



EMPLOYMENT TRIBUNALS

Claimant: Ms F Dennis

Respondents: 1. Keys Academies Trust
2. Mr M Barwise
3. Ms S Byford
4. Mr J Hebblethwaite

Heard at: Reading Employment Tribunal – fully remotely
On: 1 to 5 and 8 and 10 December 2025
(9 December 2025 in chambers)

Before: Employment Judge George

Members: Ms D Ballard
Ms B Osbourne

Representation

Claimant: Self-representing

Respondents: Mr M Williams, counsel

JUDGMENT having been sent to the parties on 8 January 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. The claimant presented her claim on 3 August 2023 against four respondents:
 - 1.1 Her former employer, the name of which is now Keys Academies Trust;
 - 1.2 Mr Martin Barwise, the Assistant Head Teacher and Senior Leadership Link to the Art Department;
 - 1.3 Mr John Hebblethwaite, the Head Teacher of Jack Hunt School, as it was then known; and
 - 1.4 Ms Sarah Byford, HR Coordinator for the school.
2. In this hearing we have heard oral evidence from the claimant and the respondents have relied on the oral evidence of the named individual respondents and also of:
 - 2.1 Emma Stephens-Dunn, Head of Governance for the trust;

- 2.2 Simon Linforth, then School Business Manager – having started in post on 31 October 2022, and
- 2.3 Niamh Walsh, Executive Assistant for the Trust. Ms Walsh presented formal evidence on behalf of the First Respondent predominantly based on what was reported to her at the time and the documents in the case. The only relevant meeting at which she was present was the final probation review meeting and she produced minutes of that.
3. All witnesses had prepared written statements which they adopted in evidence.
4. For reasons which it is not necessary to go into detail, the parties have not had sight of their respective witness statements prior to the morning of the first day of the hearing.
5. The claimant had apparently sent her witness statement to the respondents only in the early hours of Day 1. Although the respondents had sent her their witness statements in advance, they did not provide her with the passwords to allow her to open them until they had received her own.
6. The claimant complained of delay in providing her with the final version of the joint hearing file and said that that meant that she had to rely on her own hearing file which was in three parts. Whatever the rights and wrongs of that, at the start of the hearing we had a final hearing file of all of the documents the respondent considered relevant in the case and that is referred to in these reasons as RB page 1 to 1682. We also had three PDF files provided by the claimant and page numbers in those are referred to as LOD1, page 1 to 137. LOD2, page 1 to 197, LOD3, page 1 to 81.
7. The claimant's PDF files had also been appended to the joint hearing file.
8. Since the claimant had prepared her questioning with reference to *her* hearing files, the tribunal accommodated the situation referring to pages in the competing hearing files as necessary.
9. As Employment Judge Shastri-Hurst explained in paragraphs 72 and 73 of her case management order at RB page 415, the original documents provided by the claimant in which she set out details of the claim contained a number of documents or sections of documents embedded in them. This made it difficult to follow what had been embedded from another source and what was the claimant's original narrative. As requested by Judge Shastri-Hurst, the claimant largely avoided doing this in her witness statement.
10. However, she had presented the documents she wished to refer to in the hearing within her three PDF files embedded within a great deal of narrative some of which was itself copied from correspondence from contemporaneous documents and some of which was not. She had also added paragraph numbers to every paragraph in every document which frequently altered the appearance of what, ordinarily, is primary evidence. This appears to have arisen out of a misunderstanding on Ms Dennis' part that this was necessary when it is only in the witness statement that it is helpful to have paragraph numbers. The

expectation is that the primary evidence – the original contemporaneous documents – will be presented to the Tribunal exactly as they were when originally sent or written at the time the events are about.

11. The tribunal did its best to ensure that the respondent's witnesses were able to understand what they were looking at when questioned upon documents and Mr Williams, as was his professional obligation, intervened where necessary. This manner of presenting the evidence not only caused some logistical issues in making sure the witnesses were not misled by the documents that they were taken. It has also caused the Tribunal difficulties in assessing the reliability of the documents presented to us by the claimant. In general, this manner of presenting the documentary evidence means that we are not satisfied that we have complete and unedited copies of several important documents including GP medical records for the claimant dating from her employment; correspondence from consultants and specialist departments to whom the claimant states she has been referred, and responses by the claimant to the pre-placement questionnaire she completed online for Medigold, the third party Occupational Health services provider contracted by the First Respondent.
12. Furthermore, it was apparent that in respect of more than one meeting, and an example is 20 July 2022, the respondent had provided non-verbatim minutes to the claimant and she had returned them during her employment annotating those minutes not only with additional words which she considered more accurately reflected what had taken place at the meeting but also with expanded narrative and commentary about issues relevant to the purposes of the meeting, see for example, page 738.
13. Both sets, the original non-verbatim minutes and the claimant's comments on them, were in the respondent's hearing file. However, the claimant cross examined the respondent's witnesses on a third version of the relevant document within her PDFs to which yet further amendments had been made at a later stage, see for example, LOD1 page 108.
14. In respect of the grievance appeal meeting on 30 January 2023, the claimant had inserted text into the respondent's minutes which she stated was a transcript of a partial covert recording she had made. She stated that she had disclosed the audios to the respondent but that her phone had not made a complete recording. There was not an agreed transcript of such parts of the audio as were available. Neither party applied for permission to play the audios in evidence. The additions were disputed by Ms Stephens-Dunn who had taken the notes of that meeting. The claimant cross examined Ms Stephens-Dunn on a document at LOD2, page 138, which she put forward as her notes of the meeting. As previously, she has embedded additional documentation within that which she states to be minutes, see LOD2, page 139.
15. In the light of all of the above, we regard the respondents original non-verbatim minutes as the best documentary evidence available of what took place at the meeting. The claimant's original response to the minutes to the meetings of 20 July 2022 meeting was, as we understand it, sent to Mr Barwise before he made his decision on the informal complaint. Therefore, whether or not the contents of her original response were articulated in a face to face meeting, what she said

was available to the decision maker at the time. For the most part, we do not regard the claimant's further annotated versions in her own PDF files as reliable evidence about what happened at any particular meeting to the extent that it conflicts with, or amplifies, the respondent's original minutes.

16. In relation to the formal grievance appeal, we accept the evidence of Ms Stephens-Dunn that she sent draft minutes to the claimant for her comments and none were received.
17. We also had available a non-agreed chronology, a non-agreed case list, the respondent's counter-schedule of loss, a correspondence file and a file of remedy documents should that be needed. In these reasons we have generally referred to the second to fourth respondents by their names and referred to the first respondent as the Trust or "the respondent". Where we refer to "the respondent" we mean the first respondent.

Adjustments and progress at the hearing

18. The respondents confirmed that their witnesses had no particular needs. However, they asked that the named respondents might be excused attendance throughout the hearing since they were represented by Mr Williams, because – in the case of Mr Hepplethwaite and Mr Barwise at least, they had teaching and other duties in the school. The claimant objected. In principle, the tribunal – while respecting the claimant's opinion - consented to the individual named respondents attending by their representative if there were particularly pressing duties which they needed to attend to.
19. We asked the claimant at the start of Day 1 what adjustments to the tribunal procedure she would need in the hearing because of her health conditions. The hearing had been given a time allocation of 8 days which took into account her need for regular breaks.
20. We explained the normal stages in a final hearing: Claimant's evidence (short supplementary questions if permitted; cross-examination and re-examination), the Respondents' evidence; Mr Williams' submissions and the Claimant's submissions. Mr Williams said that he did not intend to make written submissions. The claimant said that it was easier for her process information if it was in more than one source so she would prefer to write her submissions down. It was agreed that, in order that both parties were on an equal footing, she would read out her written submissions, responding to Mr Williams' oral submissions if needed. In the end, she asked that Judge George read out her submissions to reduce the stress upon her.
21. The arrangement for breaks changed during the course of the hearing to adjust to the circumstances. As it was a video hearing, Judge George explained that her usual practice was to have a 5 minute break every hour in any event because of screen fatigue but if the claimant needed more breaks they could be accommodated as and when needed. She said that breaks would be very good because she suffered from chronic fatigue.
22. The claimant's evidence started shortly after lunch on day 1 and we followed that

agreed pattern for breaks, concluding the day's hearing at about 16.15. The following morning (day 2) the claimant explained that she was really exhausted and had had a bad night with asthma. She explained that she thought the breaks were not soon enough or long enough and a 10 minute break would allow more time for her to rest. We agreed to a 10 minute break after 50 minutes and suggested that consideration should be given to a slightly shorter lunch break to accommodate that. At times, the claimant found it laborious to move to a different volume of the hearing file and to lift that file because of the symptoms of long Covid and all understood that time was needed to allow for that and that moving from one volume to another should be minimised.

23. Another reason why her evidence took slightly longer than timetabled was the length of her answers. We explained that, while she should not feel constrained only to give a one word answer and should feel she could give a full answer to the questions, her style of answer tended to move away from the point under discussion and become very long. We reassured her that her answers in cross-examination were only part of the evidence from her side that we would take into account and she had the opportunity in closing speeches to remind us of any particular parts of her statement or documentary evidence. She did not, therefore, need to repeat herself in cross-examination but should focus on answering the question.
24. However, it quickly became apparent that the structure put in place at the start of Day 2 was not flexible enough for the claimant and did not give her enough recovery time. Furthermore, the claimant was monitoring her heart rate and her oxygen levels. When those reached particular levels indicating anxiety that – understandably – caused her concern. In practice, the hearing paused whenever an alarm sounded which indicated that her heart rate and oxygen levels were causing her concern for as long as she needed before she felt she could continue.
25. There were also times when it appeared that the claimant's asthma was affecting her and she was coughing. She was given as much time as she said she needed to take appropriate treatment and recover. We restarted when she confirmed she was well enough to continue and left to her that judgment recognising that she herself was keen for the litigation to come to an end and said that she did not want to postpone the hearing. It was the panel's observation that the stress of the circumstances were contributing to the physical symptoms and to the elevation of her heart rate and exacerbation of the asthma symptoms. There was the potential that postponement would merely mean the same situation arising at a postponed hearing.
26. To support the claimant we took early lunchbreaks where that was more helpful and broke whenever she needed a break. The timetable for the respondents' witnesses was amended to take account of the breaks needed.
27. The claimant shared with the Tribunal the relative number of questions she had for each witness and a rough outline of how she should divide her time between them given by the Tribunal to ensure that the relevant and necessary questions were asked of the particular witnesses. Judge George supported the claimant with time management and reminded her of the List of Issues to focus attention

on the factual disputes which the Tribunal needed to hear about. This was done to support the claimant with cognitive difficulties she explained arise from Long Covid.

28. There was also a point where the Tribunal needed to warn the claimant that her lengthy questions and repeated questions were difficult for the witnesses to answer and, in particular, that (possibly because she felt under pressure of time) she was not giving Mr Linforth sufficient time to answer them. The Tribunal's perception was that they were unable to hear everything that Mr Linforth wished to say, at times. She apologised and explained that anxiety and the importance of the issues to her were the reason why she was becoming impassioned.
29. The Judge handed down a proposed self-direction on the law for the parties to consider on Day 6 which is replicated below. The intention was that the submissions could then be focused upon the competing arguments on the facts together with any argument that the proposed self-direction had omitted or misstated anything important. Neither party had any comments on it.
30. We were grateful to both parties for working hard to enable all the evidence and submissions to be concluded by the end of Day 6, despite the sometimes challenging circumstances. This enabled the Tribunal to deliver an oral decision with reasons on Day 8. Whatever the outcome, it seemed particularly important in this case that the parties should not have the additional stress of having to wait some time for a reserved judgment.

The issues

31. The issues were agreed by the parties to remain those in paragraph 81 of the case management order of Employment Judge Shastri-Hurst at RB page 417.
32. Those issues do not include an articulation of the legitimate aim relied on by the respondents as a defence to the complaint of s.15 Equality Act 2010 discrimination for a reason arising in consequence of disability. That is found on RB page 588 para.50 of the Grounds of Resistance and is:

“the legitimate aim of management staff absence and performance managing new starters within their probationary period.”

33. It was agreed at the outset that we would hear evidence and closing submissions on three matters which might properly be categorised as remedy issues in the event that the claimant was successful. Those were the likelihood that the claimant would have been dismissed fairly and lawfully in any event, the extent to which culpable conduct by the claimant before dismissal should be taken into account and lead to a reduction of compensation and whether there should be a reduction or uplift for an unreasonable failure to comply with the applicable Acas Code of Conduct. In the light of our decision on the substantive matters, it has not been necessary for us to go on and draw conclusions on those matters.
34. One point on the issues as encapsulated in the case management order which we only noticed when deliberating was that the disabilities listed do not include allergic disorder. However, we went back to the impact statement (RB page

1464) and it is clear that, in the impact statement, the claimant did refer to the allergic disorder. We proceeded on the basis that it was a relevant disability for the claim, notwithstanding that it had not been carried forward to the case management order. We do not understand the respondent to have argued at the preliminary hearing that this was not something relied on by the claimant. Their approach to conceding disability was quite broad.

Law applicable to the issues in dispute

Raising health & safety concerns

35. So far as is relevant, s.44 ERA provides as follows:

44.— Health and safety cases.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

...

