme and that the application date for the Scheme was 19 April 2022. She explained that the Scheme included a 15-minute video recorded Diversity Case presentation; a Practice Outcomes Portfolio signed off by the service supervisor; a Reflective Account; and a 2-hour multiple choice and short answer exam.
66. The same day, Ms Tasnim confirmed in an email what they had discussed. She wrote, 'At the moment you discussed how you want to apply for the course. I explained that as a service we will support you to complete the course or progress with any decision you make. We agreed that occupational health review would benefit you should you go ahead with the course.'
67. Miss Roberts says that Mr Magnis 'sold' her the Scheme, saying there were just a few little assessments, and that he did not tell her there was another option, ie going straight onto the 1-year Trainee PWP course. She also says that Mr Magnis told her she was 'on the list' for the Scheme. After listening to Ms Tasnim's evidence, it became clear that he was referring to a national list of those who were eligible for the Scheme. It did not mean that a decision had been made.
68. We did not hear evidence from Mr Magnis, although we did have Ms Tasnim's account of what he said on the handover.
69. We believe that all the tribunal witnesses intended to tell us the truth. It is difficult to remember finer details looking backwards after so much has happened and after things have not worked out as everyone hoped.

70. On balance, we believe that Miss Roberts was told that there was a 1-year Trainee PWP Course as well as the competency Scheme. We believe she was told that she would need to apply for the 1-year Trainee PWP Course and might not be accepted; however, she was eligible for the competency Scheme and was on a list for that. We believe that Mr Magnis encouraged Miss Roberts to go for the Scheme and that – once she had decided not to retire – she willingly did so. This would have been the obvious choice. At the time, it would have seemed a far better option than going through a 1-year academic course, because (i) she was automatically eligible, whereas there was no guarantee she would be accepted onto a 1 year course, and (ii) she had been told it was simply assessing her competencies in the role she had already been doing. It was only after she went onto the Scheme and realised it was harder than she had anticipated and that it covered some areas she had not previously been trained on, that she started to wonder whether it had been the right choice. We believe that after she failed the Scheme, she looked back and thought that the 1-year Trainee PWP Course would have been a better option. We do not know if that is true. But in any case, at the outset, choosing the Scheme would have obviously been the most attractive choice. We also note that Miss Roberts never said to anyone that she wanted to go on the 1-year PWP Trainee Course rather than the Scheme until after she had failed the Scheme. These are the reasons why we think she did in fact choose to go onto the Scheme.
71. Miss Roberts signed up on the Scheme. It was run by UCL. She explained when she signed up that she was dyslexic.
72. As agreed, Miss Roberts was referred to OH for advice about support while on the course. She had a telephone consultation with OH on 25 May 2022. Dr Khan in OH wrote a report the next day.
73. Dr Khan recommended some protected time for Miss Roberts to complete her studies. Depending on the intensity of the course, this might range anywhere from a few hours to a longer period each week. Dr Khan said it was likely that Miss Roberts would take longer to produce her assignments and need longer for any exams because of her dyslexia, eg 20% extra exam time. He said dyslexia had affected Miss Roberts' memory so it would take her longer to learn information, which would slow down the rate at which she could progress on the course. Dr Khan said it would also be helpful for Miss Roberts to have a tutor/mentor for the course who she could approach with any problems. Dr Khan did not say anything about any dyslexic software.
74. Miss Roberts would have seen this OH report. She did not say it should have mentioned a need for dyslexic software. This would have been an ideal time to raise that if it was an issue for the course.
75. In the tribunal hearing, Miss Roberts was full of praise for Ms Tasnim and clearly had a very good working relationship with her. It would have been easy for her to raise any concerns at any time.

76. It was a requirement of the Scheme that Miss Roberts have a supervisor who had attended an IAPT recognised PWP supervisors' training. Ms Tasnim therefore could not be Miss Roberts' supervisor. She appointed Miss Squire instead.
77. Ms Tasnim told Miss Roberts on 22 June 2022 that Miss Squire would be her supervisor moving forward and for the Scheme. Miss Roberts did not raise any concerns.
78. On 29 July 2022, Ms Tasnim met Miss Roberts. She told her that she would be allowed 1 day/week to study and that her workload was reduced proportionally, ie by 20%. Her target for clinical contacts had been 18 moving up to 20/week. This target was reduced to 4/day, ie 16 in total to achieve that.
79. On 1 August 2022, Miss Roberts emailed UCL. She said, 'I am writing to remind you that when I signed up to the course, I explained that I was dyslexic. I would like to be given additional support as I have my first OCSE simulation assessment on Wednesday'. The OCSE assessment was a role-play.
80. The UCL deputy course director (Sundeep Phull) replied that they could not offer any additional support. She said that additional support and individual needs should be discussed with the Trust. However, UCL would allow extra time for reading the vignettes for the OCSE, although not for the clinical session itself.
81. Ms Phull added, 'For this scheme we are also able to offer individuals with additional support needs extra time within the written exam'.
82. Miss Roberts did not reply that she also needed speech to text software for the exam.
83. The Trust did not have the power to force UCL to make any adjustments to the Scheme.
84. On 17 August 2022, Ms Tasnim had a line management meeting with Miss Roberts. Miss Roberts said she had completed the OCSE assignment and was awaiting results. The next assignment was the Reflective Account. Ms Tasnim told Miss Roberts to touch base with Miss Squire about the assignment and deadlines and to let Ms Tasnim know if she needed support with meeting any deadlines.
85. During this meeting, Ms Tasnim said she would ask IT to enable the record function on Teams so that Miss Roberts could record a patient session, ask Teams to transcribe, and then copy and paste the notes. Ms Tasnim made this suggestion because Miss Roberts was taking too long to upload her clinical notes.
86. Miss Roberts did not say her Dragon and Write Clear were not working and would also be helpful.



87. On 22 August 2022, Ms Tasnim emailed IT, asking them to enable Miss Roberts' Teams' recording function as soon as possible.
88. Miss Roberts wrote again to UCL on 15 September 2022, reminding them that she was dyslexic and asking if she would have extra time to hand in her Practice Portfolio. UCL replied that they could not offer extra time for the Practice Portfolio. They could only offer extra time for people with support needs for the written exam. UCL said it was for the Trust to offer any extra study time needed.
89. Again, Miss Roberts did not say anything about needing her dyslexic software.
90. Ms Tasnim had another line management meeting with Miss Roberts on 21 September 2022. Miss Roberts explained that overall, she was finding the course 'full on'. She had not realised the amount of work that would be needed for the Portfolio. She said she had a 2-hour exam next Wednesday (28 September 2022). She said she felt prepared but anxious. Ms Tasnim asked whether she needed further support and whether there was anything Miss Squire or Ms Tasnim could do to support her. Miss Roberts said that at this stage she did not need any further support. Ms Tasnim told Miss Roberts to let her know if there were any outstanding IT issues or delays.
91. As a follow up, it was agreed that Miss Squire would ask UCL for another 1-month extension for submission of the Portfolio. Miss Squire told Miss Roberts this was needed because Miss Squire would not be able to pass her competencies for the Portfolio at this stage. UCL granted an extension to 5 October 2022.
92. Ms Tasnim met Miss Roberts on 4 October 2022. Miss Squire was off sick and could not sign off the Portfolio. However, she felt unable to do so anyway at that stage. Ms Tasnim explained that Miss Squire wanted Miss Roberts to carry out further triages under supervision to support her clinical development and help her meet the competency of carrying out a triage. It was agreed to contact UCL to ask for an extension to 19 October 2022, which UCL granted.
93. During the meeting on 4 October 2022, Miss Roberts mentioned that she was using a Dictaphone to record her clinical sessions and then typing them up. Ms Tasnim had not realised the Teams record function was still not working. She told Miss Roberts to use this in future as it was more efficient and it was important for data protection not to use and carry around a Dictaphone. Ms Tasnim asked Miss Roberts to follow up with IT.
94. Then Ms Tasnim tested the record function with Miss Roberts on 10 October 2022, at which point it was working.
95. Miss Squire had told Miss Roberts that she wanted to shadow all her triages so she could assess them. As we have said, this was to make sure

Miss Roberts met all the competencies and to help her where needed. Unfortunately, it had the effect of undermining Miss Roberts' confidence.

96. Miss Roberts did tell Ms Tasnim in around early October 2023 that she was not happy with the way Miss Squire was managing her and that she felt undermined. She felt Miss Squire was unnecessarily picky in the way she was assessing the competencies. Miss Roberts told Ms Tasnim she felt they were setting her up to fail. Ms Tasnim explained that, on the contrary, they really wanted to make sure she passed. What she was learning on the competencies would also benefit her when doing the job. Ms Tasnim explained that as a CBT therapist she herself had to go through annual accreditation against a competency scale.
97. Miss Roberts says she asked for a change of supervisor. Ms Tasnim said she did not. She says that if Miss Roberts asked for a change of supervisor, she would have had to address that request. She felt it was more that Miss Roberts was complaining about the stresses of the course.
98. On balance, we find that Miss Roberts did not go as far as asking for a change in supervisor. We believe that Ms Tasnim would explicitly have addressed such a request and spoken to Miss Squire about it. Ms Tasnim usually addressed matters when they were raised with her. Ms Tasnim also noted things down, but there is nothing in writing to suggest such a request was made. It is also inconsistent with all the positive comments Miss Roberts made about Miss Squire at various times. We believe it is more a case of Miss Roberts telling Ms Tasnim that she felt Miss Squire was being over fussy, and that she was losing confidence as a result.
99. Miss Roberts and Ms Tasnim had a line management meeting on 12 October 2022. They discussed that Miss Roberts had passed the OCSE and presentation elements of the Scheme. She had failed the on-line exam and the Reflective Account, but she would be allowed to retake these. The Portfolio submission was due the next week.
100. Miss Roberts said she felt stressed by the work required for the Scheme, but she did not ask to be removed from it or say that she wanted to do the 1-year Trainee PWP course instead. She did not say she needed Dragon for the on-line exam.
101. On 19 October 2022, Miss Roberts emailed Ms Tasnim with a copy to Miss Squire, updating them on various parts of the Scheme. She said she had been granted an extra 20 minutes for the exam retake, because her dyslexia made it hard to fully comprehend the question asked at times. She said, 'On a positive note, Lucy has been very helpful in guiding and helping me with my clinical development'.
102. Miss Roberts and Ms Tasnim met again for a line management meeting on 21 October 2022. Ms Tasnim emailed her afterwards with a copy to Miss Squire setting out the plan they had agreed. They discussed a plan for carrying out 3 triages/week so that competencies could be observed. It is then

noted, 'Alison explained that her Dragon software is not working, and this would aid her documentation for the triages. It was agreed Alison will contact IT to raise this issue. Alison to update Afsara and Lucy of progress.' There is no mention that Dragon was urgently needed for the forthcoming exam.

103. Miss Roberts did not complain that it had been left to her. She even wrote an email to Ms Tasnim and Miss Squire on 21 October 2022 which thanked them both for their help and support and saying, 'Once again, thank you both for support and assistance. Truly appreciated.'
104. The line management meeting on 21 October 2022 was the first time that Miss Roberts had told her managers that Dragon was still not working. Miss Roberts says that she did mention this orally on previous occasions. However, she did not state precisely when and to whom. She just made generalised statements that she told Ms Tasnim, Miss Squire and Miss Ilavska. We believe that if she had said anything earlier, there would be a note. Ms Tasnim wrote detailed notes in supervision sessions. We also believe that Ms Tasnim would have ensured it was sorted out prior to the Scheme. We think we would also have seen something from Miss Roberts in writing if she really was raising it orally and nothing was being done. Ms Tasnim had a good relationship with Miss Roberts and told the tribunal that Ms Tasnim was very proactive in supporting her. We can also see from the documents that Ms Tasnim consistently offered her help and took action if asked. We cannot believe she would have failed to take action if she understood it affected the Scheme and particularly the exam.
105. Miss Roberts was due to retake the online exam on 28 October 2022. She was unable to access the exam on that date due to some issues with her browser settings. Ms Tasnim raised the issue with IT who resolved it and Miss Roberts took the exam on 9 November 2022. The topic of Dragon for the exam was not raised by Miss Roberts at this point either.

### Exam outcome (21 December 2022)

106. Miss Roberts retook the exam on 9 November 2022. The same day, she emailed Miss Squire to say, 'I cannot say thank you enough. It was difficult and whatever the outcome I am eternally grateful to you and Asara'. She submitted her Portfolio on 14 November 2022. On completing this last task, she emailed Miss Squire and Ms Tasnim to say 'Thank you all very much for help and support during this very difficult time. Truly appreciate it.'
107. At no stage had Miss Roberts asked to be removed from the Scheme or suggested that she be put on the 1-year Trainee PWP course instead.
108. On 21 December 2022, Miss Roberts was informed that she had not passed the Scheme because she had failed the retake of the on-line exam. She was very disappointed. Ms Tasnim and Miss Squire were also 'gutted'. They had hoped and expected her to pass.

109. UCL's written feedback the first time Miss Roberts took the exam said that in the multiple-choice section, she had demonstrated limited knowledge of diagnosis, risk assessment and the COM-B model. The feedback then set out further areas where she had not demonstrated her understanding.
110. UCL's feedback on the second exam attempt said Miss Roberts had improved her knowledge of COM-B. However, in the multiple-choice section of the exam, she demonstrated limited knowledge of diagnosis, assessing alcohol intake/use of medication, and risk assessment. In the short answer questions, she did not demonstrate knowledge and understanding of using a worry management intervention for GAD, or the main reasons for discriminating between different types of worry and using a worry tree.
111. In summary, the feedback in both cases concerned failure to demonstrate knowledge. There was nothing about spelling or grammar.
112. The tribunal asked Miss Roberts several times why not having Dragon on her laptop caused her a disadvantage at the exam. Miss Roberts said that the exam software programme marked up spelling and grammar mistakes, and this created a panic which led to her mind going blank in the available time. She said if she had been able to dictate via Dragon, she would not have made spelling and grammar mistakes. When the tribunal commented that the exam was multiple-choice, she said she was referring to the short explanatory answers the exam required.
113. At the same time as giving the above explanation, Miss Roberts said the feedback on the two exams was based on her knowledge base around some things she was not aware of prior to doing the exam. When the tribunal said that this reason did not relate to her dyslexia, Miss Roberts said that if she had been able to speak into her Dragon rather than write, she would not have panicked.
114. We will comment on this in our conclusions.
115. We had no evidence regarding whether Dragon software would have been usable / compatible with UCL's exam software programme.
116. Miss Roberts never asked UCL if she could use Dragon software for the exam. We do not know whether UCL would have agreed or not. Miss Roberts never told UCL she had specific problems writing and would like some form of speech to text assistance.
117. Miss Roberts never told her own managers that she needed Dragon software when taking the exam. She never said she had failed her first attempt at the exam because she did not have the dyslexic software.
118. When Miss Roberts retook the exam, there was some difficulty accessing the UCL exam software safely. She was given some extra time to cover those technical problems. She says that she was not given any other extra time to complete the exam itself. We find that puzzling because in an email to her

managers on 19 October 2022, she says she had been granted an extra 20 minutes for the exam. We also note a UCL email of 28 September 2022 says that as well as the browser issues, people taking the exam would be given an extra 20 minutes if they were in the extra time group. We did not get to the bottom of this but if UCL did not give extra time which it had promised, that was UCL's responsibility, not the Trust's fault.

### First appeal letter to UCL (22 December 2022)

119. On 22 December 2022, Miss Roberts emailed an appeal to UCL, which she copied to the Trust, as follows:

On reflection, I do believe that several points need to be raised and discussed before a final decision is made. Please bear in mind that despite working in my field for over 18 years I have never had formal IAPT PWP training as I originally was employed as a primary care mental health worker.

I was expected to do a one-year course in two months with little or no prior formalised training as I recognised during the course that PWP has a set structured way of doing triages, assessments and treatment plans.

Thank you for the opportunity and it was a very difficult course for me as a dyslexic student who did not have a personal tutor to give me guidance.

I must thank my supervisor Lucy and my line manager Afsara who supported me emotionally through the course as I have ongoing family issues as two of three sons are affected by severe and enduring mental health issues and one did relapse during the time of my course.

The day of the resit for the two-hour exam was a very stressful day as I had lots to complete before going on holiday including my portfolio, all clinical notes and contacts had to be updated ...

I trust that these mitigation circumstances will be taken into consideration ....'

120. Miss Roberts did not say anything in this email about not having the dyslexic software or about anxiety over her spelling mistakes. She did not say she had not been given the extra 20 minutes.

### Initial discussion about options in December 2022

121. Miss Squire met Miss Roberts on 23 December 2022 to discuss options for Miss Roberts. Miss Squire had discussed these with Miss Ilavska. Miss Roberts said she was considering early retirement. She would also consider the options. Miss Squire said they could review the options in more detail when they met for supervision in the first week of January and she awaited a decision from Miss Roberts by 20 January 2023.

122. Miss Squire set out the options in a letter, together with comments from their discussion, ie
- 122.1. Apply for the full Trainee PWP course - Miss Roberts had said she would consider applying for the February or September 2023 cohorts.
  - 122.2. Apply to be considered for the condensed course again (the Scheme) – however, Miss Roberts was not keen, and Miss Squire did not think it was an option anyway.
  - 122.3. Apply for the PWP Apprentice scheme. Miss Roberts would look into this and consider it.
  - 122.4. Apply for S3 CBT training. This was one of Miss Roberts' preferred options and she would look into it. (By way of explanation, we add that this would not give PWP qualification – it would be a move into a different mental health area.)
  - 122.5. Apply for modality training in counselling. This was another option preferred by Miss Roberts. Miss Roberts would look into the eligibility criteria. Miss Squire asked Miss Ilavska whether she could help with that. (Again, this would be a move into a different area.)
  - 122.6. Apply for admin roles with Ealing IAPT. Miss Roberts would think about this but was not keen.
  - 122.7. Apply for clinical support worker or equivalent roles within the Trust as redeployment or non-clinical roles. Miss Roberts would look at the NHS website and review any roles she was interested in.
123. Miss Roberts feels she should not have been offered all these options because they overwhelmed her. She says she would have preferred just to have been put on the 1-year Trainee PWP course.
124. During their meeting, Miss Roberts had told Miss Squire she felt at a disadvantage with the 'condensed course' (ie the Scheme) because she had never had any PWP training. She felt someone should have picked that up. She felt let down by the service over the years. Previously she had been denied the chance to do modality training.
125. There is no mention in this letter that Miss Roberts had said anything in the discussion with Miss Squire about her lack of dyslexic software for the course or exam.
126. Ms Tasnim met Miss Roberts on 28 December 2022. Miss Roberts said she was still thinking about the options. Meanwhile they discussed how many triages Miss Roberts could start doing again. Miss Roberts said as her Dragon was not functioning, she could only do 2/week. An IT request had been sent 28 October 2022. Ms Tasnim advised Miss Roberts to continue following up with IT and asked whether Miss Roberts needed her help with this. Miss Roberts said she did not, and she would follow up. The same day, Ms Tasnim emailed IT to ask for the request on 28 October 2022 to be prioritised and actioned imminently.

Application for Apprentice Trainee PWP role (January – February 2023)

127. The Apprentice PWP Trainee role would have been another way of gaining the necessary qualification for PWP registration. Miss Ilavska let Ruth Dennis know that Miss Roberts was interested in applying for the Apprentice role. On 25 January 2023, Dr Dennis emailed Miss Roberts to say that applications had closed a few weeks previously, but due to her exceptional circumstances, they had agreed to allow Miss Roberts to apply. Dr Dennis attached details of the post and explained the application process. She asked Miss Roberts to let her know of any adjustments she would need for that selection process. Dr Dennis was Head of Psychology for the Psychological Medicine Service Line.
128. Miss Roberts applied. On 2 February 2023, Dr Dennis emailed her to say she looked ideally suited to the role. However, to be eligible for their Apprenticeship Scheme, she needed a minimum level 2 in English and Maths, ie at least a Grade C GCSE or O-Level. Dr Dennis said there was no flexibility on this because it was part of the funding structure and required by Exeter University. Miss Roberts said that she had Maths and English at GCSE level which she obtained in 2002 at Hammersmith and West London College. Dr Dennis asked about the Grade and said that Exeter would need to see the certificates.
129. Miss Roberts provided a letter from Hammersmith & West London College listing the credits which she had received for the Humanities and Social Science pathway of the modular access programme. She had received 7 credits at level 2 and 19 credits at level 3 overall including 1 level 2 credit for Maths and 1 level 2 credit, three level 3 credits for English.
130. On 6 February 2023, Dr Dennis emailed Miss Roberts to say that she was not shortlisted for the Apprentice position because she did not meet the minimum required standards for English and Maths. She said Exeter had advised that they required 12 level 2 credits in each subject.
131. Miss Roberts was very disappointed. She felt the Apprentice course would have been good for her. She also felt she had sufficient qualifications because her post-Graduate degree equated to level 6 or 7 psychology and counselling.
132. We are not in a position to assess whether Exeter's requirements were fair or not. The key point is that the Trust could do nothing about it.