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work,

...

(4) This section does not apply where the worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X.”

36. So far as relevant, s.100 ERA provides as follows:

100.— Health and safety cases.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) ...

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work,...

....”

37. The Tribunal therefore need to decide whether the Health & Safety situation outlined in s.100(1)(d) is met on the facts of the case. If it is, we need to go on to consider whether that was the reason or principle reason for the dismissal.

38. S.100(1)(d) requires the employee to believe that they are subject to circumstances of serious and imminent danger as a result of being at the workplace. The Court of Appeal in Rodgers v Leeds Laser Cutting Ltd [2022] EWCA Civ 1659 agreed that this should be broken down into the following questions

a. Did the claimant believe there were circumstances of serious and imminent danger?

- b. Was that believe objectively reasonable?
 - c. Could the claimant reasonably have been expected to avert the dangers?
39. The reason for dismissal involves a subjective inquiry into the mental processes of the person or persons who took the decision to dismiss. The classic formulation is that of Cairns LJ in Abernethy v Mott Hay and Anderson [1974] ICR 323 at p. 330 B-C:
- "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee."
40. The reason for the dismissal is not necessarily the same as something which starts in motion a chain of events which leads to dismissal.
41. Where the employee has sufficient qualifying service to bring an ordinary unfair dismissal claim (presently two years' service) the legal burden of proving the principle reason for the dismissal is on the employer although the claimant may bear an evidential burden: See the whistleblowing claim of Kuzel v Roche Products Ltd [2008] IRLR 534 CA. However, where, as in the present case, an employee does not have qualifying service for an ordinary unfair dismissal claim, the burden of proof is on the employee to show that the reason or principle reason was the automatically unfair reason.

Direct discrimination

42. The claimant alleges that she was the victim of a number of acts of disability discrimination contrary to s.13 EQA which prohibits direct discrimination. Direct discrimination contrary to s.13, for the present purposes, is where, by dismissing their employee (A) or subjecting him to any other detriment, the employer treats A less favourably than they treat, or would treat, another employee (B) in materially identical circumstances apart from that of disability and does so because of A's disability.
43. All claims under the EQA (including direct discrimination, and discrimination for a reason arising in consequence of discrimination) are subject to the statutory burden of proof as set out in s.136. This has been explained in a number of cases, most notably in the guidelines annexed to the judgment of the CA in Igen Ltd v Wong [2005] ICR 931 CA.
44. When deciding whether or not the claimant has been the victim of direct discrimination, the employment tribunal must consider whether she has satisfied us, on the balance of probabilities, of facts from which we could decide, in the absence of any other explanation, that the incidents occurred as alleged, that they amounted to less favourable treatment than an actual or hypothetical comparator did or would have received and that the reason for the treatment was disability. If we are so satisfied, we must find that discrimination has occurred unless the respondent proves that the reason for their action was not that of disability. We bear in mind that there is rarely evidence of overt or deliberate discrimination. We may need to look at the context to the events to see whether there

are appropriate inferences that can be made from the primary facts. We also bear in mind that discrimination can be unconscious but that for us to be able to infer that the alleged discriminator's actions were subconsciously motivated by disability we must have a sound evidential basis for that inference.

45. The provisions of s.136 have been considered by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054 UKSC – and more recently in Efobi v Royal Mail Group Ltd [2021] ICR 1263 UKSC. Where the employment tribunal is in a position to make positive findings on the evidence one way or the other, the burden of proof provisions are unlikely to have a bearing upon the outcome. The burden of proof provisions may be of assistance, if there are considerations of subconscious discrimination but the Tribunal needs to take care that findings of subconscious discrimination are evidence based.
46. Although the structure of the EQA invites us to consider whether there was less favourable treatment of the claimant compared with another employee in materially identical circumstances, and also whether that treatment was because of the protected characteristic concerned, those two issues are often factually and evidentially linked (Shamoon v Chief Constable of the RUC [2003] IRLR 285 HL). This is particularly the case where the claimant relies upon a hypothetical comparator. If we find that the reason for the treatment complained of was not that of disability, but some other reason, then that is likely to be a strong indicator as to whether or not that treatment was less favourable than an appropriate comparator would have been subjected to.

Discrimination arising from disability

47. Section 15 EQA provides as follows:

“15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

48. Discrimination arising from disability is where the reason for the unfavourable treatment is something arising in consequence of disability. The example given in the EHRC Code of Practice on Employment (2011) (hereafter the EHRC Employment Code), is dismissal for disability related sickness and that is what is relied on in this case. It should not be forgotten that the treatment must be unfavourable nor that the defence of justification is available in claims of s.15 discrimination.

“In considering whether the example of the disabled worker dismissed for disability-related sickness absence amounts to discrimination arising from disability, it is irrelevant whether or not other workers would have been dismissed for having the same or similar length of absence. It is not necessary to compare the treatment of the disabled worker

with that of her colleagues or any hypothetical comparator. The decision to dismiss her will be discrimination arising from disability if the employer cannot objectively justify it.”

EHRC Employment Code paragraph 5.6.

49. The Court of Appeal considered s.15 EQA in City of York Council v Grosset [2018] ICR 1492 CA and held as follows:

- a. On its proper construction, section 15(1)(a) requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) “something”? and (ii) did that “something” arise in consequence of B's disability?
- b. The first issue involves an examination of A's state of mind, to establish whether the unfavourable treatment which is in issue occurred by reason of A's attitude to the relevant “something”.
- c. The second issue is an objective matter, whether there is a causal link between B's disability and the relevant “something”.
- d. Section 15(1)(a) does not require that A must be shown to have been aware when choosing to subject B to the unfavourable treatment in question that the relevant “something” arose in consequence of B's disability.
- e. The test of justification is an objective one, according to which the employment tribunal must make its own assessment: see *Hardy & Hansons plc v Lax* [2005] ICR 1565 , paras 31–32, and *Chief Constable of West Yorkshire Police v Homer* [2012] ICR 704 , paras 20, 24–26 per Baroness Hale of Richmond JSC, with whom the other members of the court agreed. What is required is an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition. This is for the respondent to prove.

50. On justification, when considering if the action was a proportionate means of achieving a legitimate aim, the Tribunal has to take into account the reasonable needs of the business but should

“make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary”. (*ibid*)

51. This is for the respondent to prove and “they must produce evidence to support their assertion that the treatment is justified and not rely on mere generalisations” (EHRC Code para.5.12).

52. Hampson v Department of Education and Science [1989] ICR 179 involved a policy for authorising teachers to teach in the U.K. which was alleged to be indirectly discriminatory on grounds of race. The same statutory formulation is used for justification in s.19 as in s.15. Hampson is authority for the principle that the impugned action must correspond to a real need on the part of the employer and that the treatment of the claimant must be reasonably necessary. The question is whether this employer has shown that their treatment of this claimant was genuinely done to achieve an aim assessed by the Tribunal as a legitimate business aim; whether the treatment was apt to achieve that aim and whether it was reasonably necessary with a view to achieving that aim.
53. The other potential defence is lack of knowledge of disability. This requires the respondent to show that they did not know and could not reasonably have been expected to know that the claimant was disabled (constructive knowledge is discussed in the case of Gallop v Newport City Council [2013] EWCA Civ 1583 CA)

Breach of the duty to make reasonable adjustments

54. The obligation upon an employer to make reasonable adjustments in relation to disabled employees so far as it is relevant to this claim is found in ss. 20, 21, 39 and 136 and Schedule 8 EqA 2010.
- a. By s.39(5) the duty to make reasonable adjustments is applied to employers;
 - b. By s.20(3) and Sch.8 paras.2 & 5 that duty includes the requirement where a PCP applied by or on behalf of the employer puts a disabled person, such as the claimant, at a substantial disadvantage in relation to his employment in comparison to persons who are not disabled to take such steps as are reasonable to have to take to avoid the disadvantage.
 - c. When considering whether the duty to make reasonable adjustments has arisen, the Tribunal must separately identify the following: the PCP (or, if applicable the physical feature of the premises or auxiliary aid); the identity of non-disabled comparators and the nature and extent of the substantial disadvantage: Environment Agency v Rowan [2008] ICR 218 EAT.
 - d. By s.21 a failure to comply with the above requirement is a failure to comply with a duty to make reasonable adjustments. The employer discriminates against their disabled employee if they fail to comply with the duty to make reasonable adjustments.
 - e. Project Management Institute v Latif [2007] IRLR 579 EAT is authority for the principle that the claimant must not only establish that the duty has arisen but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been

breached. This requires evidence of some apparently reasonable adjustment which could be made.

f. Sch 8 para. 20 provides that the employer is not subject to a duty to make reasonable adjustments if he does not know and could not reasonably be expected to know that the employee has a disability and is likely to be placed at the disadvantage in question.

g. The requirement on the employer is, in the words of s.20, to take “such steps as it is reasonable to have to take to avoid the disadvantage”. The test for a breach of the duty to make reasonable adjustments is an objective one and thus does not depend solely upon the subjective opinion of the respondent based upon, for example, the information or medical evidence available to it.

55. Time limits in reasonable adjustments cases can require particularly careful consideration. In Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194 CA it was held that the duty to make reasonable adjustments arises as soon as the employer is able to take steps which it is reasonable for it to have to take to avoid the relevant disadvantage. Time does not necessary start to run at that point in the case of a failure to make reasonable adjustments.

56. Further guidance was given in Fernandes v Department for Work and Pensions [2023] EAT 114 EAT. Time may start to run at a notional date after the date from which the employer was able to make reasonable adjustment. The tribunal should start by identifying the practice which causes the disadvantage. Then the tribunal must make a factual finding about when it would be reasonable for the employer to have to take steps to alleviate the disadvantage. That would be the date of the breach of the duty to make reasonable adjustments. The tribunal should then ask if there are facts which would allow it to conclude that the employer acted inconsistently with the duty to make adjustments. If there are, then that determines the notional date when time starts to run. If there is no inconsistent act by the employer, then there will come a time when it would be reasonable for the employee, on the facts known to him or her, to conclude that the employer is not going to comply with the duty. Time would start to run in omission cases where there is no act inconsistent with making the adjustments on that later date. If the notional date means the claim falls outside the primary time limit, the tribunal would then be entitled to consider the claimant’s subjective state of mind when considering the discretionary question of whether time should be extended on a just and equitable basis.

Findings of fact

57. We make our findings of fact on the balance of probabilities taking into account all of the evidence both documentary and oral which was admitted at the hearing. We do not set out in this judgment all of the evidence we have heard but only our principal findings of fact, those which are necessary for us to make in order

to reach conclusions on the remaining issues.

58. We start by turning to the claimant's contract of employment, and at RB page 624 there is the provision about sick pay. It provides that:

“Subject to the provisions of the scheme a member of staff who is absent from duty owing to illness shall be entitled to receive, in any twelve month period, contractual sick pay, as follows provided that the employee complies with the Academy's absence notification requirements and produces self-certificates and/or doctors statements as required:”

59. That entitlement is stated to be one month's full pay during the first year of service and, after completing four calendar months' service, two months' half pay. We understand that this provision is negotiated at a national level or has national application.
60. Then we turn to our findings on the claimant's working environment in the school's Art Department.
61. The claimant's employment started on 23 May 2022 as an Art and Design Technician. There was an audit at around the time that the claimant started work. On 21 June 2022 Ms Dennis emailed her line manager, see LOD1 page 63, saying that Jane Booth, the Facilities Manager, would update them about any action required following the COSHH report from Southhalls. She referred in her email to safe practice about issuing white spirit from the COSHH cupboard. LOD page 64 contains (para.178) an embedded email sent the same day by the Facilities Manager. This is evidence that work needed to be carried out in the Art Department including on risk assessments for individual products or materials in use which fall within the scope of the regulations on Control of Substances Hazardous to Health or 'COSHH', as that is commonly abbreviated to. It appears from this embedded email as though work particularly needs to be done in respect of the Art and the DT Departments. The Facilities Manager asked that existing assessments be uploaded directly into the Safety Cloud.
62. On the same page at para.179 is an embedded reply from the line manager (copied to the claimant). The line manager stated that Ms Dennis has hard copies of the health and safety documents and asked her to upload them to the Safety Cloud. The claimant's evidence to us was that those are found in LOD1, pages 19, 20, 21 and 23. There are four scans of pages of a document embedded into those pages. This, she states, had been provided to her in the first days of her employment as a risk assessment for the Art Department itself. It is not an individual risk assessment for each of the products within the Art Department that should be stored in accordance with the principles in the COSHH Regulations.
63. She was also provided with the document at LOD1 page 25, which is a table. She says that it is a table of COSHH chemicals in the department and that it was given to her at the start of her employment. The specific chemicals listed as within the Art Department include white spirit, aerosol spray paint and oil paint varnish. We particularly note those because in the table they are described as having the GOSH designation which denotes that they are respiratory

sensitisers.