Appeal to UCL (January / February 2023)

133. On 11 January 2023, Miss Roberts wrote a further email of appeal to UCL.

134. She said she had spoken to her union, and it was felt that she should have been put onto the 1-year course rather than the 2-month course. She said this put her at a disadvantage and under tremendous stress because she was never given PWP training, having started as a Primary Care Mental Health Worker in 2005. She said she had been out of formal training for over 15 years and had a learning disability which should have been considered. She said another area of concern was that she was disadvantaged during the course as she did not have workable Dragon speaking software.
135. On 7 February 2023, UCL replied to say it could not change the outcome. It said the Scheme was set up for people already doing the role and it set out to assess this competence rather than expecting people to do the full course. Both the Trust and UCL had made adjustments to actual assignments. UCL said that if Miss Roberts wanted to remain in the PWP role, she should apply for the full PWP Trainee course, either at UCL or another PWP course.

#### Further discussions about next steps (February – March 2023)

136. On 21 February 2023, Miss Ilavska sent Miss Roberts a FAQ for the Trust's 'Retire and Return' scheme, in which she was interested. She said that Miss Roberts would be unable to return to her current role because she did not have the qualification, but she could consider an alternative role. If she wished to consider training as a PWP, she could apply for the Autumn 2023 cohort. The recruitment campaign for that should go live in April/May 2023. Miss Ilavska asked Miss Roberts to let her know how she would like to proceed.
137. Miss Roberts replied on 1 March 2023 to say that after some deep thoughts and discussions with her family, she had decided to opt for staying on and doing the PWP training for the Autumn cohort. The email was copied to Miss Krusikiewicz.
138. Miss Ilavska replied, 'That's great, thank you for your email'.

#### Alleged harassment (April – May 2023)

139. Miss Krusikiewicz took over from Ms Tasnim as Miss Roberts' line manager in February/March 2023. Miss Krusikiewicz was the Deputy Step 2 lead.
140. On 7 February 2023, the Dragon software had been installed on Miss Roberts' laptop. Miss Ilavska told Miss Roberts she would be given in-house training to help her use it.
141. In an email dated 10 February 2023, Miss Roberts explained that she had been very distressed, but she felt assured and confident that the Trust was doing its best to support her going forward in the service. She said she was



happy with her management team, especially Miss Ilavska, her clinical lead, Ms Tasnim, her line manager, and Miss Squire, her supervisor, who had gone above and beyond to support her through all her personal and professional difficulties.

142. Miss Krusikiewicz met Miss Roberts for a line management supervision on 20 March 2023. Miss Krusikiewicz saw the OH report dated 9 March 2023, where Miss Roberts had mentioned concern about increasing her caseload from 18 clients/week until she has been trained on Dragon. This was because of the time it was taking her to write reports and clinical notes, as she needed to write on paper first and then type later which was very time-consuming. Miss Krusikiewicz showed Miss Roberts how to use the Teams record function which could have transcribed the notes.
143. Miss Roberts was off sick from 4 – 19 April 2023. Originally, she had been going to go on holiday from 4 April 2023, but she became unwell and she took sick leave. She provided a 2-week Fit Note from 4 April 2023, signing her off with 'stress'. She then had her annual leave booked from 20 April to 10 May 2023.
144. While Miss Roberts was off sick in early April, Miss Krusikiewicz made several attempts to contact her by telephone. This was partly to discuss her wellbeing in line with the Trust's Managing Health and Attendance Policy and partly to make sure she knew that applications for the next Trainee PWP Course had to be made between 27 April 2023 and 15 May 2023.
145. Under the Trust's sickness absence reporting procedure, employees must maintain contact with their line manager during their sickness absence. The line manager should also telephone, text or write to the employee to maintain contact.
146. Miss Krusikiewicz was unable to make contact with Miss Roberts before her scheduled annual leave, and Miss Roberts did not respond to voicemails. Miss Krusikiewicz therefore sent an email on 24 April 2023. She started by saying that she hoped, following the sickness period of 4 – 19 April 2023, that Miss Roberts was now feeling better and keeping well. She said they had not had an opportunity to discuss her wellbeing prior to her scheduled annual leave, and she was keen to follow up on that when Miss Roberts returned to work. Miss Krusikiewicz did not at this point know that Miss Roberts was still unwell.
147. She added, 'however, as previously discussed, I also wanted to send you a gentle reminder to submit your application to University College London by 15 May 2023 for the Trainee PWP course (Autumn 2023 start). ... This is so you do not miss the deadline for submission.'
148. Miss Krusikiewicz went on to say:
- 'as we have discussed on several occasions previously, there is a national requirement for anyone in a PWP role to have the appropriate qualification

and professional registration. PWPs who will not be compliant with this will not be able to practise in their current role as a PWP. Please do let me know if you need any assistance in making your submission to the university.

You are a valued member of the Trust and I will continue to support you in continuing practising in the interim, providing close supervision. The service will continue supporting you in this way until Autumn 2023. I am hoping to welcome you back on your return from annual leave on 11 May 2023 and would be happy to set up a meeting to discuss the above with you. Alternatively, you can contact me on [number] if you have questions before then.'

149. This is the first of seven emails which Miss Roberts says amounted to harassment.
150. On 25 April 2023, Miss Roberts emailed Miss Krusikiewicz to say she was still struggling with her wellbeing and stress levels. She was due back to work on 15 May and looked forward to discussing all these matters with Miss Krusikiewicz on her return. She said she did not have access to apply for the Trainee PEP course because she did not have access to her work emails.
151. Miss Krusikiewicz emailed Miss Roberts on 5 May 2023 to say that Miss Roberts was in fact due back on 11 May 2023. She asked Miss Roberts to keep her updated on her health and, if she took sick leave after 10 May as she had indicated might be possible, to provide the best contact number so they could speak on 11 May 2023 with a view to thinking of what support Miss Krusikiewicz could provide. She concluded:

'Lastly, are you happy for me to communicate with you on this email address? The good news is that you do not need access to work email to submit the application to UCL for PWP course, and I would like to support you with this the best I can. The application can be completed by accessing the link below.'

152. Miss Krusikiewicz attached the UCL link. No one at the Trust could actually complete the application for Miss Roberts. Miss Roberts needed to do that herself.
153. This email is the second email which Miss Roberts refers to for her harassment claim.
154. On 9 May 2023, Miss Roberts emailed back to say she had made a mistake regarding her return date. She would be getting back to London on 12 May. She said she still felt very unwell and might have to get medical assistance where she was. She would speak to her GP on her return. She said she would call Miss Krusikiewicz on 12 May 2023 to discuss ongoing issues. She ended:

'Please feel free to email me on this email as I do not have access to work email.'

Thank you for your support during this very difficult time.'

155. Miss Krusikiewicz was keen to speak to Miss Roberts, not only about her health, but also to get an update on whether she wanted to apply for the Trainee PWP course and if she needed any help with the application. She was conscious that the deadline was only days away (15 May). She therefore replied on 11 May 2023: 'I'm sorry to hear you continue to feel unwell and hope you have a safe return. What time would be good for you for tomorrow's call? Let me know best times and I'll send you a Teams invite.'
156. This was the third email which Miss Roberts says was harassment.
157. Miss Roberts replied that she should be available from 9 onwards. The next day (12 May) she emailed to say she had just got home and 10 am would be better. She asked for a link. The laptop was not working. Later on 12 May 2023, Miss Roberts emailed to explain. She also said that she had an emergency appointment with her GP because she had a bacterial infection which was affecting her breathing, severe chest pain and eyes constantly full of mucus. Miss Roberts provided a backdated sick note after she had seen her GP to say she had had a bacterial chest infection from 19 April – 18 May 2023.
158. The GP issued a Fit Note on 12 May 2023 saying that Miss Roberts had a bacterial chest infection which Miss Roberts said went back to 19 April. The Fit Note covered 19 April 2023 – 18 May 2023
159. On Monday 15 May, Miss Krusikiewicz emailed to say she was sorry to hear Miss Roberts was unwell and ask if she was available at 10 am that day to check in. This was the fourth email which Miss Roberts says was harassment.
160. Miss Roberts replied to say she would use the link at 10 am and 'look forward to speaking to you'. Miss Roberts and Miss Krusikiewicz spoke very briefly because Miss Roberts was so unwell with her chest infection. They arranged to speak again that Thursday (18 May), the date the Fit Note was due to expire. On 15 May 2023, Miss Krusikiewicz sent the Teams link for a 2 pm meeting on the Thursday. This was the fifth allegedly harassing email.
161. On 18 May 2023, Miss Roberts emailed Miss Krusikiewicz to say she was still feeling unwell, and breathing was very difficult. She asked to rearrange the meeting for the following week. Miss Krusikiewicz replied that she was sorry to hear Miss Roberts was still unwell. Miss Krusikiewicz said she was away the next week, but if it was OK with Miss Roberts, she would ask Miss Ilavska to check in with her. She also asked if Miss Roberts wanted her annual leave re-credited as she had been sick while she was on holiday. This was the sixth email which Miss Roberts says was harassing.
162. Miss Roberts replied an hour later saying, 'Thank you for your understanding during my sickness.' She said she did not mind if Miss Ilavska

checked in with her next week though she was still struggling with being out of breath. She said she would keep Miss Krusikiewicz updated on her illness after she spoke to her GP the next day. With regards to her sick leave, yes she would like the leave recredited. She ended with 'Once again, thank you for your support during this very difficult time'.

163. Miss Roberts did not write in any of her emails back that she did not wish to be contacted or that she was feeling pressurised or harassed by these emails.

### Ongoing events and the June 2023 deadline

164. In the event, Miss Roberts remained off sick from 4 April 2023 – 30 September 2023. Her Fit Notes gave these reasons: 12 days stress from 4 April 2023; 32 days chest infection from 20 April 2023; then anxiety and stress from 5 June 2023.
165. NHS England had said that from 1 June 2023, people carrying out Miss Roberts' PWP role had to hold the necessary professional registration.
166. If Miss Roberts had applied in April/May 2023 for the October 2023 course, the Trust would have known by the critical date of 1 June 2023 whether or not she had been accepted and enrolled onto the course. If she had at that point been enrolled onto the course, the Trust could and would have kept her at Band 5 as a Trainee PWP for the duration of the course.
167. Unfortunately, because she was unwell, Miss Roberts did not apply in time for the October 2023 course. That meant there was a problem.
168. Miss Roberts referred us to some Q&As on a PWP Registration Webinar. She misunderstood this document. This was about registration. It was a two-stage process. First people needed to have the necessary qualification. They either already had that or needed to get it, eg via the Scheme or an accredited 1-year Trainee course. Then they needed to apply to the registration bodies. The Q&A document was mainly about delays getting the registration from the registration bodies.
169. On 7 June 2023, Miss Krusikiewicz wrote to Miss Roberts. She said she was very aware that Miss Roberts' current home situation may be very difficult and that she needed time and space to recuperate. However, it would be irresponsible not to update Miss Roberts on the current situation.
170. She said the deadline had now passed for applying for the UCL course. She had contacted UCL to ask whether they would accept a late application, but they would not.
171. The situation was now that unfortunately she could not return to the role because she did not have the required qualifications. The Trust would therefore have to start an informal capability management process.

172. Miss Krusikiewicz said that Miss Roberts was a valued member of the Trust, and she was hoping to welcome her back on 7 July 2023 after annual leave, and she would be happy to set up a meeting to discuss the situation then.
173. There is an OH report dated 27 June 2023, which confirmed that Miss Roberts had been off work since 4 April 2023 due to both home and work stressors. OH said that Miss Roberts was temporarily unfit for work. A phased return was recommended when she was ready to come back.
174. On 28 June 2023, Miss Krusikiewicz wrote to Miss Roberts. She said that from 1 June 2023, for the period of time that Miss Roberts was not registered with the BABCP or BPS, she could not work in the role of PWP. Therefore, effective from that date, she had been moved into the role of Assistant PWP Band 4. The Trust would apply pay protection for 3 months, ie until 31 August 2023. The Trust expected that Miss Roberts would apply for the next available programme in good time to allow her to register as soon as possible. Once she was registered, she could assimilate back to PWP Band 5.
175. Dr Khan in OH spoke to Miss Roberts on 15 August 2023 and wrote a report dated 18 August 2023. Dr Khan recommended redeployment into another team as Miss Roberts found the idea of being regraded as a Band 4 difficult to handle. He suggested discussing temporary redeployment options with her between now and when she was planning to retire in April on her 60<sup>th</sup> birthday. Dr Khan said that if Miss Roberts did ever retake her exams/assessments, she would need to have her dyslexia programmes in place. Dr Khan could not guarantee that they would change the outcome, but she should certainly have the option of using them.
176. A Stage 2 long-term absence meeting was held with Miss Krusikiewicz on 5 September 2023. HR was present and Miss Roberts had a union representative. The outcome was confirmed by letter dated 21 September 2023.
177. At the meeting, Miss Roberts said she wanted to explore redeployment and not return to her current team. She wanted a phased return to work once a post had been identified.
178. Miss Roberts said she was considering early retirement. They also discussed that if she wanted to consider gaining the PWP qualification, she could apply for a Trainee PWP position through the UCL course – the recruitment application for the February 2024 course was now available. The link was attached to the letter.
179. Miss Roberts felt much better and, although she was suffering from a new chest infection and although her home situation was still ongoing, she felt ready to return to work. They arranged a case conference for 4 October 2023 with OH to jointly identify suitable redeployment options.

180. Following the meeting, Miss Krusikiewicz helped Miss Roberts find someone to assist her with completion of the redeployment forms.
181. Miss Roberts' Fit Note expired on 30 September 2023. No further Fit Note was provided at that point. Miss Krusikiewicz understood that Miss Roberts was fit to return to work from 2 October 2023.
182. The case conference was held on 4 October 2023 with Miss Krusikiewicz, HR and Dr Khan to discuss the various options. Miss Roberts no longer wanted to explore redeployment options. She felt less stressed than previously, so she would now prefer to return to her current team in the role of Assistant Trainee PWP and enrol on the next available 1-year Trainee PWP course. Dr Khan thought that it was now possible for Miss Roberts to return to her team although it was suggested that she see him again for reassessment to ensure it was safe for her to return.
183. Miss Krusikiewicz said the Trust was happy to support Miss Roberts in her request to apply for the 1-year Trainee PWP course although the deadline for applying for the March 2024 cohort had now passed. She also said that she was happy to welcome Miss Roberts back into the team as Assistant PWP at Band 4, pending confirmation of funding for that post.
184. Miss Roberts accepted during cross-examination that at this case conference, she had agreed to work in the Band 4 role until her retirement. Miss Roberts said she felt she had no choice and she preferred this to redeployment.
185. Later that day, Miss Krusikiewicz emailed UCL. She said she knew applications for the Trainee PWP course had closed on 2 October 2023, but Miss Roberts had just returned from long-term illness. She asked whether UCL would consider a late application. UCL said no.
186. Also on 4 October 2023, Miss Krusikiewicz sent Miss Roberts a variation to contract letter which said 'Following our discussions, I can confirm the following variation to your contract effective from 1.9.23: Job title – Assistant Psychologist, Band 4. All other terms and conditions of employment will remain unchanged. Please sign both copies of this variation to contract retaining one for your own records and returning the other to myself as soon as possible...If you have questions regarding this, please do not hesitate to contact me.'
187. The effective date was 1 September 2023 because the 3 months protected pay had been factored in.
188. Miss Roberts and Miss Krusikiewicz met on 9 and 11 October 2023 to complete the work risk assessment. They discussed in detail the phased return and the expectations and job description of an Assistant PWP. This would involve conducting triages, doing check in calls for onward referrals,

providing administrative support for the PWP team and supporting the community engagement officer.

189. On 11 October 2023, Miss Krusikiewicz emailed Miss Roberts to confirm their discussion at the risk assessment that day. The email states, 'You have made a decision to take partial retirement starting as soon as practically possible with the remaining time working in a capacity of an Assistant PWP at Band 4 .... If you wish to retire fully in April, we can offer you a fixed-term Assistant PWP post till 30 April 2024. We discussed what the role would entail...'
190. There appears then to have been some discussion about the terms and conditions of the Band 4 role. Miss Roberts wanted a copy of her original Band 5 contract so she could make comparison.
191. On 12 October 2023, Miss Krusikiewicz sent Miss Roberts a contract variation document. The only changes were to the job title and Band.
192. Miss Krusikiewicz emailed Miss Roberts on 25 October 2023, with the case conference outcome letter. The letter recapped the meeting and what had happened since.
193. Under the heading 'contract and conditions of employment', Miss Krusikiewicz wrote:

'We discussed your contract implications and your intention to partially or fully retire. As you are aware you were transferred from your role as PWP Band 5 to Assistant Psychologist Band 4 effective from 1 September 2023 due to the professional registration requirements of the role being made effective from this date which you were unable to fulfil. You were off sick at the time and remained off sick until 30 September 2023.

On your return to work, we explored both JD and PS for Assistant Psychologist Band 4 and Assistant PWP Band 4. It was agreed that you are best suited for the Assistant PWP Band 4 role due to the meeting the essential criteria within job description and person specification.

We discussed what the role would entail. Assistant PWPs provide triage support to the community engagement officer as well as admin support within the team for two days in the week and conduct triage assessments on three days of the week. I have also provided you with a job description for the post.

The Assistant PWP post is an unfunded post in the team but has been offered to you as an alternative to dismissal being considered on grounds of you being unable to fulfil the professional registration requirements of the PWP role. Therefore, as an exceptional action, the post is offered to you on a limited term basis with the hope that within this period, you will be able to either gain the accreditations required or fully retire as you have been contemplating. Therefore, the role is offered to you as a fixed term contract until 30 April 2024. Please confirm your acceptance of this post via e-mail.'

194. On 31 October 2023, Miss Krusikiewicz emailed Miss Roberts to say as she had all the information she had requested, could she please confirm by 5 pm on 3 November 2023 whether she was accepting the offer of the Assistant PWP role or not. At Miss Roberts' request, she re-sent the variation of contract together with a job description.

### The phased return to work plan

195. Meanwhile, following the 4 October 2023 case conference, Miss Roberts was referred again to OH. Dr Khan spoke to her by telephone on 17 October 2023 and wrote a report dated 19 October 2023. Dr Khan felt Miss Roberts had coped well with her mental health and was ready now to return to work in the same department as a Band 4 PWP Assistant or Trainee. Indeed, he understood she had officially returned from the start of the month though she had not actually been working.
196. Dr Khan said that as Miss Roberts would be coming back from a 6 months' absence, there should be a staged return to work. He recommended 3 half days on week 1; 3 days of 6 hours each on week 2; 3 full days on week 3; 3 full days and 2 half days on week 4; returning to 5 full days for week 5.
197. Although Miss Roberts was fit for all aspects of her role, Dr Khan said her dyslexia may impair how efficiently she worked, though she would still be competent and safe. Dr Khan said the simplest way to help with her dyslexia would be to provide voice-activated software so she could dictate her reports. She would also benefit from her Read and Write Software to help formulate her reports after she had dictated them. He said that Miss Roberts had expressed a slight concern with undertaking triage work. She should therefore start doing triages only one month after returning. Then she should initially carry out 1 triage / day which she could gradually build up.
198. Miss Krusikiewicz was concerned that the stages of the return to work suggested by Dr Khan did not fit within the Trust Policy for return to work, which requires an individual to be carrying out at least 50% of the post. Paragraph 18.7 of the Policy says, 'Normally a rehabilitation period will only be considered where an employee is able to return to a minimum of 50% of their substantive hours.' This refers to a phased return to work period while the employee is paid full pay.
199. For Miss Roberts, normal hours were 5 days / week at 8 hours / day including a half hour lunch break. As a Band 5 PWP, Miss Roberts had had to carry out 2 days of triage (doing 4 or 5/day) and 3 days of patient work. A Band 4 Assistant PWP would be carrying out 3 days of triage work and two days of community events with the community support officer.
200. On 19 October 2023, Miss Krusikiewicz emailed about various matters. She confirmed the phased return to work was already in place and agreed



since their meeting on 9 October 2023, starting in the week of 9 October 2023. She noted that Miss Roberts had said she wanted the phased return to work to start from November or from the nearest date when Dr Khan's report was sent, and only then to start conducting triages. In that case, she would have to submit a Fit Note for October.

201. Miss Krusikiewicz said that in their 9 October discussion, they had therefore agreed a gradual start for Miss Roberts' clinical work. They had also agreed she would start putting in triage slots from the next week. Miss Roberts had not suggested how many triages she should start with, so Miss Krusikiewicz suggested to start with 2/day and adjust when the OH report was complete.
202. Miss Roberts did not send in a further Fit Note.
203. On 20 October 2023, Miss Roberts sent Miss Krusikiewicz an email.
204. She said that on 2 October 2023, Miss Ilavska had helped her get back onto the system. She had then used the time to check her emails and meet with HR, OH and Miss Krusikiewicz. However., she had understood that her phased return to work would not start until she had met Dr Khan again for an urgent reassessment as discussed at the case conference. Her phased return had therefore started on 16 October 2023 with a 4-hour day all week, then two weeks at 5 hours/day and then the fourth week at 6 hours/day. She would arrange her diary accordingly.
205. Lastly, she would send her suggested gradual triage as Dr Khan felt they should start with one triage/week and gradually build up over the following weeks while she was awaiting her dyslexic training.
206. By letter dated 25 October 2023, Miss Krusikiewicz said she was offering an alternative staged return to work which could be accommodated, ie  
w/c 9 October – 4-hour days;  
weeks commencing 16 and 23 October – 5-hour days;  
w/c 30 October – 6-hour days.
207. Miss Krusikiewicz said she had checked with Dr Khan, and these alternative hours were appropriate.
208. Dr Khan had confirmed in writing to Miss Krusikiewicz on 25 October 2023 that he was not saying Miss Roberts was unfit to do triage work. He was only saying that Miss Roberts had expressed a concern about it, so he had recommended bringing it in after 1 month. However, now he understood that triage work was the only clinical work available, he could confirm that she was fit for triage work. Once she started, it would be good to build up gradually, eg starting with 1 / day if feasible.
209. Miss Krusikiewicz agreed that Miss Roberts need only do 1 triage/week when she came back. This would start immediately.