64. Plaster of Paris is not present on the list. At the time it was still being used by one art teacher who we understand left the end of that academic year. Later on, the respondent minimised the risk of exposure to Plaster of Paris, on the basis that it was only used once by this particular teacher. Nevertheless, it appears that, at the start of the claimant's employment, pupils in his class were working on a project which used Plaster of Paris and that involved work being laid out in the photo room for a period of time. It remained to be cleared up in the closing weeks of the summer term 2022 and the claimant was involved in or responsible for that clearing up. That was her evidence and the respondent did not lead evidence which contradicted her on that point.
65. We have the impression that, when the claimant joined the school, the organisation of the storeroom did not meet best practice for storing, dispensing and handling of chemicals which carry the COSHH labelling. There is photographic evidence that it was untidy, and good practice does not appear to have been embedded in the way that the Art Department organised itself on a day to day basis. The most obvious illustration of that is the claimant's frequently expressed assertion, which we accept, that waste white spirit should have been stored in a brown bottle with a lid and stored safely awaiting safe disposal, but was instead, apparently, in an open pot.
66. The claimant states that when she arrived the COSHH cupboard was not consistently locked. However, the claimant's presentation of the evidence, in our view, exaggerates the extent of this problem. She has a tendency to describe things which have upset or angered her in heightened terms which are not objectively justified. We analyse her description of Mr Barwise and Ms Byford's behaviour below and that is an example of this tendency.
67. Secondly, the claimant has condensed and manipulated images when presenting photographic evidence. They are therefore clearly a montage. They have no date stamped. It means that photographs described as "the contents of the cupboard when I joined", for example, are not reliable evidence of those contents, in our view.
68. In her evidence and argument, the claimant also criticised the practises wholesale and did not focus on what was relevant for her claim. In answers to questions, she diverted attention from the relevant specifics of the question to her broader criticisms. As a result we have searched supporting evidence that is reliable about the extent to which she was exposed to particular chemicals that can fairly be described as hazardous to health in the specific way that she relies on for her claim. Furthermore, the way the claimant has described the state of affairs when she started has not been consistent throughout her employment or throughout the litigation.
69. The respondents, on the other hand, have not disclosed or included in the hearing file the audit report which we have already referred to, which was apparently carried out in the late spring and early summer 2022. One would have expected that to be a relevant document. Nevertheless, deficiencies in the paperwork in the Art Department, by which we mean the lack of individual product

risk assessments, does not without more support a conclusion that the claimant was, at the start of her employment, in danger in her work environment.

70. Later on, during September and October 2022, the claimant, herself, wrote the individual product risk assessments which had been recommended in that audit.
71. We accept that the storeroom was a storeroom and not a preparation room and we accept the respondent's evidence that it was not the claimant's main workspace. Her duties would take her there to find materials or to replace them which would be a relatively short visit. It was only if she was specifically tasked with tidying up the storeroom or with stocktaking that might be expected to take longer that she would be expected to work in the storeroom for any extended period and such duties would be periodic and occasional.
72. The storeroom contains the locked COSHH cupboard. The chemicals which are potentially relevant for the claim are those which are respiratory sensitisers. The products which the claimant focussed on in her complaints was white spirit. She appears to consider there to be too much of that kept in stock. White Spirit would probably be used in the Department for brush cleaning and thinning oil paints. As such, it would need to be removed from the COSHH cupboard to be used in lessons. Good practice stated that it should be replaced when not in use but we accept that it would be impossible to avoid all contact to white spirit fumes if you worked in the Art Department.
73. The claimant approached Anne Hatton in the Chemistry Department about the COSHH Regulations and set out to better inform herself about what handling practices should be. That is to her credit. She cannot have anticipated, despite her own knowledge of her health conditions, that working in the Art Department would have any adverse consequences for her. Had she done so, we can think of no reason why she would not have raised specific concerns.
74. As will be described in more detail below, the claimant did not tell either the Trust or Medigold, their third party Occupational Health service provider, that she had a medical condition which she expected to be adversely affected by her work. She had worked as an Art Technician before and the respondent reasonably expected her to have a reasonable understanding that an Art Department, teaching Fine Art to public exam standards (including at Key Stages Four and Five), would stock products such as those the claimant has complained about within these proceedings. She stated, further on in the process, that her own experience in another Art Department was more limited. But, based on what she was asked about and the answers she gave in interview, the respondent reasonably expected her to have an understanding of what would be in the Art Department.
75. None of the products that we have been referred to appear out of the ordinary for their setting. Nevertheless, it is fair to say that at the beginning of her employment her role did require her to carry out tasks that would involve handling and storing chemicals which could fairly be described as hazardous to health if they were not managed and used appropriately. There were in use in the Art Department some products which, according to the evidence before us, appear to have been respiratory sensitisers; specifically white spirit, Plaster of Paris and

spray paint.

76. As long as those are properly stored, and bottles closed, the risk has been adequately mitigated for the majority or generality of people. One of the matters the claimant complained about was ventilation. The door to the storeroom has a vent in it and we found Mr Linforth's evidence entirely credible about there being another source of ventilation. Mr Linforth impressed us as being efficient and thorough in his approach to his duties and to managing the attempt to return the claimant to work. Both he and Mr Hebblethwaite relied upon the absence of criticism of ventilation in the storeroom in Southalls' annual audits.
77. There was limited evidence about the content of the audit from Southalls. As we have already said, the respondents did not disclose it and the absence of it from the evidence is unexplained. We had to consider whether specific inferences could be made from that. What we do have are the emails about the audit which have been produced by the claimant and there is nothing in those about inadequate ventilation. It seems improbable that the Facilities Manager would not have mentioned ventilation in her June 2022 email about action required if ventilation in the storeroom had been flagged up by that audit, and improbable that Southalls would not have flagged it up if the standard of ventilation breached the school's Health and Safety Policy. Despite the lack of explanation for the non-disclosure of this audit, we do not think it right to infer from that that it would provide evidence of any specific failing.
78. The claimant persistently misdescribed the standard in the Trust's Health and Safety Policy for ventilation that applied to the Art Department storeroom by it as a prep room, which we are satisfied it was not. The respondent did not require the claimant to work in a room without adequate ventilation. She was not required to work in there for very long at a time. She had to go there. Her main workplace was the Art Department Staffroom; that was the work location which was assessed for her DSE assessment. She had a responsibility for organisation of the storeroom. It was not where she was supposed to work for the duration of her 4-hour shift on every occasions. We accept, in any event, that it had adequate ventilation. We also accept that an extractor fan was not mandatory in that location under the school's Health and Safety Policy because it was a storeroom and not a preparation room.
79. The claimant was very imprecise when she represented to witnesses what the Trust's policy documents required. She asked more than one witness why the storeroom did not have an extractor fan and asserted that that was contrary to the Health & Safety Policy. However that policy clearly states that only a preparation room needs to have an extractor fan. She elides storeroom and preparation room to better her fit her argument and this was also the mistaken basis of her assertion that there should have been 5 changes of air per hour 24 hours a day in the storeroom. There was no such requirement under the school's policy.
80. We turn to our findings on the respondent's knowledge of disability.
81. In her application form (RB page 620), the question was asked "Do you consider yourself to have a disability?" and the claimant's answer is recorded as "False".

The claimant may have had reasons for not disclosing her health conditions so we do not criticise her for that. However, the fact that she stated that, would send the message to the reasonable employer that she does not consider that she has a health condition that would adversely impact on her ability to do the job.

82. That impression would have been reinforced by the information that the respondent received from Medigold. The claimant completed the preplacement questionnaire on 27 May 2022, four days into her employment. The full set of questions are at RB page 660. Medigold informed the respondent, see RB page 664:

“we can confirm that based on the information provided there are no health concerns identified that are likely to affect the individual or require any adjustments in the workplace.”

83. After questions were raised about what she had disclosed, the claimant obtained her completed form and she sent to the respondent snapshots or extracts from it (RB pages 662 and 663). Those show that she disclosed mild dyslexia and a dairy allergy. In answer to a question about any psychological conditions in the last five years she disclosed anxiety and depression. She said that she had required medical support with regard to a respiratory condition, namely inhalers.
84. The claimant’s evidence is that she obtained the questionnaire in November 2022 and she has referred us to LOD1 page 40 in her documents. An extract is on that page. It shows that she also told Medigold that she had mild dyslexia, had been absent for more than 10 days in the last 12 months due to severe chest infection/covid and was taking inhalers for asthma.
85. There are many differences between the documents the claimant has produced within the litigation and the extracts she disclosed to the respondent during her employment when they asked what information she had provided in the pre-placement questionnaire to Medigold. She is showing the Tribunal now more of the answers she gave to Medigold than she showed to the respondent in November 2022. However, neither disclosures show all of the answers to the entire questionnaire. Notable omissions – despite the obligation to give full disclosure within the litigation - include her answer to questions about whether she needed adjustments or whether she considered that her medical condition would be impacted by her workplace. The claimant has chosen not to tell us what she told Medigold in full.
86. Medigold were, we find, a third party provider of Occupational Health to the Trust. It is up to the applicant for a post to decide what to disclose and the Occupational Health adviser uses that disclosure as the basis of a medical opinion given by Medigold Health “when assessing your fitness and suitability for the post you have been offered.” That explanation is on the Placement Questionnaire and the applicant is asked to “answer all questions as fully as possible.” (LOD1 page 37).
87. Medigold appear to accept now that someone else looking at her information might have made a different clinical decision and contacted her for further information before giving their opinion to the respondent. Nevertheless, it is clear that they did not disclose the specific information to the respondent at the start

of the claimant's employment that she had provided to them. They only provided their opinion on it.

88. The documents embedded in LOD1 page 40 to 42 are among those which have been altered and amended, possibly by inserting into an email apparently sent on 27 January the claimant's evidence of conversations with a Medigold representative. It makes it difficult to understand and difficult to know what, if anything, is reliable. On balance, we accept that LOI1 page 42 shows that the claimant was told by Medigold that they do not send a copy of the form or the details of the clinical opinion to the Trust, only the outcome of their opinion. Medigold told the claimant:

“ We are only permitted to share health information with the employer if it is deemed relevant to the role.”

89. What happened is that Medigold assessed the information that the claimant had provided to be not relevant to the role she had to carry out and therefore did not pass on to the Trust the specific information she had disclosed to Medigold but had not told the trust directly. That being Medigold's assessment, the obligation of confidentiality to the claimant on them meant that they could not disclose the health information that she had told them if they assessed it as not relevant to the role to which she was being recruited. The respondent is not fixed with knowledge of the matters the claimant told Medigold but did not tell the respondent directly because Medigold did not tell the respondent as a result of an obligation of confidentiality to the claimant.
90. We therefore find that the trust had actual knowledge of the following conditions in the following order. They knew about:
- a. Asthma and milk allergy through the pre-start workforce form (RB page 653).
 - b. They knew about migraine following the claimant's first absence as it is referred to on her return to work form or self-certification form (RB page 689).
 - c. They found out about anxiety and depression at the absence meeting on 20 July 2022.
 - d. The claimant referred to stress in broad terms in her informal complaint on 15 July 2022 (RB page 707).
 - e. Dyslexia was notified via the Occupational Health report on 14 November 2022. We do not think that that condition could reasonably have been known by the respondents before that.
 - f. The Occupational Health report of 14 November 2022 also notified the respondents that the claimant has post-Covid syndrome and
 - g. The respondent accepts that the probation review notes also refer to symptoms of the menopause.

- h. In relation to the allergic disorder, the claimant informed her employer of a Grade 2 dust allergy on 15 July 2022 through the informal grievance. This was also discussed at the meeting on 20 July and the GP certificate from about this time refers to it as well. That is earlier than the date in the respondent's evidence. Either they knew about allergic disorder by 15-20 July 2022 or ought reasonably to have made further enquiries about the GP's comment about the reasons for the claimant's absence in early July. To that extent, there was a certain lack of curiosity on the part of the respondent.
 - i. The skin symptoms and the urticaria, were notified to the respondent through the Occupational Health report on 17 November 2022.
- 91. In the case of each of these health condition, unless specifically stated, we reject the claimant's argument that the respondent had constructive knowledge of any particular conditions earlier than that they had actual knowledge.
 - 92. We turn to our findings on the relevant events, including about the claimant's health related absences.
 - 93. Where it has been necessary to identify dates of the claimant's absences we have accepted the attendance record in the respondent's bundle at RB page 669. She was absent on 10 June for one day and for two days on 22 and 24 June 2022, both with migraines.
 - 94. She was then absent between 11 July and 19 July inclusive. The GP notes state the reason to be allergic disorder with Covid inserted in the comments section. On 15 July 2022, the claimant presented the informal complaint and she returned to work on the last day of the summer term. At the return to work meeting on 20 July 2022 both the causes for her absence and her informal complaint were discussed. This needed investigation urgently in order that the first respondent could identify whether there was a problem in the Art Department that they needed to address. The respondent relies on minutes at RB page 701. The claimant's annotated version of the minutes is at LOD 1 p.101.
 - 95. The claimant alleges that, in that meeting, Mr Barwise and Ms Byford accused her of lying when she said that she had disclosed anxiety and depression. This is not a reasonable interpretation of what they said. Ms Byford said she would check what had been disclosed and then moved on to offer the claimant access to the employee assistance programme and access to the school counsellor. Those are not the actions of individuals who disbelieved an employee who had just notified them that she has anxiety and depression. We know that anxiety and depression were not disclosed to the school either by the claimant or Medigold prior to this point, so it is unsurprising that the school wished to check it. As Ms Byford said in oral evidence, she wanted to know whether she had overlooked something.
 - 96. Within the minutes (RB page 703) the claimant is recorded as being asked whether she has recovered enough to complete her full duties and says "yes". She told them that her allergies were under control at that point. The claimant notified Mr Barwise during the return to work meeting that she had gone out of

her way to obtain COSHH training.

97. She now argues that the respondent should have proposed adjustments to her workplace on their own initiative based upon what they knew at that point. She argues that there should not only be an obligation on her to present solutions. However, the respondent's managers can only react to known risks or risks that they ought reasonably to have known about. There is much nuance in what an individual person's needs are and our view is that, overall, the respondent responded appropriately to the information that they were presented with.
98. When the claimant returned to work in the Autumn of 2022 she was asked to work in the staffroom so that she was not in close proximity to her line manager against whom there was an outstanding grievance. We agree that the respondent should have investigated that grievance as it was potentially serious, given the nature of the allegations.
99. We also note that, in the email from the claimant of 6 September 2022 (RB page 758), she asked to work in the Art Department. She states that she would achieve more than if working remotely from the staffroom. She explained to us that she found it embarrassing to be asked why she was working there when she was unable to explain the reason because of confidentiality. The point we draw from this is that that email belies any concern on her part at that time about working in the Art Department as a whole because of fumes and chemicals used for the business of teaching art.
100. In the return to work meeting on 20 July 2022, she had asked to work in the Conference Room but that was in constant use and was therefore inappropriate. She asked to work from home and this was granted for a number of days in September with the claimant attending site to work on days when her line manager was absent.
101. In terms of the respondent's knowledge of any disadvantage of working from the Art Department as it was organised at the time, that email is part of a picture from which they would have an impression that there was no need to alter her working environment.
102. The summary of the allegations raised by the claimant in the informal grievance against her line manager is that the line manager treated the claimant as a PA, that she had mountains of work to do and that she complained that the line manager was overbearing, controlling, aggressive and mean.
103. The informal complaint was sent jointly to the line manager and to the curriculum co-lead as well as to Mr Barwise who, as I have said, was the Senior Leadership Link for the Art Department. The outcomes requested were a different line manager and that the kiln should be moved because of the position was causing friction. The claimant was, at this stage, still quite new in her employment and these are bold requests; she included a request to change her line manager which would have an impact on the roles of others.
104. The Grievance Policy is at RB page 1047 to 1054. Step 1 is the informal stage but, if the grievance is against a line manager themselves, it is possible to move

straightaway to the formal grievance at Step 2. This is treated informally but investigated by the next person above the line manager and given the resolutions that the claimant was seeking, it was appropriate for the first respondent to investigate it as they did.

105. The next stage in the policy is a formal grievance in writing. It is relevant for the subsequent grievance that we note now that that formal grievance should be in writing to the head teacher laying out the grounds of the complaint and the remedy sought. The head teacher should normally meet the individual and respond, usually within 10 days. The head teacher should have one other person with them at the formal meeting and the employee has a right to be accompanied. There should be investigations as appropriate and those might be interview based. The head teacher would deliver the outcome and there is an appeal stage after that.
106. The 15 July 2022 informal complaint was dealt with informally. It was accepted by the claimant that Mr Barwise interviewed all of the people that she asked him to when she met him on 20 July. Ms Byford was present at that meeting. She asked for Debbie Henning and Jane Booth to be investigated (see RB page 726). Mr Barwise asked if the claimant wished to escalate her complaint to a formal stage and she declined.
107. He interviewed the line manager and Mr Kinver Binmore at on 20 July (RB page 733 and 734 respectively). The latter was leaving the school so that was very prompt and appropriate action. Then on 9 September, after the summer break, Mr Barwise interviewed the Facilities Manager, Jane Booth (RB page 735) and Debbie Henning (RB page 736). He delivered a grievance outcome in the investigation feedback meeting on 27 September 2022. The notes of that meeting are at RB page 766.
108. Mr Barwise did not uphold the grievance and knew that there was a need to manage the claimant back into the department because the relationships had been damaged but we are satisfied that, at this stage, there was no cause for Mr Barwise reasonably to think there was a risk to the claimant's health connected with returning her to the Art Department. He reminded her that she could escalate the complaint to the formal stage.
109. The claimant's complaint about Mr Barwise's actions in relation to this investigation is that he came to a conclusion that did not give sufficient weight to everything that was said by the colleagues that was critical about the line manager and, therefore, that it was not dealt with fairly.
110. We do not fault the process that he followed. The actual allegation was bullying and nothing was substantiated at that level. The view he took of the information provided in the interviews was that the line manager was intense and demanding but the other colleagues had clearly stated she was not bullying; even those who had observed interactions that the claimant had complained about directly were of that view. Overall, the conclusion that Mr Barwise reached was supported by the evidence he had in front of him. His outcome does not set out every negative comment such as "intense" or "bossy". Nevertheless, it is a balanced and fair explanation of the reasons for his conclusions. Potentially, there were actions

that could have been taken forward to support the line manager's development as a manager but the claimant did not take up the opportunity to make this formal.

111. The claimant's attendance in September 2022 is at RB page 669. There were training days on 5 and 6 September, she worked in school on 7 September and then worked from home on 8 and 9 September with permission pending the outcome of the grievance (which was ultimately delivered on 27 September). She appeared to be working from school when the line manager was not on site. Then on 13 to 16 September she is recorded as on unauthorised paid leave because the Trust wanted her to work on site and she was unwilling to do so.
112. When we analyse the reason or reasons for those absences, on 16 September onwards, Mr Barwise made an adjustment to working practices so that she could work from home so that she would not work in the area where she alleged she had been bullied. She said that she was told that she could work from home until an alternative was set up but advised that if she was not well enough to work she did not have to do so.
113. In the outcome meeting for her grievance on 27 September (RB page 768), Mr Barwise referred back to the question of the claimant's disclosure of her health conditions at an earlier stage. This is which is referred to in the same terms by Mr Barwise. He says:

"You have subsequently highlighted a mental health disability that we were not informed of in your staff workforce form."

114. That was true. Again, the claimant states that she was being accused of lying but, as we have already said, we do not think that that is the case. She appears, on more than on occasion, to be sensitive to perceiving people as not believing her when they have stated they do not accept her perspective and that is not the same thing. We have not seen documentary evidence that she disclosed a mental health *disability* on her appointment - a mental health *problem*, but not a *disability* - and she explained to us why she chose not to do so.
115. We have been taken to her documents at LOD2 page 145, paragraph 1359, which are the claimant's annotations to the grievance minutes. It is impossible to know when these were done but it is telling that she has written:

"As soon as Martin: "Are any of these absences linked to a disability"? and SBD [Ms Byford]: "I believe only aspirin and milk allergy were declared," instead of feeling supported I mediatly felt verry uncomfortable and stigmatised for having a disability."

116. Perhaps one might give her the benefit of the doubt during the meeting on 20 July itself because she did disclose depression and anxiety to Medigold and she seems to have expected them to pass it on to the employer. However, by the time of the grievance appeal, she knows that Medigold did not do so and knows that there was no reason why Mr Barwise of Ms Byford would have known that she had disclosed anxiety and depression. She did not forward the highlights of her pre-placement questionnaire to the employer until November 2022. Nevertheless, she continues to say that they accused her of lying. We are satisfied that was not either what was said or was intended and shows

oversensitivity by the claimant.

117. At most, the period from 13 to 16 September are dates when the claimant chose to work from home, before Mr Barwise had authorised her to do so, because of how she felt about where she was being asked to work pending the grievance outcome. That was to do with investigating her allegation and not to do with her health considerations.
118. The second probation review meeting was on 13 October 2022. The claimant raised at that point that there should have been a risk assessment (RB page 774). She agreed to an Occupational Health referral. When she was asked about her work rate and efficiency (RB page 775), we note that she did not raise dyslexia as a factor for those problems. It was not an explanation provided at that time - so far as we can see on those minutes - nor is it mentioned in the informal grievance itself. It appears that the first mention was in the Occupational Health report dated 14 November, RB page 786.
119. In her first probation review meeting of 22 June (RB page 698) she was either scored as meeting expectations or exceeding expectations and she argues that the drop in score she received in the 13 October second review meeting, can only be explained by the fact that in the interim the respondent had received information about disability.
120. The concerns recorded by Mr Barwise were not at all to do with the quality and accuracy of the claimant's work which was scored as meeting expectations. What they were about was efficiency, which was said to be about doing too much and spending too long on tasks so that she does more than is needed. That would impact on the quantity of work done during her normal hours and on whether there was a risk the claimant worked longer than normal working hours to her detriment.
121. She was also scored below expectation on attendance. She argued that the respondent should record her disability-related sickness absence separately to other absences. By this stage, there are a number of different reasons that have been given for absences and some of them were connected with disability. For example, Migraine (a reason on the self-certification form) is not a disability for the purpose of the claim. Anxiety is and the claimant implies that stress causes her, as a person with anxiety to have migraines – hence the sickness absence. When she was absent with Covid symptoms, that is the disease itself not the disability of Long Covid Syndrome. In that period of time, she was diagnosed with, as the GP says, with an allergic disorder. The GP cites “allergic reaction” as a reason for absence which suggests a connection between respiratory problems and the length of the absence with Covid – a respiratory disease. That is relied on by the claimant within the impact statement as a cause of absence (RB page 1564). She has also provided evidence that she was prescribed two different sets of antibiotics for a chest infection and steroids to bring her allergies under control. It also seems to us to be artificial to distinguish between the effects of allergic disorder and asthma on the facts of this case. So, although there were several contributory factors which caused the July 2022 absence, it was - on balance - disability related.

122. However, we do not accept that the respondent has to disregard all disability related sickness absence and that is what appeared to be the claimant's belief. It is certainly the way she argued it in the grievance and in the hearing before us. An employer may need to adjust formal triggers to take account of disability related absence and to measure that separately so that they know that reasonable adjustments could be made. But they do not need to disregard all disability related sickness absence in all the circumstances.
123. We are impressed at Mr Barwise's approach to the concerns. We accept that he had a positive, forward-thinking, solutions-based, approach. He approached his first concern asking "How do we solve the problem of attendance?". He offered a stress risk assessment and an Occupational Health referral. The claimant appears not to have attended on at least one day when one might reasonably expect her to have attended because her line manager was not in. So, he has got grounds to think that her attitude to attendance is not as the respondent would want it to be - even making reasonable allowances for her health problems.
124. For all of the other "below expectations" assessments in the probation review, he proposed a solution and detailed what could be done to assist the claimant to meet expectations and pass her probation.
125. It is true that, in relation to time-keeping, he does mention lateness on the day that the claimant had the asthma attack (RB page 777). He complains that the claimant did not call the absence line. Had this been the only matter raised by Mr Barwise we would have considered this to be harsh because this was the occasion when the claimant was unable to make a phonecall as she was experiencing an asthma attack but communicated by other means. However, he also raises timekeeping more in the sense of taking time to carry out work and the way that she was using the TOIL system. That perhaps is more in the nature of a concern about time management than timekeeping.
126. We accept that he did genuinely think that this was an area in which the claimant needed to improve because it would have had an impact on the school if she accumulated too much TOIL. Although in the hearing before us the claimant stated that time management was to do with disability, that was not something that she mentioned at the time. She did not say that she was unable to carry out work as quickly as people without dyslexia or dyscalculia could do in that probation review meeting and the respondent would not have known of any disadvantage there. Dyslexia was not mentioned until the Occupational Health meeting.
127. Workplace relationships were also raised as an area of concern. Mr Barwise had not upheld the claimant's grievance and he raised a question about the way in which the claimant had made her strongly expressed allegations. The way that she went about raising the issues was likely to exacerbate tension the workplace and made the initial problem that she had raised more difficult to resolve. We do not think that it was an unreasonable assessment that she was below expectations on reasonable working relationships in that respect.
128. In relation to the earlier complaints about other individuals, she had met sympathy and understanding including from her line manager when she

described her experiences. So, it was not simply the relationship with the line manager that was the foundation of Mr Barwise's assessment.

129. We appreciate that the claimant described to us having low self-esteem because of previous experiences and that she did not think that she should have to put up with behaviour that upset her. However, her reaction appears to us to have been disproportionate and not, so far as we can see on the evidence, related to disability. No doubt she was upset to receive a negative probationary review but, objectively, we do not find that this meeting was conducted anything other than professionally. There were objective reasons for his judgment and there was a positive focus on encouraging the claimant to improve. He extended the timescales for the claimant in the probationary period. It seems likely that under the policy he could have chosen not to extend the probationary period but he chose to give her that additional opportunity. He referred her to Occupational Health.

130. The Occupational Health assessment led to a report (RB page 786) which provides more information to the respondent about the claimant's health conditions. Some of the wording used makes clear that the therapist is recounting what the claimant has said to them rather than providing an independent clinician's opinion about the causation of health problems that she described or the reasons for absence. For example,

"Ms Dennis has incurred an absence from work, that appears to be due to, allergic disorder, an exacerbation of respiratory symptoms, asthma, and skin symptoms, interior (sic), migraines, she perceives to be stress induced, and Covid. She also appears to have ongoing acute stress symptoms, anxiety, and depression."