210. In the event, Miss Roberts did not book herself in for any triage work prior to going off sick again on 10 November 2023.

211. Miss Roberts did not return to work before her retirement.

## Law

### Discrimination arising from disability

212. Section 15 of the Equality Act 2010 prohibits discrimination arising from disability. This occurs if the respondent treated the claimant unfavourably because of something arising in consequence of the claimant's disability. The respondent has a defence if it can show such treatment was a proportionate means of achieving a legitimate aim.

213. The tribunal must decide (1) whether the claimant was treated unfavourably and by whom; (2) what caused that treatment — focusing on the reason in the mind of the alleged discriminator (consciously or unconsciously); (3) whether the reason was 'something arising in consequence of the claimant's disability'. This only needs to be a loose connection and might involve a number of causal links. At this stage, it is an objective question which does not depend on the thought processes of the alleged discriminator. (Pnaiser v NHS England and anor [2016] IRLR 170)

214. The causal connection between the something that causes unfavourable treatment and the disability may involve several links, depending on the facts of a particular case. (Sheikholeslami v University of Edinburgh [2018] IRLR 1090.)

215. There may be more than one reason for the unfavourable treatment. The 'something' that causes it need not be the main or sole reason, but it must be more than a trivial part of the reason for the unfavourable treatment. (Pnaisner; Sheikholeslami.)

216. In regard to the potential defence, a critical evaluation of the evidence is required, weighing the needs of the employer against the discriminatory impact on the employee. The tribunal must carry out its own assessment on this matter, as opposed to simply asking what may fall within the band of reasonable responses. . (Gray v University of Portsmouth; Hardy & Hansons plc v Lax [2005] ICR 1565.)

### Harassment

217. The duty to make reasonable adjustments is set out in sections 20 – 21 of the Equality Act 2010 and in Schedule 8. Where a provision, criterion or practice applied by the employer or a physical feature of the premises or a lack of an auxiliary aid puts a disabled person at a substantial disadvantage in

comparison with people who are not disabled, the employer must take such steps as it is reasonable to have to take to avoid the disadvantage or provide the auxiliary aid. Substantial' means more than minor or trivial (EqA s212(1)).

218. 'The words 'provision, criterion or practice' are not terms of art, but are ordinary English words. They are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application. However, it is significant that Parliament chose to define claims based on reasonable adjustment and indirect discrimination by reference to these particular words, and did not use the words 'act' or 'decision' in addition or instead. As a matter of ordinary language, it was difficult to see what the word 'practice' added to the words if all one-off decisions and acts necessarily qualify as PCPs. The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. ... the act of discrimination that must be justified is not the disadvantage that a claimant suffers but the practice, process, rule (or other PCP) under, by or in consequence of which the disadvantageous act is done. To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. 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 that 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. In context, and having regard to the function and purpose of the PCP in the 2010 Act, all three words carry the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. 'Practice' connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises.' (Ishola v Transport for London [2020] IRLR 368, CA.)

219. The line between a PCP on the one hand and a simple response to events in hand, on the other, can be difficult to draw. It is possible for a PCP to emerge from what happened on a single occasion, but there needs to be either direct evidence that it is indicative of a practice of more general application or there must be some evidence from which the existence of such a practice can be inferred. (Gan Menachem Hendon Ltd v de Groen [2019] IRLR 410.)

220. Under Schedule 8, paragraph 20(1), the employer is not subject to a duty to make reasonable adjustments if the employer does not know, and could not reasonably be expected to know that the disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.
221. The Equality and Human Rights Commission's Employment Code addresses reasonable adjustments particularly in chapter 6. The Code does not impose legal obligations and it does not purport to be an authoritative statement of the law. Nevertheless, it can be used in evidence in tribunal proceedings and tribunals must take into account any part of the Code which appears relevant to any question arising in the proceedings.

### Burden of proof under Equality Act 2010

222. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A can show that he or she did not contravene the provision.
223. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258. The tribunal can take into account the respondents' explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.)
224. In cases for failure to make reasonable adjustments for the claimant's disability, by the time the case is heard before a tribunal, there must be some indication as to what adjustments it is alleged should have been made. The claimant must establish that the duty has arisen and there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. It is not enough to show there was a provision, criterion or practice which caused substantial disadvantage. There must be evidence of some apparently reasonable adjustment which could be made. That is not to say that in every case the claimant would have to provide the detailed adjustment that would need to be made before the burden would shift. It would, however, be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not. (Project Management Institute v Latif [2007] IRLR 579, EAT.)

## **Conclusions**

225. In this section, we will set out our conclusions on the legal claims. We will use the numbering in the List of Issues above. We may slightly change the order so that it is easier to read.

Failure to make reasonable adjustment 3.4.1.1:  
Miss Ilavska, Miss Squire and Ms Tasnim removing Miss Roberts  
from the fast-track course (the Scheme)

226. Did the Trust apply a PCP to Miss Roberts of putting Trainee PWP's through the Scheme? (Issue 3.2.1)

227. The Trust did not apply such a PCP.

228. The Trust was not following any general practice. Miss Roberts was the only person eligible to go onto the Scheme in the first place. NHS England had offered a time-limited opportunity to avoid having to do the 1-year Trainee PWP course and to apply for the Scheme instead. The Trust discussed with Miss Roberts what she would personally like to do in the particular circumstances.

229. The Trust did not 'put Miss Roberts through' the Scheme. It offered her the opportunity to go onto the Scheme and encouraged her to do so, but it was her decision to apply. We do not accept that she was manipulated. She was told the overall picture, and she knew there were the different routes to accredited qualification, ie the Scheme or the 1-year course. She chose the Scheme. The Trust consistently told her that it would support whatever decision she made.

230. Once she had started the course, she continued with it, and her managers (Ms Tasmin, Miss Squire, Miss Ilavska) supported her.

231. Even if there was such a PCP, did it put Miss Roberts at a substantial disadvantage in comparison with non-disabled people? (Issue 3.3.1)

232. Miss Roberts says putting her through the Scheme put her at a substantial disadvantage because she needed more time to process information and learn due to her dyslexia.

233. We were not satisfied that the Scheme put Miss Roberts at a substantial disadvantage compared with someone who was not disabled. For reasons we go into more later, the key problem for her was that she had initially trained so long ago that there were gaps in her knowledge. The Scheme was designed to measure competencies which she should already have had from doing the job.

234. Miss Roberts believes that the Scheme put her at a disadvantage compared with placing her on the 1-year Trainee PWP course.

235. The root of Miss Roberts' view about this is that she believes the Scheme was an attempt to do the 1-year course in 2 months. That is why she consistently calls it a 'fast-track' scheme. This is a complete misunderstanding. The 1-year course taught all topics from scratch. The Scheme was for people who were already doing the job. It was simply a way of checking that they met the competencies.
236. Miss Roberts ultimately passed all aspects of the Scheme except the on-line exam.
237. There is simply no evidence that the 1-year Trainee PWP course would have been any easier for Miss Roberts. Although the course would take place over a much longer period, Miss Roberts may well have had to learn much more new information. We do not know how exams and assessments would have been carried out, but they may have been more onerous and stressful for all we know. Also, she would still have had to work during part of the week, and she would have still had to undergo the same amount of supervision sessions.
238. If Miss Roberts failed the Scheme, she would still have had the option to do the 1-year course. She was not excluded from that.
239. Another consideration is that the Trust could not guarantee that she would get a place on the 1-year course. That required competitive interview. So it would have been an advantage first to try the Scheme, where she was automatically eligible.
240. Miss Roberts argues that if she was on the 1-year course, there would have been more time to set up her dyslexic software before it ended. We do not accept that argument. If Miss Roberts needed the dyslexic software to undertake the Scheme, she should have said so, and it could have been re-installed before the Scheme started. There was time to sort this out if she had raised it.
241. We appreciate that having to do the Scheme turned out to be stressful for Miss Roberts. However, the real problem was the NHS England requirement for accreditation. The option of the Scheme was not a disadvantage compared with trying to get a place on the 1-year Trainee PWP course and then going on the course.
242. Did the Trust know or should it have known there was a disadvantage? (Issue 3.5)
243. As we have said, there was no disadvantage in the Scheme compared with the 1-year Trainee PWP course.
244. Even if there was a disadvantage, the Trust could not have known. The Scheme looked like the best option and, apart from the exam at the end, Miss Roberts passed it.

245. Would it have been a reasonable adjustment to remove Miss Roberts from the Scheme and place her onto a 1-year course? (Issue 3.6)
246. We do not believe that this question arises, because Miss Roberts was not put at any disadvantage by any PCP. However, even if she was, it would not be a reasonable adjustment to remove her from the Scheme and place her on the 1-year course.
247. As we have said, Miss Roberts had no automatic right to get onto the 1-year Trainee PWP course, whereas she was automatically eligible for the Scheme. So if she was removed from the Scheme, she may never have been able to get onto the 1-year course or she may have had to wait.
248. Also, Miss Roberts always had the option of applying for the 1-year course if she failed the Scheme. The Trust was willing to support her. Trying the Scheme first would only involve a small investment of time.
249. We believe Miss Roberts is looking at this with hindsight. Before she went onto the Scheme, it was very obviously the best option. NHS England was insisting on the qualification. Miss Roberts was automatically eligible for the Scheme. It did not require starting from scratch learning a great deal of information. It simply involved testing her competencies on a role she had been doing for nearly 20 years. Her managers believed in advance that she would pass the Scheme, and she had chosen to do it.
250. Once on the Scheme, the Trust managers did everything in their power to help Miss Roberts pass the Scheme. They constantly offered support and asked where they could help. They adjusted workload and gave a day off/week to study. They helped Miss Roberts gain a few time extensions from UCL. It was reasonable for them to expect Miss Roberts to pass. It very nearly worked out.
251. For all these reasons, we reject the claim for failure to make a reasonable adjustment by removing Miss Roberts from the Scheme and placing her on the 1-year course. (Adjustment 3.4.1.1.)