And "an exacerbation of respiratory symptoms that she perceives to have been exacerbated by work".

131. This is not, contrary to the claimant's argument, expert evidence that her respiratory symptoms have been exacerbated by work. Asthma is described as being well controlled until recently. There is no evidence in the Occupational Health report that the author sought information from the claimant's GP or saw any evidence from a consulting physician about the many and complex conditions Ms Dennis had. She was being investigated for post-covid symptoms by this time and had informed the Occupational Health physician that she was still experiencing debilitating symptoms relating to that condition.

132. Although she apparently told the Occupational Health therapist that she perceived her respiratory symptoms and skin symptoms were receding whilst she was away from her workplace, her oral evidence before us was that she was severely ill over the summer holidays and, at the time of the assessment, she was unfit to work.

133. The OH therapist did not and would not, particularly from the telephone appointment, have been competent to give an opinion about the cause of exacerbation of respiratory symptoms. For legal causation to be made out one would need objective evidence about precisely what the air quality was, what the

degree of exposure of the claimant was and to what, information about the product and the tendency of a particular product - used in the way that the claimant used it - to trigger symptoms. The claimant relies on the Occupational Health report as evidence that her respiratory symptoms, in the sense of asthma going from well controlled to severe, have been caused and that the allergic disorder has been caused by the workplace atmosphere, that is not our reading of the report. We are reinforced in that view when she had been referred for (and has since been diagnosed with) long-covid syndrome following contracting Covid at the same time as she was diagnosed with an allergic disorder.

134. Recommendations of the therapist are that ongoing symptoms of acute stress and anxiety and depression are perceived to be due to work-related stress. There is recommendation for a face-to-face Occupational Health assessment with a physician to assess her fitness for work, capability and to see if there are appropriate adjustments which could be made to support a return to work. The therapist also advised (RB page 788) holding a meeting with the claimant

“to offer fair and sensitive workplace support, discussion, identification [...] and resolution of work related issues that she perceives may have impacted on her health, wellbeing, and safety at work.”.

135. On 6 December 2022 Mr Hebblethwaite wrote (RB page 792) to inform the claimant that her entitlement to 26 days full contractual sick pay ceased on 19 November. It is not clear to us how that 26 days was calculated and the contract provides for a month's full pay - and 26 working days seems a little high for a month. Unfortunately, this was not a question that occurred to the Tribunal when the witness was available to explain in evidence. He continued that, from 18 November she would remain at half contractual pay plus SSP for a further 52 days. As we say, the contract provides for a month and the difference between the contract and the wording of the letter was not noticed when it was possible to ask the witness about that apparent discrepancy.
136. By the time of the probationary review meeting the claimant had been absent for 10 working days (RB page 669). She attended work for 2 days in October before the school closure during half term and worked 1 day in November 2022 before a period of sickness absence starting on 2 November. Payslips for November 2022 do not show any deduction in that month; the payslips first show a deduction for December 2022 (RB page 1038) which bears a pay date of 22 December 2022. As far as we can make out from the payslip, the claimant was paid half pay for December and then, apparently, paid in full in January 2023 although it is not entirely clear from the payslips. In cross examination the claimant accepted that she was paid in accordance with the contract; her complaint is that she should have been given the benefit of full pay because she was absent on disability-related sickness.
137. Mr Barwise wrote to the claimant on 12 December 2022 (RB page 790) about the recommendations in Occupational Health report. He said in oral evidence that he had not written immediately after receiving the report because the claimant was signed off sick and had only written at a point where there was a prospect of her returning to work. We consider this to be a reasonable and rational reason for waiting until she was likely to be coming back to work. He

asks for an informal meeting in school later in the week.

138. The claimant wrote to the head teacher on 12 December 2022 asking for full pay and reasonable adjustments (RB page 793). It is also in that letter that she, for the first time, quotes section 44 Employment Rights Act 1996. To paraphrase, she appears to imply that she considers herself to have brought to the employer's attention circumstances connected with her work which she reasonably believes to be harmful, or potentially harmful to health or safety, to be absent because of serious and imminent danger which she cannot reasonably be expected to avert or to have taken appropriate steps to protect herself from serious and imminent danger.
139. She submitted a formal grievance on 21 December, initially to a governor, which is not as directed by the policy, and then it was redirected to the head teacher on 4 January 2023.
140. She also wrote on 3 January 2023 (RB page 791) asking only to have communications from the school in writing.
141. The formal grievance, at RB page 802, raises several issues. In it the claimant complained of a failure to make reasonable adjustments and discrimination arising in consequence of disability. She complains about being accused of not disclosing her disabilities and she says that she wants permanent adjustments which are listed on RB page 805. There are seven reasonable adjustments and we accept that this was the first time when they are specified. They are:
 - "Provide a reasonable adjustments passport.
 - Record disability-related sick leave separately from other sick absence as it is protected under the Equality Act 2010.
 - Provide PPE (such as FFP3 dust masks).
 - Provide an Air Purifier with HEPA Filtration and a cooling fan for the store room and staffroom.
 - Provide additional time as I'm Dyslexic and it takes me longer to read, write and respond to emails and all other correspondence. Dyslexia is classed as a lifelong condition and as it has a significant impact on a person's day-to-day life, it meets the criteria of a disability and is therefore covered by The Equality Act 2010.
 - Create clear (sic) fair workplace policies for Disabilities including Mental Health and the Menopause.
 - Set realistic fair and manageable work volumes (i.e., set work tasks for the 4 contracted hours I work each day - not 6 hours of work to complete in 4 hours which is currently the case, as this only increases my anxiety and stress levels and makes me feel I'm being set up to fail)."
142. The grievance was looked into by Mr Hebblethwaite and his response letter is dated 10 January 2023 (RB page 808). This was a quick response for a grievance with many issues. He had rationalised her letter into four headings that are taken from a passage in her grievance setting out what she "would also"

like you to explain (RB page 804). They are:

- a. CONCERN 1: COSHH controls,
- b. CONCERN 2: Failure to make reasonable adjustments for particular disabilities,
- c. CONCERN 3: the failure of Medigold to advise the school that she had notified them of disabilities and
- d. CONCERN 4: He condensed her workload issue into a question about why she was contracted to work 20 hours a week when other technicians were contracted for 27 + hours – essentially the question about whether the workload could sensibly be carried out in the claimant's contracted 20 hours.

143. Mr Hebblethwaite himself had only joined the school on 1 September 2022. Where he described in his findings about the COSHH controls, he correctly stated that COSHH controls were managed, at the time the claimant's employment started, by the departmental risk assessment and the CLEAPSS model policies. He was satisfied that that was sufficient and he accepted that the general health and safety training in the school, the specific COSHH training and the availability of expertise in the school (which individuals were able to access) was sufficient. On that point of training, we concur. By the time that Mr Hebblethwaite reached his conclusion on the grievance, the school had been reported to the Health & Safety Executive in relation to these concerns. That organisation carried out what appears to have been a paper based enquiry. The school had then been informed by the HSE that everything was satisfactory. Mr Hebblethwaite himself referred to a no-notice site inspection but if that was connected with this report to the HSE there was a surprising lack of documentation about it.
144. We know that some of the documents that satisfied the HSE in their enquiry in December 2022 were not in place until October 2022 when they were written by the claimant. Mr Hebblethwaite says that the provision was in place prior to her joining Jack Hunt School but part of what he appears to rely on are the claimant's own product risk assessments which were not in place at the time she started. That is the practical difference between what he finds following his investigation and what we have found based on the evidence that we have got.
145. The claimant argues that the absence of those documents was contrary to the Trust's internal policy. Even if that is correct, it does not, in our view, undermine his conclusion that, overall, the Art Department was broadly compliant. Nevertheless, the question he answers is more to do with the provision at the time he is answering the question than it is to do with answering the question that has actually been asked – which was about control of COSHH. His oral evidence on this was weakened by his stated reliance on what he believed to be a clean bill of health from an audit, whereas we note that the audit did make recommendations for change and we have not seen the details of it. However, the reason he did not uphold the grievance on this point is that the HSE had given him comfort that matters were satisfactory at present, and Mr Linforth's attention as the incoming Business Manager would also have given him comfort.

In that context, the decision is not perfectly reasoned, but those are his reasons for it.

146. On Concern 2, about reasonable adjustments, he responded by listing what had been done in relation to all of the conditions that the respondent now has knowledge of and asks the claimant to have a conversation about what other specific tasks or materials will be needed and adjustments. That was the appropriate course of action at that stage. The claimant had not agreed to have that discussion. The formal invitation to do so came in the letter from Mr Barwise of 12 December 2022 but she did not engage with the respondent in a meaningful discussion at that point. So, in that respect, Mr Hebblethwaite's response was a rational and fair response to this head of the grievance.
147. On Concern 3, see RB page 810, Mr Hebblethwaite did not specifically answer the question. However, he truthfully stated what information the school has had from Medigold. It is hard to see what more the school could say in response. Medigold had provided the answer to the question about what they had said. It was not unreasonable for the claimant to think, when she was filling in the form, that she was providing information to Medigold which they would provide to the employer, although we remind ourselves that we have not seen a complete copy of the form and we do not know exactly what she was told that Medigold would do with the information she provided.
148. As formulated by Mr Hebblethwaite, Concern 4 is about why the art technician was only contracted to work 20 hours. That specific point was satisfactorily answered. The substantive complaint was more to do with the need for adjustments to support the claimant's dyslexia and that was separately addressed. However, Mr Hebblethwaite does not appear to have addressed the point about whether the respondent should record disability related sickness leave separately or why her pay was reduced to half pay in December. He had answered that in response to her original enquiry (RB page 796) and it is unlikely that he would have given any different answer in the grievance but it would have been complete and clearer for the claimant had he made reference to his earlier reply.
149. As a general comment, we might have expected some evidence of how Mr Hebblethwaite found out the information which he put in his letter rather than just the outcome of his enquiries, and his witness statement does not provide any more information about that.
150. There was no grievance meeting. The policy does not make one mandatory but it does say that it is normal. That means that Mr Hebblethwaite (and through him the first respondent's) handling of the first stage of the grievance is not beyond criticism. The appeal stage was more thorough. The appeal was raised by a document dated 20 January (RB page 822). It is 77 pages long. The complaint includes about failure to answer the point about disability related sickness absence. The second point raised was about her adjustments. She informs the trustees that:

"my GP informed me on 02.11.2022 that I have become sensitised to the hazardous COSHH fumes in the art storeroom and hazardous plaster of paris

dust in the photo studio.” (RB page 825)

151. She also refers in her appeal to being alleged to have lied, to what was (and was not) disclosed by Medigold and to her working hours.
152. There was an invitation for her to attend a grievance appeal meeting which was convened on 30 January 2023 (RB page 904). The claimant had no complaint about the timescale in which any stage of the grievance was turned around. Ms Stephens-Dunn took minutes for the meeting. The management response was presented by Mr Hepplethwaite.
153. The claimant made a covert recording of this meeting. Her lack of candour about volunteering the whole recording and her approach to curating documents generally, mean that we think that she has probably disclosed and transcribed those parts she thinks best fits her narrative, and this partial account is not something that we will rely on in the absence of other supporting evidence.
154. Her cross examination focussed on the differences between her notes and those of Ms Stephens-Dunn in two respects. Her statement at page 17, paragraph 141, lists a series of questions and statements about her request that the COSHH cupboard be moved from the art storeroom which she states took place during the grievance appeal hearing. She stated that the panel said that they did not think her request was reasonable. It is clear from the minutes and from the outcome that this was discussed and a conclusion reached although it was, in part, for further adjustments to be pursued through a return to work meeting.
155. The minutes are brief. However, the grievance appeal is not unfair merely because of that. We consider whether the panel considered the substance of her grievance. Our impression of the claimant in the hearing is that there are always points other than the focus point that she wishes to raise. She may have been managed during the meeting in order to try to keep focused on the core concerns. That again is not improper as a way to conduct proceedings to ensure there is sufficient use of time.
156. Among the things that we particularly note in the respondents’ minutes of the grievance appeal are that one of the trustees says (RB page 908):

“I have heard the very clear message from the school that they would like to engage with you Fiona. I would very much like to hear from you that you would like to engage with the school.”
157. Ms Dennis said:

“I’ve got nothing else to say.”
158. This accords with her oral evidence to us which causes us to conclude, that by the time the grievance was submitted, and certainly by the time of this meeting, she did not believe what key members of the Senior Leadership Team were telling her.
159. Although the notes were brief, they do show the main areas were discussed and the claimant was informed by Mr Linforth during the course of the meeting that

the COSHH cupboard had not been moved but it was securely locked and it was not in a work room. This led to a disagreement because the claimant said that the storeroom was a work room for her.

160. Particulars matters that the claimant cross examined Ms Stephens-Dunn about were with reference to LOD2 page 138, about the documents that were in place at the time she started. Paragraph 1245 records a trustee stated that there was recognition that she had done a very good piece of work when writing the CLEAPSS model policies. The respondent's non-verbatim minutes (which are very much a summary – see RB page 907) did not include those words of praise. The claimant was evidently upset that something that was said in the meeting that was positive had been omitted from the minutes, which shows her sensibility. She was not under investigation, the school was, and in that context the minutes are fit for purpose and not targeting her.
161. There, at LOD2 page 142 paragraph 1296 the claimant embeds a section of the respondent's minutes. Paragraph 1297 appears to embed "My covert recording of this section of the meeting:" Comparing the respondent's minutes about Mr Sadler's questions with what the claimant states are a transcript of her covert recording we see that his questions are put in more succinct terms in Ms Stephens-Dunn's notes. However this is no sufficient reason to conclude that the panel did not, in fact, consider these matters or hear what was said at the time. Indeed, her notes show, potentially, more thorough enquiries were being made that was apparent from Ms Stephens-Dunn's notes. For example, when the use of Plaster of Paris was discussed, the panel deal with the practical point that the product would not be used and that her vulnerabilities would be considered and planned for if there became a proposal to use it.
162. These matters are set out in the outcome letter (RB page 910). We particularly note that, when dealing with Concern 2, the panel thank the claimant for the work that she did updating the documentation. So, that particular discrepancy the claimant highlighted in the minutes was in fact something that was referred to in the outcome letter.
163. Overall, the grievance appeal was dealt with by a completely independent panel. The claimant had an opportunity to be involved in the meeting so far as was proportionate to the need to use time efficiently so that a conclusion was reached. She attended remotely, which would be of assistance to her. The matters that she has drawn to our attention as differences in the notes, were considered and, as far as we can see, the panel came to justifiable conclusions.
164. Putting the two stages of the grievance together, this reassures us that the claimant had a fair opportunity to put her case to her employer notwithstanding the lack of face-to-face meeting with Mr Hebblethwaite.
165. The claimant was then invited to a return to work meeting with Mr Linforth on 20 February 2023. The invite of 10 February is one of a number of occasions on which she was requested to return to work.
166. There is some evidence that the claimant is unwilling to accept the outcome of the grievance in the continued correspondence with Medigold (copied to the

respondent). In correspondence, in early February 2023 (including RB pages 917 and 922) her language is becoming increasingly intemperate. Mr Hepplethwaite replied to her on 14 February 2023 thanking her and reminding her that the grievance has concluded and that return to work plans need to be made (RB page 921).

167. The claimant replied to that in a 19-page document (RB page 922 to 940) saying that the respondents' reply about what Medigold told them was a 'cop out'. She outlining in detail eight reasonable adjustment requests covering the management of COSHH chemicals and other matters. She says she will not return to work until the reasonable adjustments are in place.
168. The respondent replies on 21 February 2023 offering a virtual meeting (RB page 942). That had been one of the matters that she said that she needed.
169. That return to work meeting was held on 22 February with Mr Linforth. He covered, in a wide-ranging interview, those matters set out in the minutes at RB page 943. It is a comprehensive meeting with someone who had not previously been involved in the process of the probationary review or managing absence and therefore was unaffected by the concern the claimant had about the past because he, himself, had only started work on 31 October 2022. He covered COSHH training, the COSHH cupboard relocation (when the claimant stated that, if it were moved from the store cupboard she would have have no respiratory issues), and respiratory sensitisers. He reassured the claimant about the use of Plaster of Paris and told her that it was not in use and that still on site was locked away in a location where she did not need to come. He assured her that if it was used in the future the relevant controls would be put in place and she would be consulted. He addressed fitness to work and future monitoring, task management and proposed a ticketing system to support her as a person with dyslexia. The claimant confirmed before us that that was a good and practical idea. He mentioned the menopause policy and discussed PPE, and an airfilter. The discussion covered all the areas which the claimant had previously said impacted on her and discussed the reasonable adjustments she had required. Practical solutions were proposed to the various matters that she had raised. She was to return to work the following day.
170. She sent a completed Workplace Reasonable Adjustments Passport that evening but was unfortunately too unwell to attend work as planned on 23 and 24 February 2023. She wrote to remind Mr Linforth that she was still invoking section 44 ERA and would return to work when the adjustments were in place (RB page 960).
171. Mr Linforth wrote on 24 February 2023 pushing back the return to work phase to start on 27 February (see RB page 958) and the claimant responded with further questions and requirements.
172. She also talked about the potential for working from home. There were some tasks that she could on an ongoing basis have carried out at home but a very limited number. Her main role was supporting art teachers in preparing rooms for lessons and checking stock and ordering supplies. So, the respondent's requirement that she work on site was necessary for her role to be effectively

carried out. They were very flexible about her working from home where that was possible.

173. The claimant wrote in similar terms to before on 26 March 2023 (RB page 964). She stated that she had taken advice from a senior solicitor specialising in discrimination and recounted what she had apparently been advised might be her compensation for discrimination. She repeated that she was not returning to work until all reasonable adjustments were made. She listed those to be:
- a. Air purifiers with HEPA and carbon filtration in place in both the staff room and art store room,
 - b. A cooling fan in place in both the staff room and store room.
 - c. The COSHH cupboard and contents (which she described as all GHS08 Sensitisers) to be totally removed from the art store room to prevent further harm.
 - d. For the respondent to record disability related sick leave separately and adjust the absence trigger points to accommodate her disabilities and individual set of circumstances.
 - e. She asked to be given work she could do at home until those adjustments were implemented.
174. She then attended COSHH training on 1 March, see RB page 668.
175. There was a meeting on 2 March 2023 to discuss the reasonable adjustments passport although she does not visit the art department on that occasion, see RB page 976. The proposal was for her line manager to be a different person to previously. The approach of the school to recording absence and to managing disability related absence that was explained in that meeting is very usual and a reasonable one. She would not be penalised for medical appointments but the respondents would continue to monitor absence. Mr Linforth was open about what remains in the COSHH cupboard, see RB page 979, saying that all chemicals had been moved to the Science Department COSHH cupboard. He told her that all that remained in the Art storeroom COSHH cupboard were inert spray cans and non-toxic brush cleaners. His oral evidence was that there were open bottles of white spirit in use in Ms Henning's cupboard but only the waste white spirit would be present in the COSHH cupboard in a sealed brown bottle awaiting safe disposal.
176. A mediation meeting planned for 3 March 2023 could not take place because of sickness absence. It took place on 6 March when there was also a site visit. Further adjustments were discussed and the claimant toured the Art Department. She was shown the storeroom.
177. Her evidence was that she was not offered PPE and used her scarf to cover her mouth when entering the storeroom, and noticed her throat was sensitised. According to the claimant, the HR representative commented because it may be that the atmosphere was dry. The HEPA air purifier had been running for 24

hours in situ.

178. Mr Linforth's evidence was that the FFP3 masks, which are for dust prevention, were on the claimant's desk but she did not use them and covered her face with a scarf and that had surprised him. He stated that she had suffered an asthma attack on the way out when she used the school exit near the swimming pool. His evidence was that he had assisted her and that she had not been carrying one of her inhalers.
179. She wrote the next day to say that she had had a rough night as a result of the attack and had been signed off for seven days with increased steroids (RB page 996).
180. We also note at RB page 1021 in the minutes of the probation review meeting that the claimant stated that the attack had happened after having to enter by the swimming pool where there was chlorine. RB page 987 are Mr Linforth's notes of the day. They support something being said about the proximity of the swimming pool and that affecting the claimant. Because there are contemporaneous document including the comments by the claimant, we accept that Mr Linforth's evidence is to be preferred. The claimant did not use available masks and the timing suggests that her reaction was probably to the swimming pool, possibly including the stress of the situation and not to the Art Department's environment.
181. The claimant emailed Mr Linforth on 6 March 2023 (RB page 993) saying that as

"I have now experienced a severe allergic reaction for the second time in less than a week whilst attending my workplace, my GP and I are absolutely confident that my workplace is still very unsafe for me, and so, I am invoking Section 44, again and therefore I should not suffer any detriment."
182. The same day Mr Linforth sent recent photographs of the COSHH cupboard and emailed the claimant (RB page 994 to 995) detailing what was there. The respondent's proposal is that a limited amount of chemicals remain in the cupboard and that a return should commence from 14 March 2023. His proposal was that the claimant would not access or open the COSHH cupboard and she would need to access stores in the storeroom but it would not be part of her job to open the COSHH cupboard itself at least pending Occupational Health review.
183. A doctor's certificate was issued on 7 March confirming the absence in March for 7 days due to Asthma exacerbation. Further emails are exchanged between the claimant and Mr Linforth in early March on workplace adjustments. Ultimately, things reached an impasse with the claimant refusing to return until the COSHH cupboard was moved, while saying that she was prepared to work from home.
184. Before us, the claimant's proposal was that the COSHH cupboard should be put into Ms Henning's store cupboard. We accept that that was a much small area, students have access to it and that meant that it was not appropriate.
185. Mr Linforth said that the COSHH cupboard was a sealed cupboard, designed so that fumes would not escape from it. The bulk of the chemicals were stored in the Chemistry Department which was in a different building and it would not be

convenient, it would disrupt the business of the department if everything was moved there, If the COSHH cupboard itself was moved to the DT Department, the hazardous materials would have to be transported further. So, we will have to consider whether moving the COSHH cupboard was a step which was reasonable for the respondent to have to take.

186. There were further requests for the claimant to return to work but her oral evidence was that, by this time in April 2023, any trust that she had, even in Mr Linforth, had been destroyed because he had not removed 100% of any items bearing the COSHH labelling and that was not a practical request. He made his 6th request that she return to work on 17 April 2023 and 7th request on 27 April 2023 when he also confirmed that a disabled parking space would be available for the claimant.
187. A further Occupational Health referral was made and they report on 2 May 2023. The Occupational Physician (RB page 1012) made recommendations for alternative roles to be offered to the claimant if that was possible. His opinion was that the claimant was unfit to work due to Long Covid and state (in answer to the question about an underlying health concern)
- “She is affected by a respiratory, psychological and a neurodiverse condition which have been fairly well controlled by medication until she contracted COVID and she was exposed to COSHH respiratory sensitisers in her workplace. She now suffers from Post Covid Syndrome which has very debilitating symptoms.”
188. It is the symptoms of Long Covid which the physician states cause her to be unfit to attend work but he also described emotional symptoms aggravated by perceived stress at work (RB page 1013). There is considerably more emphasis in this assessment on the impact on her cognitive function and Post Covid Syndrome. That is the reason why Occupational Health assess her as not fit to work. He was unable to provide a timescale for her return to fitness to work.
189. The claimant was then invited to a final probation review meeting on 11 May 2023 and warned that the termination of her employment was a possible outcome, see RB page 1016.
190. The same day, she notified ACAS of a potential claim in respect of the school and Mr Barwise.
191. The final probation meeting took place on 19 May 2023. It was conducted by Mr Hebblethwaite, with Mr Barwise, Ms Walsh, Mr Linforth and an HR representative present. The claimant joined by MSTeams. Mr Hebblethwaite’s conclusion was that the claimant had failed her extended probation. The termination of employment letter was sent on 23 May 2023 (RB page 1024). The claimant did not appeal.
192. We accept that the reasons Mr Hebblethwaite had for ending the claimant’s employment were genuinely those set out in his letter at RB page 1024. They include that the claimant had failed probation due to absences: being present only for 35 days out of 190 possible days of work. Quite a lot of that absence was due to disability related absence. Those include that the claimant had been

provided with a fan to be at her desk. He set out the reasonable adjustments that had been discussed (RB page 1025). Although he does state in his rationale there that there are no COSHH substances in Art, in fact the evidence was that there was none the storeroom that was not locked in the COSHH cupboard.

193. The claimant states that some of the absences were due to her relying on section 44 Employment Rights Act 1996 which she claimed covered the situation. However, the second Occupational Health report stated that she was, in fact, unfit for work during this period due to post-covid syndrome.
194. We think that this conclusion on the breakdown of working relationships was amply evidenced. The claimant continued to believe that Mr Barwise and Ms Byford had targeted her and that was not objectively justifiable. Mr Linforth had worked extremely hard to try to rebuild her confidence in the school leadership and had offered her a line manager with whom she did not have trust issues but those burgeoning attempts had broken down.
195. So far as performance was concerned, the claimant had not been in work to show herself capable of carrying on the role and, where she had raised dyslexia as a basis for time management problems, she accepted before us that Mr Linforth's proposal was practical and suitable as a way of supporting her with the challenges that condition caused her when carrying out her day to day tasks. Mr Hebblethwaite, in our view, reasonably concluded that the respondent had done everything they could to support her in respect of dyslexia.
196. We note the following explanation that Mr Barwise gave to Mr Hebblethwaite in the probation review meeting:

“Despite putting reasonable adjustments in place, Ms Dennis has been unsuccessful in returning to work. She is sensitive to dust, clay, varnish etc and even when stored the products are still in due(sic) during lesson times. Ms Dennis cannot be in any area they have been used. The role of Art Technician is a practical one so when tasks had been specifically created for Ms Dennis to support the time she worked from home it is not something that can be offered permanently. Practical on-site support is required for the role. The Occupational Health report concluded that Ms Denis was not able to return to her contractual duties. There is no other suitable alternative post available to Ms Dennis within the trust.”
197. He therefore recommends that the probationary period was terminated on the grounds that she had failed it, and the respondents have satisfied us that they did have evidence to reach the conclusions that were argued for by Mr Barwise.
198. As far as an alternative role is concerned, workplace trust had, on the claimant's account, completely gone. The working relationship issues went beyond relationships with Mr Barwise and Ms Byford. The way that she approached day to day interactions in her early weeks created conflict. We have in mind her response to an email from a person in accounts who told her (accurately) that she did not have authority to make a firm booking and her interactions with the person in reception. Her approach to those interactions was binary and that was also relevant for the respondents to have taken into account.