Failure to make reasonable adjustment 3.4.2.1:  
Miss Squire taking a more empathetic approach from mid-October 2022

252. Miss Roberts says the Trust applied a PCP of increased involvement of Lucy Squire in her day-to-day management from July 2022 when the course began. (See issue 3.2.2)
253. The Trust accepts it applied this PCP to Miss Roberts.
254. Did this put Miss Roberts at a disadvantage because of the increasing likelihood of stress and anxiety? She says that it did, (Issue 3.3.2.)

255. As we have said, we do not accept that Miss Squire's increased involvement in the day-to-day management of Miss Roberts put Miss Roberts at a disadvantage compared to a non-disabled person. What created anxiety and put Miss Roberts at a disadvantage was going through the Scheme and needing to pass the various elements of it.
256. It is inevitable that an employee would find it stressful to have their assessments critiqued and to be required to carry out more under supervision. But even an employee without the disability of stress and anxiety would have been stressed about this. There was no evidence that Miss Roberts was any more stressed than any other person in her position might be.
257. There is also evidence from what Miss Roberts put in emails that she found Miss Squire helpful. On 19 October 2022, in an email to Ms Tasnim copied to Miss Squire, Miss Roberts said, 'On a positive note, Lucy has been very helpful in guiding and helping me with my clinical development'. On 21 October 2022, after a line management meeting, Miss Roberts emailed Ms Tasnim and Miss Squire thanking them both and saying, 'Once again, thank you both for support and assistance. Truly appreciated.'
258. We add that after she had completed the Scheme, Miss Roberts acknowledged the support she had had from Miss Squire as well as from Ms Tasnim. On 9 November 2022 she emailed Miss Squire to say, 'I cannot say thank you enough. It was difficult and whatever the outcome I am eternally grateful to you and Asara'. She submitted her Portfolio on 14 November 2022. On completing this last task, she emailed Miss Squire and Ms Tasnim to say 'Thank you all very much for help and support during this very difficult time. Truly appreciate it.' In her appeal to UCCL on 22 December 2022, she said, 'I must thank my supervisor Lucy and my line manager Afsara who supported me emotionally through the course'. In an email dated 10 February 2023, Miss Roberts said Miss Ilavska, Ms Tasnim and Miss Squire 'had gone above and beyond to support her through all her personal and professional difficulties'. This was far more than ordinary politeness. We think it is unlikely she would have been so effusive if she really was put at a disadvantage by Miss Squire's increased involvement in her day-to-day management.
259. Did the Trust know, or could it reasonably have been expected to know, that Miss Roberts was likely to be placed at such a disadvantage because of the increased involvement of Miss Squire? (Issue 3.5)
260. The answer is no, because apart from a complaint at one stage that Miss Squire's desire to shadow her triages and pedantic approach was undermining her confidence, Miss Roberts was giving positive feedback about Miss Squire, eg in her emails of 19 and 21 October 2022. Ms Tasnim would have reasonably understood that the problem was the requirements of the Scheme and Miss Roberts' knowledge gaps; the problem was not the increased day-to-day management by Miss Squire. Indeed Ms Tasnim



explained to Miss Roberts that she herself needed to go through annual accreditation as a CBT therapist. Miss Roberts did not ask Ms Tasnim for a new supervisor and did not consistently complain about Miss Squire.

261. Was it a reasonable adjustment for Miss Squire to take an empathetic approach from October 2022? (Issue 3.4.2.1)
262. We do not believe Miss Squire was unempathetic. We have already mentioned the various emails Miss Roberts wrote. We have not seen any emails from Miss Squire which appear unempathetic. We do not know what a more empathetic approach would be, other than not picking up on areas which needed improvement and not asking to shadow future triages. This is not a question of empathy but of what was required to get Miss Roberts through the Portfolio part of the course in particular.
263. It had rocked Miss Roberts' confidence when Miss Squire did pick up on points and when she wanted to carry out further supervisions, but this was unavoidable. Ultimately, with the benefit of a short time extension from UCL, it did enable Miss Squire to sign off Miss Roberts' Portfolio.
264. We therefore reject this claim for failure to make reasonable adjustments.

Failure to make reasonable adjustment 3.4.2.2:  
Changing Miss Roberts' PWP supervisor at the end of September 2022

265. Most of our comments in relation to the suggestion of taking a more empathetic approach also apply here. We do not accept that Miss Squire's increased involvement put Miss Roberts at a disadvantage or that the Trust knew or could reasonably have known that it put her at a disadvantage. Even if we are wrong about that, we do not believe that changing Miss Roberts' supervisor would have been a reasonable adjustment.
266. There was no reason to change Miss Roberts' supervisor in October 2022. Miss Squire had worked with Miss Roberts for a few months. They had both put a lot of effort in. At one stage Miss Roberts' complained to Ms Tasnim about Miss Squire's fussy approach, but any supervisor would – and should – have been the same. Miss Squire was dedicated towards helping Miss Roberts pass the course.
267. There was no suggestion that Miss Squire had been unpleasant in any way or said anything out of turn. There was no suggestion of any serious breakdown of relationship. Miss Roberts had simply communicated to Ms Tasnim that she was finding the course tough and that Miss Squire picking up on points and wanting to shadow her all the time was undermining her confidence and causing some strains.
268. Miss Roberts did not ask for a change of supervisor.

269. It would have been an extreme and probably destabilising step to try to change supervisor at that point on the course. It was likely to cause more rather than less problems for Miss Roberts in passing the Scheme.
270. It is also likely there would have been difficulty in finding someone else suitably qualified and at such short notice with the deadlines for the Scheme completion coming up.

Failure to make reasonable adjustment 3.4.2.3:

Removing Miss Roberts from the fast-track course and placing her on the 1-year course on or around 20 September 2022.

271. The other reasonable adjustment Miss Roberts suggests because of the alleged disadvantage of Miss Squire's increased involvement in her day-to-day management was to remove Miss Roberts from the Scheme and place her on the 1-year course in or around 20 September 2022.
272. As we have said, we do not accept that Miss Squire's increased involvement put Miss Roberts at a disadvantage or that the Trust knew or could reasonably have known that it put her at a disadvantage. Even if we are wrong about that, we do not believe that removing Miss Roberts from the Scheme and placing her on the 1-year course on or around 20 September 2022 would have been a reasonable adjustment.
273. We make the same points for this as we do regarding the first suggested adjustment (3.4.1.1). But there is an extra point here about timing. Taking Miss Roberts off the Scheme on around 20 September 2022 would have been a strange time to do so, once Miss Roberts had embarked on the course and support systems were in place.
274. Also, Miss Roberts at no stage asked to be taken off the Scheme. She simply said she was finding the course full-on. That is different from asking to be taken off it. The appropriate response from Ms Tasnim and Miss Squire was to ask how they could help and offer more support. This is what they did.
275. Finally, to repeat, the Trust could not 'put Miss Roberts on' the 1-year Trainee PWP course. That was outside its power. Miss Roberts would have to apply. She might or might not have been accepted. She would still be able to apply if she was unsuccessful on the Scheme, which was only about 6 weeks away from completion.
276. For all these reasons, we reject the claim for failure to make reasonable adjustments in respect of adjustment 3.4.2.3.

Failure to make reasonable adjustment 3.4.3.1:

Phased return to work

277. The List of Issues says the PCP was requiring Miss Roberts to attend work on 2 October 2023. It says the suggested adjustment was allowing a phased return to work from 2 October 2023 as suggested in the OH report of 18 August 2023.
278. The relevant OH report was in fact 19 October 2023.
279. Miss Roberts was not required to attend work as such on 2 October 2023. The first two weeks were taken up with meetings, risk assessments, checking her emails, discussing her duties in the Band 4 role and making arrangements for the forthcoming 4-week phased return to work.
280. In the tribunal, the issue Miss Roberts was concerned about was that, when the phased return to work did start, Miss Krusikiewicz did not stick to the return-to-work hours recommended by Dr Khan. She was also concerned that she was expected to do triages from day 1 rather than after 1 month.
281. We find that it did not put Miss Roberts at a disadvantage to return to work on 2 October 2023 because she was not required to do any work at that point.
282. In practice, the return to work stages started with effect from 16 October 2023, with no substantive work happening before then.
283. The stages applied were week 1 (16 October 2023) 4-hour days all week, then two weeks at 5 hours/day and then the fourth week at 6 hours/day. This was more than Dr Khan originally recommended, ie 3 half days on week 1; 3 days of 6 hours each on week 2; 3 full days on week 3; 3 full days and 2 half days on week 4.
284. We were given no evidence that the longer hours required by Miss Krusikiewicz caused or would cause Miss Roberts any disadvantage. Dr Khan thought they were acceptable.
285. If there was any disadvantage, the Trust could not reasonably be expected to have known, because Dr Khan was happy.
286. Would it have been a reasonable adjustment to allow Miss Roberts to complete the phased return as suggested in the OH report? (Issue 3.4.3.1)
287. This would not have been a reasonable adjustment because the alternative arrangement made by Miss Krusikiewicz was sufficient. Also, Dr Khan's original suggestion was outside the Trust's Policy, ie that an employee should be returning on at least 50% of their hours. We are aware that what the Policy says is not a conclusive factor because it uses the word 'normally' and because in any event, it is disability discrimination law which decides what adjustments are reasonable, not what an employer puts in a policy. However, the normal Policy is a relevant factor in the context here, where OH was happy to keep within it.

288. As for the triages, Dr Khan had not initially realised that Miss Roberts would be doing no other clinical work. Again, he was happy not to have the 1 month delay as long as Miss Roberts started with only 1/day. Miss Krusikiewicz modified her suggestion of 2/day and only required Miss Roberts to start at 1/day. We therefore find there was no disadvantage in the requirement to start doing 1 triage/day from her return and it would not have been a reasonable adjustment to allow her to do no triages at all for the first month. She would then not have had any clinical work at all.
289. This claim for failure to make reasonable adjustments with regard to the return-to-work therefore fails.

Failure to make reasonable adjustment (amendment):  
Failure to provide dyslexic software for the Scheme

290. Miss Roberts claims that the Trust should have made the reasonable adjustment of ensuring her dyslexic software, was on her laptop for the start of the Scheme. During the tribunal hearing, Miss Roberts was talking primarily about Dragon.
291. We do not need to decide if there was a PCP because this would come under the alternative heading in section 20 of the Equality Act of failure to provide an auxiliary aid.
292. The next question is whether the lack of an auxiliary aid put Miss Roberts at a substantial disadvantage compared with someone who was not disabled.
293. Miss Roberts was asked several times in the tribunal what disadvantage was caused by the lack of the dyslexic software. She said the disadvantage was not passing the exam. When she was asked why the lack of software caused her not to pass the exam, she said it was because she could see her spelling and grammar mistakes marked on the screen, and that this sent her into a panic which made her mind go blank on the answers.
294. We do not find that Miss Roberts was put at a disadvantage in the exam because of the lack of Dragon dictate or similar dyslexic software. The exam consisted of multiple-choice answers as well as short written answers. The feedback on both occasions when she failed the exam referred to gaps in her knowledge. She had demonstrated this lack of knowledge in the multiple-choice parts of the exam as well as in the short written answers.
295. Miss Squire had also identified competency gaps in a context that was not time-limited and did not involve Miss Roberts' mind going blank. That is why Miss Squire was unable to sign off the Portfolio and wanted to get an extension from UCL to 19 October 2022. It is why she wanted Miss Roberts to carry out further triages under her supervision.