199. The respondent said there were no alternative roles available. In any event, she was unfit for work because of post-covid syndrome with no prognosis for a date by which she would be fit for work. We do not think there was anything more that the respondent should have considered in relation to alternative roles.

Conclusions

200. We now set out our conclusions on the issues, applying the law as set out above to the facts which we have found. We do not repeat all of the facts here since that would add unnecessarily to the length of the reasons, but we have them all in mind in reaching those conclusions.

Automatic unfair dismissal

201. The first head of claim is the automatic unfair dismissal and found in List of Issues paragraph 2.1. Breaking that down, the questions we need to ask are:
- a. Did the claimant believe there were circumstances of serious and imminent danger?
 - b. Was that belief objectively reasonable?
 - c. Could the claimant reasonably have been expected to avert the dangers?
202. We accept that from 12 December 2022 (when she first relied upon this section) onwards (see para.138 above) the claimant genuinely believed that the environment in her workplace amounted to circumstances of serious and imminent danger. Not only does she consistently set out her reliance upon s.44 Employment Rights Act 1996, but she comes across in her emails at the time as genuinely anxious about the risk to her if she returns to work.
203. We go on to consider whether – at the relevant time - the claimant reasonably believed that there was serious and imminent danger that she could not reasonably have been expected to avert. If we accept that, we need to consider whether that was why she refused to return to the workplace and whether that was the reason, or principal reason, for the dismissal. The knowledge available to the claimant about the steps taken to improve the environment developed over time, in particular when Mr Linforth was discussing a return to work with her. The most relevant time is from February 2023 onwards and the reasonableness of her belief must be viewed as at the time she eventually refused to return to work once all the adjustments were in place or arranged and there had been the site visit. It is then that her case is referred for a final Probation Review meeting at which the decision was taken to dismiss her – including on grounds of continued absence. We focus on the reasonableness of her belief when she declined to return to work despite all the adjustments made by her employer.
204. This complaint fails because we do not consider that the claimant's belief that there was serious and imminent danger was a reasonable one for her to have on the evidence before us. At the relevant time, the chemicals in the department that would be in her working environment, were extremely limited in number because a large amount of stock had been removed from the department. The

respondent's approach to control of those remaining chemicals at the time she sought to reply on this provision meant that they were being stored appropriately and safely – whatever the situation may have been previously. In any event, at its height, the claimant has shown that exposure to respiratory sensitisers had the potential to aggravate some of her health conditions. On the facts of this case, that does not meet the test of serious and imminent danger.

205. Mr Linforth explained in detail all the steps that the respondent had taken to clean the storeroom, to reduce to a minimum the chemicals in the department and ordered suitable PPE. He was transparent with the claimant about the contents of the COSHH cupboard. The storeroom had suitable ventilation and an air purifier had been purchased. COSHH training was provided. We do not overlook that the claimant argues that a potentially serious asthma attack would be triggered by exposure to chemicals in the environment of the Art Department. We are well aware that, as a general proposition, asthma attacks have the potential to be fatal. However, we have rejected the claimant's account of the visit to the Art Department on 6 March 2023 and were not satisfied that her asthma attack on that day was linked to the environment in the department. She appears to have chosen not to wear a mask during that visit. By that time, the claimant was unable to accept anything that the respondents and Mr Linforth (on behalf of the first respondent) told her and that was not a reasonable stance for her to have. Her continued belief that the workplace was dangerous for her was not a reasonable belief for her to hold.
206. Furthermore, she was not being asked to work in the close proximity with the COSHH designated chemicals. She was being asked to work elsewhere in the department and therefore could have avoided any risk by returning to the alternative location suggested as an attempt to bring her back to work. She does not make out the necessary precondition about the reason for her absence and the complaint of automatic unfair dismissal contrary to s.100 Employment Rights Act 1996 fails.

Direct disability discrimination

207. So far as the direct disability discrimination complaint is concerned (List of Issues 5.1 to 5.4), some of these allegations are not made out on their facts.
208. List of Issues 5.1 lists 8 alleged unlawful acts but the claimant has not shown as a matter of fact that the respondent acted as alleged and the core facts are only made out to a limited extent.
209. LOI 5.1.1, 5.1.2, 5.1.3, 5.1.4 & 5.1.4.: The first allegation is that the first respondent required the claimant to work in close proximity to dangerous chemicals. She was required at the start of her employment to work with chemicals that were potentially hazardous to health if they were not properly stored in accordance with COSHH regulations – which we do not consider reaches the heights of the alleged conduct. At the start of her employment there were ways in which the department needed to improve its compliance with its

internal policies. So, considering LOI 5.1.3, there were ways in which the storage and management of waste white spirit may well have been contrary to COSHH guidelines because we have accepted that waste white spirit was not stored in a sealed brown bottle until the claimant – on her initiative – obtained instruction in COSHH from the technician in the chemistry department and practices were changed. We have not been taken specifically to those guidelines but it seems probable that they do not sanction storing waste white spirit in an open container so LOI 5.1.5 is made out to a limited extent and at a specific time period prior at the latest to the claimant's absence which began in November 2022. Similarly with LOI 5.1.4, the allegation about inadequate PPE. The claimant's evidence (which the witnesses who gave live evidence for the respondents did not directly contradict) was that the dust masks that were available for use with (for example) Plaster of Paris were unsanitary and unusable.

210. We reject LOI 5.1.2 because we have found that there was adequate ventilation in the storeroom.
211. However, first it is relevant that this state of affairs did change – in part because of the efforts of the claimant. By the time the claimant's grievance was considered by Mr Hepplethwaite in early 2023 and when Mr Linforth was trying to negotiate her return to work from late February 2023 onwards, there was no requirement that she work in close proximity to dangerous chemicals, there was adequate PPE, the respondent was following its own policies and the COSHH guidelines – so far as the evidence before us shows.
212. Secondly, the core part of the claimant's complaint in relation to allegations LOI 5.1.1 to 5.1.5 is that, factually, this is something that was done in the Art Department as a whole. So, anybody who entered the storeroom would have also been required to work alongside chemicals that had been stored in the same way and it cannot be said that it is less favourable treatment of the claimant or that it was done to her on grounds of her disability or disabilities. As direct disability discrimination complaint, these 5 allegations are unarguable.
213. So far as LOI 5.1.6 is concerned, the claimant was not subjected to disciplinary investigation and procedures.
214. As far as LOI 5.1.7 is concerned, overall, the informal grievance and the formal grievance, if you take both stages together, were dealt with fairly. We had some criticisms of Mr Hepplethwaite's outcome which was not transparently reasoned. He summarised the complaints which meant some nuance was overlooked but responded in a very quick time. There was no grievance meeting at the first stage when the policy provides that normally this would happen. However, a meeting does not take place in all circumstances and the Stage 2 grievance appeal to the trustees was comprehensive. As a whole, this allegation is not made out. That leaves the dismissal (LOI 5.1.8).
215. A comparator for a direct discrimination complaint based on the dismissal would be someone who had as many absences as the claimant, who was unable to return to work, who had been only present in work for 35 days out of 190 days during an extended probationary period, who had the same workplace relationship difficulties and performance difficulties. We see nothing from which

to infer that such a person who did not share the claimant's disabilities would have been treated in any other way than the claimant was. The likelihood is that they would have failed their probation.

216. The direct disability discrimination complaint fails.

Discrimination for a reason arising in consequence of disability

217. We turn to the discrimination arising from disability complaint under s.15 Equality Act 2010. The first allegation rests on the probation review meeting (LOI 6.1.1.). As alleged, she was assessed as below expectations in that probation review meeting on 13 October 2022.
218. The respondent did not know at the time of that probation review meeting that the claimant had dyslexia. A summary of our findings about the dates of knowledge of the particular conditions which are accepted to mean that the claimant is disabled are set out in para.90 above. Factors which were taken into account by Mr Barwise in his assessment which concern efficiency, taking too long on tasks and some of the time management points, are probably linked in some way to dyslexia. That was something the respondents were reasonably ignorant of as at 13 October 2022.
219. We are conscious that we do not have a complete diagnosis in respect of the claimant's dyslexia. It is one of the documents that have been produced only in part. She did not link the problem that they had identified to dyslexia when discussing it in the probation review meeting. One of the reasons she was taking too long was that she was taking on additional tasks which she did not need to carry out. So, that particular factor which led to her being assessed as below expectations was connected only in part with something to do with her disability but it was a disability that the respondents were unaware of at the time.
220. Part of the reason for the below expectations assessment were absences. Some of the absences as at that date had combined causes. But we accept that, overall, the respondent took into account absences which were related to disabilities. Migraines were not clearly disability related. There is an element in the claimant's reasoning which argues that it is disability related because she alleges that they are a consequence of stress. However, she had had 10 days' authorised sickness absence by the time of her second probation review which is two weeks' out of a possible 14 weeks' employment. That is quite a lot of absence in that period of time. The reasonable needs of the organisation for managing staff absence have to be balanced with supporting employees. The view of the panel – in particular of both non-legal members – is that that level of absence does need proactive management. It is not reasonable to expect the respondents to ignore all disability related sickness absence.
221. The workplace relationship concerns were entirely legitimate ones for Mr Barwise to have because they were based upon the claimant's poor judgment of copying the informal grievance to more than one person which (given the way she framed her complaint) would exacerbate tensions in the department. That was not related to disability in any way.

222. The legitimate aims relied on by the respondent are both that of managing staff absence and performance and that of managing a new starter in their probationary period. In principle, those are legitimate aims.
223. Marking someone as below expectation in their second probationary review is capable of achieving the aim of managing a new starter. We note that Mr Barwise also extended the probationary period at that point. He did not immediately terminate employment, he referred the claimant to Occupational Health to investigate the recently identified disabilities and, as we have noted, in respect of every concern he proposed solutions. It is that balanced approach which causes the panel to be satisfied that marking the claimant as below expectations (when that was amply evidenced) when combined with the solutions that he proposed in order to help her achieve a satisfactory performance and pass her probation was a proportionate means of achieving the first respondent's aim.
224. The next allegation of s.15 discrimination arising from disability is a failure to pay her full sick pay in December 2022: LOI 6.1.2. The claimant was not paid full pay in December 2022 and that was because of sickness absences that are certified by the GP to be related to anxiety and depression. The sickness absences were therefore disability related. However, we consider that that was a proportionate means of achieving the legitimate aim of managing someone in their probationary period. We do not think it is reasonable that someone should have unlimited full pay when they are not fit to work during their probationary period, even if those absences are disability related. The relevant circumstances when balancing the impact on the claimant against the needs of the business include the sick pay scheme which, considering the claimant was in her probation, was generous compared with some other industries. She must have already had a month of full sick pay from May 2022 before this reduction kicked into place and that is relevant to the impact upon her.
225. The description in Mr Hebblethwaite's letter is that she should be reduced to half pay plus SSP although it is not entirely clear how the calculation was from the details in the payslips. We think that it is reasonable and proportionate for the respondent to adhere to a standard policy in respect of sick pay in the interests of equality and parity with other employees in this instance. They did adjust it when the claimant had put in a formal grievance which put into question whether they were reasonable adjustments that needed to be made to assist her to come back to work. GOT TO HERE
226. List of issues 6.1.3 is not made out as a matter of fact because the claimant was not subjected to disciplinary investigations and procedures.
227. Neither are the core facts of the allegation in List of Issues 6.1.4 made out because the respondent did deal with the claimant's grievance fairly. The claimant has not shown the core facts underpinning the allegations in List of Issues 6.1.3 or 6.1.4.
228. LOI 6.1.5 is dismissal. So far as dismissal is concerned, part of the reason for dismissal was ill health absence – the 'something' relied on by the claimant in LOI 6.2.1. Her absences – and continued absence - were a major factor in the reasons why she was dismissed. At the time of dismissal, she was certified by

the Occupational Health Physician as unfit to work because of Long Covid Syndrome. Among the absences considered by Mr Hebblethwaite were those for which the claimant's explanation was that she had decided it was necessary to remove herself from the work environment in order to protect her health. She also alleged at the time (and before us) that the respondents were in breach of the duty to make reasonable adjustments and so she could not return to work until all reasonable adjustments were made. We read across into our reasoning on the s.15 complaint, our conclusions on the reasonable adjustments complaint.