296. Miss Roberts also recognised she had gaps in knowledge because she had been trained so long ago. She considered this a very important point. She said it repeatedly in the tribunal. She emphasised its importance. She also said it at the time. Miss Roberts said in the tribunal that it was one of the reasons why she failed the exam.
297. We do not think that at the time, Miss Roberts believed the reason she had failed the exam was because of lack of dyslexic software. She did not say this to Ms Tasnim after having failed the exam the first time and before retaking it the second time. She did not say at the line management meeting on 12 October 2022, when they were reviewing what she had and had not passed on the Scheme, that she would need Dragon for the retake of the exam.
298. At the line management meeting on 21 October 2022, Miss Roberts raised the issue of her Dragon not working, but only in the context of enabling her to complete paperwork for the triages. She was due to retake the exam only 1 week later, but she did not say she needed Dragon urgently for that.
299. She also did not say to UCL at any stage that she needed Dragon or similar, or that she would have trouble writing in an exam, or that she was worried about her spelling and grammar for the exam. She wrote to UCL asking for time extensions at various stages and asking for adjustments generally. She never wrote to them and asked if she could use Dragon or if they had any speech to text software for the exam.
300. Her first appeal to UCL on 22 December 2022 mentioned a number of mitigating circumstances, but not that she needed Dragon.
301. We find that Miss Roberts did not at the time believe that she had been at a disadvantage in the exam because of no Dragon. She believed she was at a disadvantage because there were topics on which she had not originally been trained and because it was a time-limited exam.
302. The last question is whether it would have been a reasonable adjustment to put Dragon onto Miss Roberts' laptop in time for the start of the Scheme and certainly in time for the exam.
303. We do not believe that would have been a reasonable adjustment because, as we have said, we do not believe that is what led to Miss Roberts failing the exam.
304. But even if we did think that was a factor, we would have said it was not a reasonable adjustment. Miss Roberts did not tell her Trust managers that her Dragon was not working until near the end of the course, ie 21 October 2022. Even then, she did not say she needed it urgently for the exam which was fixed for one week's time.
305. The Trust is not responsible for decisions by UCL about adjustments. But anyway, we note that Miss Roberts never asked UCL if she would be able to

use Dragon on the exam or if UCL had built-in speech to text software or even if she could dictate her answers orally to an examiner.

306. The Trust could not have known that Miss Roberts needed Dragon for the exam, because she did not say so, even when Ms Tasnim asked her so often how she could help. If Miss Roberts was saying that Dragon would help her write up triages, her managers would reasonably have assumed she would have said if it was also needed for anything else.

Discrimination arising from disability 3.7.1:  
not placing dyslexic software on her laptop

307. The original List of Issues said it was discrimination arising from disability under section 15 not to place dyslexic software onto Miss Roberts' new laptop on 5 March 2020.
308. Miss Roberts clarified in the tribunal that this claim related to not putting the software onto her laptop in time for the start of the Scheme in July/August 2022. We will anyway look at the claim in respect of both dates.
309. As we have already explained, we thought that Miss Roberts needed to run her argument about the software as a reasonable adjustment claim. We thought that putting it as a section 15 claim did not do justice to what she wanted to argue and did not fit the legal definition. However, to be fair, we have tested her argument against both legal definitions. We have already looked at it as a reasonable adjustment claim. We are now discussing it as a section 15 claim.
310. We accept it was unfavourable treatment not to put working dyslexic software onto Miss Roberts' new laptop after her old laptop was replaced in 2020. Equally it was unfavourable treatment not to put working dyslexic software on her computer after that and in time for the start of the Scheme. The software was useful in her work, and specifically in writing up the triages (although the new Teams function would also have been helpful).
311. Under section 15, the reason for the unfavourable treatment has to be 'something arising' from Miss Roberts' disability. The 'something arising' was needing software to help her at work because of her dyslexia. We accept that because of her dyslexia, she found it difficult to write up her triages and do paperwork within short time periods. The software (Dragon and Write Clear) helped her with that.
312. The next question is whether the unfavourable treatment (ie not providing the software) was because of the 'something arising' (ie the need for software). This is where the section 15 claim breaks down. The Trust did not fail to provide the software because Miss Roberts needed the software.

313. We believe the Trust failed to provide working software because it did not know there was still a problem. The reason it did not know there was a problem was that Miss Roberts did not tell them. The reason she did not tell them was not because of her disabilities. She just got fed up with how long it took IT to deal with matters and found her own solutions. Miss Roberts believes the reason she was not given the software was because of inefficiency and lack of proactivity by the IT department and possibly her managers. Again, there is no evidence that this was because of anything arising from her disability.
314. The same comments apply whether we look at the March 2020 date or the July 2022 date.
315. In any event, we would say that the Trust's failure to put working software on in March 2020 and again prior to the start of the Scheme was a proportionate means of achieving a legitimate aim. Its aim was appropriate management of reported IT issues, which is a legitimate aim. It was proportionate because Miss Roberts did not report her lack of working software sooner.
316. In regard to March 2020, the first time Miss Roberts mentioned that her dyslexia packages were not on the new laptop was in the OH report of 10 June 2020. It is reasonable to expect an employee to take the initiative and report if there are missing software packages when their laptop is replaced.
317. The first time Miss Roberts emailed the IT service desk about this was 17 September 2020. It then took 6 weeks to install the software, which we do not consider an unreasonable amount of time when we look at the content of the emails between Miss Roberts and the IT department. Miss Roberts did not always provide an immediate reply to questions IT asked, and IT was making suggestions and working with her to resolve the matter.
318. On 4 November 2020, Miss Roberts told IT that she now had the packages on her laptop. She said she did not have her usual Dictaphone and headphones. She does not appear to have followed that up with anyone. The IT emails show the IT department were helpful and friendly and perfectly approachable.
319. The first time after that, that Miss Roberts told anyone in IT or her managers that the software was still not working was 21 October 2022. We believe the onus was on Miss Roberts to have gone back to her managers if it still was not right.
320. There were numerous line management meetings with Ms Tasnim, who she got on well with and who she says was very proactive when a matter was brought to her attention. On 17 August 2022, Ms Tasnim had suggested Miss Roberts use the Teams transcribe and record function to help her type up her triage notes. Ms Tasnim emailed IT the next day to ask for the function to be enabled as soon as possible. On 21 September 2022, Ms Tasnim told Miss Roberts to let her know if there were any outstanding IT issues or delays and

asked generally if there was anything further she could do by way of support. On 4 October 2022, when it emerged that the Teams function was still not working, Ms Tasnim asked Miss Roberts to follow up with IT. Ms Tasnim then checked it was working on 10 October 2022, which it was.

321. This would have been another opportunity for Miss Roberts to say that she also wanted Dragon and possibly Write Clear. But she did not say that. Had she said so, Ms Tasnim is likely to have given hands on help to get it sorted as she had done with the Teams function.
322. It was not until 21 October 2022 that Miss Roberts told her managers that her Dragon was not working. The Scheme was nearly finished by that stage. She did not say she needed it urgently for the exam. She was talking about the triage notes. It was agreed that Miss Roberts would contact IT to raise the issue and update Ms Tasnim and Miss Squire of progress.
323. An IT request was sent on 28 October 2022. On 28 December 2022, Ms Tasnim advised Miss Roberts to keep following it up with IT and asked whether she needed Ms Tasnim's help with that. Miss Roberts said she did not. Ms Tasnim emailed IT anyway that day, asking it to be actioned imminently. The context was Miss Roberts saying she could only do 2 triages/week because her Dragon was not functioning.
324. The Dragon software was eventually installed on 7 February 2023.

Discrimination arising from disability 3.7.2:  
Decision to downgrade from Band 5 Trainee PWP to Band 4  
Assistant PWP in June 2023

325. Strictly-speaking, the decision was that as from June 2023, Miss Roberts could not continue in her Band 5 PWP post and also that she could not continue as a Band 5 Trainee PWP. On 28 June 2023, Miss Krusikiewicz told Miss Roberts she had been moved into the role of Assistant PWP Band 4 from 1 June 2023 with 3 months protected pay, on the expectation she would apply for the next 1-year course, at which point she could assimilate back to Band 5.
326. Miss Roberts was off sick at the time and so not undertaking any duties anyway. This allowed for discussions to take place. Miss Roberts was given a number of options, including returning to her team as an Assistant PWP at Band 4 on a fixed-term contract. She ultimately chose that option.
327. The decision that Miss Roberts could not continue in a Band 5 PWP or Trainee PWP post was unfavourable treatment.
328. The next question is whether that treatment was for a reason arising from Miss Roberts' disabilities. (Issue 3.8.2)



329. The reason why Miss Roberts could not remain in her Band 5 PWP post was that she did not hold an accredited qualification at the June 2023 date.
330. This national requirement did not arise from Miss Roberts' disability.
331. If Miss Roberts had passed the Scheme, she would have been able to remain a Band 5 PWP. She did not pass it because she failed the exam. The reason she failed the exam was because of gaps in her knowledge, possibly because she had originally been trained so long ago. She did not fail the exam for a reason arising out of her disabilities.
332. The reason why Miss Roberts could not remain as a Band 5 Trainee PWP was because she was not enrolled on the 1-year Trainee PWP course as at June 2023. In the first instance, that was because she did not make an application in time. The deadline for applying for the course was 15 May 2022. The reason she did not apply was because she had had a bacterial chest infection from 19 April – 18 May 2023. That was not a reason arising from her disabilities.
333. The Trust's first reaction in June 2023, was to tell Miss Roberts she had been moved into the Band 4 Assistant PWP role with effect from 1 June 2023 with 3 months' pay protection. It was expected that Miss Roberts would apply for the next available programme so she could be assimilated back to Band 5. There was 3 months' protected pay.
334. Miss Roberts was off sick at the time, so was not carrying out any duties anyway. There followed discussions about what options she wanted to choose. These included looking for any redeployment opportunities, which could have been at Band 5. In the end, Miss Roberts chose the Band 4 Assistant PWP post.
335. The reason Miss Roberts ended up in a Band 4 post was the consequence of being unable to stay at Band 5 which we have explained. It was not for a reason arising out of her disability.
336. Even if the downgrading, as Miss Roberts puts it, was because of something arising out of her disability, the Trust proved to us that it was a proportionate means of achieving a legitimate aim. (Issue 3.9.2)
337. The Trust's aim was to comply with national registration requirements. That is clearly a legitimate aim. The Trust could not keep Miss Roberts at Band 5 when she was not doing the Band 5 role and had not tried to enrol onto the 1-year PWP Trainee course. Other Assistant PWPs would have been on Band 4.
338. The action was also proportionate. We accept that the effect on Miss Roberts was severe. It hurt her self-esteem to be removed from her role and to go down a Band after so many years' service. Work was an important refuge for her, given health issues affecting some of her children. It also had an impact on her pay – although there was 3 months' pay protection.

339. The problem is that the Trust had no choice about not allowing Miss Roberts to continue in her role. Miss Roberts found that very hard to accept in the employment tribunal. But it was national decision of the regulator.
340. The Trust offered Miss Roberts a range of options to keep her employed. A number of options were not viable because Miss Roberts did not meet eligibility requirements imposed by external bodies. That was not the Trust's fault.
341. Miss Roberts could have looked for redeployment in another Band 5 role. She was offered some help with forms. She decided she did not want to do that.
342. We appreciate Miss Roberts felt unwell, but if she had applied in May 2023, as Miss Krusikiewicz was trying to encourage and support her to do, Miss Roberts would have had a chance of being enrolled by June 2023 and she would have been kept at Band 5, albeit as a Trainee PWP.
343. The Trust made available an unfunded position at Band 4 with the hope that Miss Roberts would meanwhile reapply and gain the qualification. Miss Roberts chose that option.
344. Miss Roberts then went on to miss the second deadline to apply for the 1-year Trainee PWP course. The Trust had no evidence that Miss Roberts was ever going to do the course.
345. We do not think it would be appropriate to expect the Trust to keep Miss Roberts on Band 5 when she was an Assistant PWP, because that would be inconsistent with its Bands for the role. The Trust did offer 3 months' protected pay.
346. Looking at the facts, the Trust acted very fairly in circumstances it had little control over. The managers were continually supportive. They tried very hard to help Miss Roberts through the Scheme and when that did not work, they tried to encourage and support her for other options, including trying for the 1-year course which would have kept her at Band 5.
347. We therefore think that the 'downgrading' was justified.
348. The claim that the decision to downgrade from Band 5 Trainee PWP to Band 4 Assistant PWP was discrimination arising from disability is not upheld.

Discrimination arising from disability 3.7.3:  
Asking Miss Roberts to sign a new contract / contract variation on 4, 11 and 18 October 2023

349. It is not clear exactly when the contract variation took effect because Miss Roberts was off sick anyway as at 1 June 2023 and through to the end of September 2023, and a variety of options were under discussion. In addition, she was given 3 months' pay protection, which ultimately was effected by keeping her at Band 5 for the three months, despite the original announcement that she would be downgraded as from 1 June 2023.
350. There were then discussions at the 4 October 2023 case conference, where Miss Roberts said she accepted the Band 4 Assistant PWP role. There was then a further exchange of correspondence, after Miss Roberts had orally agreed, with Miss Krusikiewicz trying to get Miss Roberts to sign the contract documents and Miss Roberts querying terms and conditions. We were not specifically given evidence about 18 October 2023, so that date may be a typo, but the discussions were mainly in October.
351. On 4 October 2023, Miss Krusikiewicz sent Miss Roberts a variation to contract letter said 'Following our discussions, I can confirm the following variation to your contract effective from 1.9.23: Job title – Assistant Psychologist, Band 4. All other terms and conditions of employment will remain unchanged. Please sign both copies ...'
352. Miss Roberts and Miss Krusikiewicz discussed in detail the phased return and duties of an Assistant PWP during the risk assessment on 9 and 11 October 2023. There was then some discussion about when Miss Roberts wanted to take retirement, and about the terms and conditions of the Assistant PWP role – which were in fact the same as the Band 5 role except for Band and pay. On 12 October 2023, Miss Krusikiewicz sent Miss Roberts a contract variation document.
353. The consequence of Miss Roberts choosing the Assistant PWP role was that she was agreeing to a new contract.
354. The most immediate reason for asking Miss Roberts to sign the new contract / contract variation was to formalise her oral agreement that she would accept the Assistant 4 role. This was not a reason arising from Miss Roberts' disability and in any event, was entirely justifiable. It is good practice to put oral contract changes in writing.
355. More indirectly, the reason for the new contract / contract variation was the same as the reason why Miss Roberts was downgraded from Band 5 and offered Band 4. We have already dealt with why that was not section 15 discrimination.
356. In the tribunal, Miss Roberts was very focused on the fact that it was a breach of contract to remove her from the Band 5 PWP role. It may well have been a breach of contract. But the question for us was whether it was discriminatory. We find that it was not.

### Disability-related Harassment 3.10-3.14

357. The alleged harassment is Anna Krusikiewicz sending Miss Roberts 7 emails chasing her to fill in a form asking her to re-apply for the accreditation course. (This means the 1-year Trainee PWP course.) The emails were dated 20.4.23 (with attached letter), 5.5.23, 11.5.23, 15.5.23, 15.5.23, 18.5.23 and 22.5.23.
358. We accept that from Miss Roberts' point of view, sending these emails was unwanted conduct. (Issue 3.11)
359. Did the conduct relate to Miss Roberts' disabilities? (Issue 3.12)
360. We do not believe that the conduct did relate to Miss Roberts' disabilities. The issue of the course deadline was nothing to do with her disability. We add that the sickness absence which was being discussed at that time was a chest infection.
361. The next question is whether sending the emails had the purpose of violating Miss Roberts' dignity or creating a hostile, degrading, humiliating or offensive environment for her.
362. We find that sending those emails did not have that purpose. Miss Krusikiewicz meant well. She was following Trust policies and wanted to check on Miss Roberts' well-being. And she also wanted to remind her of the deadline for applying for the 1-year course which Miss Roberts had said she wanted to do. As the deadline was so close after Miss Roberts' scheduled return to work date, it was only fair to give her forewarning. It was also only fair to remind her of the national requirement to hold the appropriate qualification in order to practise in the role.
363. The final question is whether sending emails had the effect of violating Miss Roberts' dignity or creating a hostile, degrading, humiliating or offensive environment for her.
364. Those are very big words. The emails may have increased Miss Roberts' stress because she did not want to think about the problem with her work qualifications. But they did not violate her dignity or create a hostile, degrading, humiliating or offensive environment. There was nothing in Miss Roberts' email responses at the time which suggested she felt that. On the contrary, she thanked Miss Krusikiewicz for her support.
365. It also would not be reasonable for the emails to have that effect. We appreciate that Miss Roberts was unwell at the time and having to cope with the stress of the PWP qualification requirement. However, the letters, individually and taken together, were obviously supportive. The first email on 24 April 2023 was written after the period covered by the Fit Note (4 – 19 April 2023). Miss Krusikiewicz said she would like to discuss Miss Roberts' wellbeing on her return to work. She also wanted to send Miss Roberts 'a

gentle reminder' to submit her application for the 1-year course by the deadline of 15 May 2023.

366. Miss Roberts cannot reasonably have taken that email as badly meant. The tone was gentle. Miss Roberts knew she had told her managers that she wanted to apply for the course as the next step. Miss Krusikiewicz asked Miss Roberts to let her know if she wanted any assistance to make the submission to the university. She said, 'You are a valued member of the service/Trust and I will continue to support you in continuing to practise in the interim'.
367. Miss Roberts replied on 25 April 2023 that she was still struggling with stress and looked forward to discussing these matters with Miss Krusikiewicz on her return on 15 May. She said she did not have access to apply for the course.
368. Miss Krusikiewicz replied on 5 May 2023. She reminded Miss Roberts that she was in fact due back on 11 May 2023, and she provided a link for the application. She had to provide this information because of what Miss Roberts had said in her 25 April 2023 email. Also, in response to what Miss Roberts had said about still feeling unwell, she asked to be updated so they could speak with a view to thinking what support Miss Krusikiewicz could provide. Finally, she asked whether Miss Roberts was happy to communicate on this email address.
369. We do not believe Miss Roberts at the time felt that the email violated her dignity or created a hostile, degrading, humiliating or offensive environment for her because her response on 9 May 2023 was to thank Miss Krusikiewicz for her support.
370. In any event, it could not reasonably have the effect of violating her dignity or creating a hostile, degrading, humiliating or offensive environment for her. The email was so obviously necessary to answer Miss Roberts' statement that she was not due back till 15 May 2023 and her belief that she could not access the application link. It would have been uncaring and even negligent if Miss Krusikiewicz had not addressed those points. The tone again was completely supportive.
371. On 9 May 2023, Miss Roberts emailed to say she still felt unwell and would speak to her GP on her return. She said she would call Miss Krusikiewicz on 12 May 2023 to discuss ongoing issues. She ended by saying, 'please feel free to email me on this email as I do not have access to work email'. She did not ask to be left alone. She ended with, 'Thankyou for your support during this very difficult time'.
372. Miss Krusikiewicz replied on 11 May 2023 asking what time would be good for the call the next day. She wished her a good journey home. This was the third allegedly harassing email.
373. There is nothing to suggest that Miss Krusikiewicz intended to harass Miss Roberts by this email. It was simply making arrangements for the timing of the

agreed call. Miss Krusikiewicz was also conscious that the deadline for applying for the 1-year course was days away and she wanted to check whether she could help.

374. It would be unreasonable if Miss Roberts did feel harassed by it since it was simply making arrangements for the timing of a call she had agreed to. Again the tone is friendly. And Miss Roberts knew she had just thanked Miss Krusikiewicz for her support.

375. The 15 May 2023 email was simply a continuation of the arrangements about a suitable time to speak. The second email of 15 May 2023 was a follow-up with a link for the meeting which they had agreed to postpone till the Thursday because Miss Roberts was finding it hard to talk that day. The 18 May 2023 was a necessary response to Miss Roberts' request to postpone their meeting to the following week. Miss Krusikiewicz agreed to the postponement without complaint and asked if it was ok for Miss Roberts to speak to Miss Ilavska as Miss Krusikiewicz would be away. That email also made the suggestion that Miss Roberts get her sickness while on annual leave recredited. That was a friendly and helpful suggestion to make, and Miss Roberts responded to thank her for her understanding during Miss Roberts' sickness and for her support during this very difficult time.

376. We cannot see any way in which these emails can reasonably be considered harassment.

377. The harassment claim is not upheld.

### Time-limits

378. As we have not upheld any of the claims, it is not necessary to discuss time-limits. We have in any event looked into them fully.

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Employment Judge Lewis

Dated: 30 October 2025

Judgment and Reasons sent to the parties on:

6 November 2025

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For the Tribunal Office