229. The claimant explained in part of one of her documents (LOD2 page 145, paragraph 1360 – her comments on the grievance appeal) that her position on this is that you have a duty to make reasonable adjustments simply when an employee asks for them at any stage of their employment and not just on preplacement health questionnaire. She said that, if you fail to acknowledge the need for an adjustment at a later stage or refuse a request, that is blatant discrimination. Applying that test, she believed that the first respondent had failed in their duty to make reasonable adjustments for her.
230. The claimant is a litigant in person, and we do not expect her to have the same level of understanding of the law that a lawyer would have. However, this suggests that her understanding is that, if any request for adjustments is refused that is discrimination. That places a far more onerous burden on the employer than does the Equality Act 2010. She expected almost strict liability on the part of the first respondent and viewed it as discrimination when they did not make all of the changes that she regarded as necessary. There is a duty for the employer to consider a request for reasonable adjustments and see what is reasonable and possible, and what is practicable taking into account other competing aims and responsibilities. It is usual, in our experience, that this is done by dialogue between the two parties. The respondent was trying to get that dialogue to happen and from December 2022 onwards, for the most part, the claimant did not want, or felt unable, to engage with the respondent.
231. The role of the three person tribunal and the purpose of including non-legal members, includes to assess the facts that we have found against the legal tests using our experience of workplace norms to see what this respondent did was proportionate and justified; whether the adjustments requested were ones that it was reasonable for the first respondent to have to make balancing their needs, against the evidence of the disadvantage experienced by the claimant.
232. We have considerable sympathy for the claimant. Her health problems are evident from the impact on her presentation of her claim during the hearing. It is a very sad situation. But there is a different perspective to her own and that is that the respondent in general, once they could have reasonably could have known that the claimant's conditions had potential impacts on her in the workplace, treated her with sympathy, professionalism, respect and worked hard to meet her demands when they could reasonably do so. This was at a time when she was still in her probationary period. We accept their evidence that they set out to treat all their staff in a supportive manner; the Trustee Board had created a document which emphasised that this was their aim. In managing the claimant, they set out to put those ideals into practice.

233. The respondent was not in breach of their duty to make reasonable adjustments when they decided to dismiss her as we will explain in more detail when we come on to that particular complaint. We have to view their needs objectively and balance that against the impact on the claimant of the decision to dismiss in deciding whether it was justified. On the one hand, the claimant loses a great deal because she loses her employment. On the other hand the school needed its Art Technician to be at work. The claimant was not fit for work and she was not expected to be fit for work for the foreseeable future. The respondent had shown understanding and worked hard to address as many of her concerns as they reasonably could over a period of months. There were other non-disability related concerns about her performance and where concerns about her performance were disability related (those concerning time management and productivity) practical solutions had been proposed which – had she been able to return to work – had a real prospect of helping. Her attendance was really very low for someone in her first year of employment. In the absence of an alternative role, given her frequently stated antipathy towards the school management, the decision to dismiss was a proportionate means of achieving the aims of managing attendance and managing those in their probation.

Breach of the duty to make reasonable adjustments

234. The PCP at LOI 7.2.1 is not made out precisely in the terms alleged but the respondent did require the claimant to work in close proximity to chemicals which were designated hazardous to health if not stored and managed appropriately at the start of her employment. There is evidence that, at the start of her employment, some hazardous chemicals were not stored or handled in the way that they should have been. However, in part due to her efforts, that situation improved during the course of her employment.
235. List of issues 7.2.2 and 7.2.3 are not made out. There was adequate ventilation in the storeroom.
236. List of Issues 7.2.4 is not made out. There was adequate PPE for her needs. The evidence about this appeared to cover two periods of time: the early part of her employment and when Mr Linforth was trying to arrange the claimant's return to work.
237. She did not specifically request SSP masks to be bought prior to, for example, clearing the classroom where Plaster of Paris had been used in September 2022. Her evidence was that the SSP masks were available but that they were not sanitary because of where they were stored. Her oral evidence was that they were not respiratory masks although that is not exactly how that is described in the documentary evidence. We think that looking for dust masks is something that the respondent can expect employees to proactively be proactive about. If there are masks available but those are unusable because they have expired or are unsanitary then, unless the claimant states that they need to be repurchased, the respondent cannot reasonably be expected to know that they need repurchasing or that the claimant will be disadvantaged because the stock of masks is unusable. She complains that she was not advised to wear them, see paragraph 115 of her statement, but at this time (2022) everyone was used to wearing masks in a way that was not the case historically – although for other

reasons than avoiding exposure to dust.

238. In terms of the later period of time, in anticipation of her return to work and when discussing the implementation of the adjustments the claimant had requested, the first respondent bought two boxes of suitable masks. One was left on the claimant's desk and one kept in Mr Linforth's office so that, if someone else used the masks designed for her use or if they ran out, there would be a separate source. Overall, the evidence before does not support a finding that the claimant was required to work without adequate PPE/RPE.
239. We set the fifth alleged PCP to one side for the moment because there the alleged disadvantage is said to relate to the claimant's dyslexia and dyscalculia (among other conditions) whereas the first four are concerned with her working environment and alleged exposure to chemicals within the COSHH regulations.
240. What the claimant has to show under LOI 7.3 is that such PCPs as there were caused her health conditions to be severely exacerbated. That is the substantial disadvantage alleged. We are not satisfied on that alleged causation for reasons that we have already explained. The claimant herself, see RB page 1020, in the probationary review meeting said that COSHH has done the damage as well as getting Covid (our emphasis). The medical evidence that states that there is a connection is the GP's note at RB page 243 that states: "Dust and fumes in workplace have worsened these issues". We think it is problematic to base causation in the way that is required under section 20 Equality Act 2010 on that sentence. That is because the GP only had available the claimant's explanation about which chemicals were present and how she was exposed to them. Our finding about the extent to which she was exposed is much more limited than her own account, and it is reasonable to assume that the GP was basing their opinion to the extent that they are qualified to make that assessment, on the claimant's account of a state of affairs which was not as dire as she said.
241. Similarly the Occupational Health Physician's statement (see para.187 above) was based on the claimant's self-reported account of the extent of exposure and lists two causes jointly – exposure to respiratory sensitisers and Covid. We do not have a complete medical history, in particular about the management of the claimant's asthma. The incomplete evidence and possible alternate causes of the exacerbation of the claimant's asthma combined with the vague evidence about what she was exposed to and when means that, to the extent that the claimant has shown that she was required as part of her job to work in an environment where she was exposed to chemicals which are designated Hazardous to Health, we are not satisfied that it was that which caused her health conditions to be exacerbated – let alone which caused the severe exacerbation she describes.
242. For the above reasons we are not satisfied that the duty to make reasonable adjustments arose in relation to the workplace environment, the handling of COSHH and provision of PPE (LOI 7.2.1 to 7.2.4).
243. If we are wrong about that, at the start of employment the respondent could not reasonably have been expected to know that the claimant was put to that substantial disadvantage relied on. They did know from the start of her

employment that she had asthma. However, she had informed her prospective employer that she did not consider herself to have a disability and Medigold, who carried out the pre-placement questions, told the Trust that there was no health concerns that they regarded as likely to impact the claimant in her work or in the workplace.

244. We have said that the way the Art Department was organised at the start of her employment was open to criticism. Our role is not to assess whether in all respects the school met their Health and Safety Policy, the Health and Safety at Work Act or secondary legislation. We are assessing whether at the start of her employment, or at key times later, they ought reasonably to have known of the relevant health conditions and ought reasonably to have known that the claimant would be put at a substantial risk of exacerbation of her health because they required specific things of her, and we are not satisfied of that.
245. The claimant argues that there should have been an individual risk assessment. At the start of her employment, the first respondent was entitled to rely on the Medigold opinion following the questionnaire completed by the new starter. It is the purpose of those questions to elucidate the impact on the new employee's health of the role and whether any adjustments are needed. Medigold had an obligation of confidentiality to the claimant and made the assessment that no adjustments were needed based upon their reading of the information she gave them. She has not been transparent about everything she told them and which they presumably based that opinion on. She has been selective in these proceedings with what she has disclosed of the answers she provided to Medigold. She has provided more information about that within the litigation than she provided to the Trust in November 2022 after they asked what conditions she had disclosed. She only disclosed asthma and a milk allergy directly to the Trust in her application. Overall, there was nothing known to the first respondent that ought reasonably to have caused them to think more enquiries should be made at the start of employment.
246. We have some concerns that some warning signs might have led some employers to make further enquiries from 20 July onwards when the GP referred to an allergic disorder, and it might be argued that the respondent could have done more (or acted more quickly) from that point. However in the return to work meeting on 20 July (the last day of the summer term), the claimant said her allergies were under control and that she was fit to resume her duties. She was certified fit to work in September and October. She was working predominantly at home because of the grievance investigation. Her email where she asks to work in the Art Department would have contributed to the impression of the respondent that that was not a hazardous environment for her. If, as she says within this litigation, she was put at risk of severe exacerbation of her health conditions that is at odds with the way she presented herself to the employer. Furthermore, Mr Barwise obtained the claimant's consent at that meeting for an Occupational Health referral which was an appropriate step.
247. Clear information was provided in the GPs note of 2 November where the GP sets out their support for reasonable adjustments for a range of issues. By then the Trust had referred the claimant for an Occupational Health assessment which happened on 7 November 2022. Some employers might have acted more

quickly but, until 27 November, the respondent was investigating the informal grievance about the line manager relationship problems. Once that informal grievance was concluded, the first respondent was either taking action or was trying to take action to discuss what was practicable by way of reasonable adjustments as recommended by the Occupational Health therapist but the claimant was not engaging with them.

248. The claimant had some responsibility to be proactive about things that she needed and the Trust was reasonably entitled to rely upon the absence of any request as grounds to think that there is not a substantial disadvantage that they need to make an adjustment for. Individuals with disabilities know their own condition and an employer should not be expected to know the nuances about how every condition impacts an individual because things are different for different people. They had a lot of people in the school with asthma. The claimant was not the only person in that environment. It is probable that at the point she started work that there the working environment was not as dust-free and fume -free as it was possible for it to be. Whether, had been so, it would have been a good enough environment for her is uncertain. During her employment things were moved from an environment where one was not as clean as it could be to one which was.
249. What the claimant was seeking by way of reasonable adjustment went beyond what she has argued for in this claim. We compare LOI 7.5.1. to 7.5.5. with the list of adjustments she stipulated to be necessary before she could return to work. Among those were a requirement that the COSHH cupboard be relocated or that all chemicals which carried the COSHH designation should be removed from the Art Department COSHH cupboard and located elsewhere.
250. We do not think that it was reasonable for the first respondent to have to move the COSHH cupboard to Ms Henning's store cupboard – which was the claimant's suggestion. That was smaller and more confined and students had access to it during their lessons. It was not practical for a teacher to have to go to the store cupboard of another teacher or to another department to locate materials for their lessons. It was disproportionate given the minimal risk to the claimant shown by the evidence before us. The claimant was not obliged to touch the cupboard or have to access it. She could wear appropriate masks which, contrary to her evidence, were available for her.
251. Neither was it reasonable, in our view, for the respondent to remove from the department such chemicals as remained in the COSHH cupboard. It was a suitable place to store them and, if those products which were routinely used in Art classes, were still to be used in Art classes, then storing them in a different department would not eradicate the exposure to them of anyone working in the Art Department. The claimant expressly said that she was not contending, for example, that Art students should have to stop using White Spirit in Art classes. The inconvenience of storing materials elsewhere would not be justified by removing them from the claimant's workplace for storage when they would still be in use from time to time.
252. The fifth alleged PCP is argued to disadvantage the claimant in relation to dyslexia, dyscalculia, Post-Covid Syndrome, anxiety and depressive disorder

(LOI 7.2.5.). However, the immediate disadvantage from large volumes of written information is said to be caused by the effects of dyslexia. This, the claimant argues, caused stress which was difficult to deal with as a person with anxiety and depressive disorder and, when she had developed Post-Covid Syndrome, cognitive challenges associated with that would compound the effects of dyslexia.

253. The first question is whether the claimant has shown that there was such a requirement. She argued that there was a requirement for her to process large volumes of written information such as documents and correspondence. She did not raise problems caused by dyslexia until the first Occupational Health report on 14 November. It is true that she had complained about the quantity of documentation given her by her line manager but she did not say that this was a problem for her because she had dyslexia. She had disclosed “mild dyslexia” to Medigold in the pre-placement questionnaire but not directly to the Trust. The respondent could not reasonably have known about that condition until they received the Occupational Health report dated 14 November 2022.
254. From the date of knowledge, Mr Linforth attempted a return to work programme, addressed all of the suggested adjustments that she contends for in list of issue 7.5.6, 7.5.7 and 7.5.8 in practical terms. Those were read aloud software, more time to complete work and reducing her workload. We are satisfied that there was no breach of a duty to make reasonable adjustments in respect of supporting the claimant’s dyslexia or other cognitive difficulties impacted by the way work was presented or its volume. Even if the claimant could demonstrate that she was required to process large volumes of written information specifically, she has not shown that the respondent knew or ought to have known before 14 November 2022 that she was put a substantial disadvantage and after that date they took all steps they reasonably could take to engage with the claimant and to put in place the adjustments she contends for. In fact, the evidence is more that the respondent had a general concern about whether the claimant was managing time well than it is that there was a preponderance of information presented in a written format.

Unauthorised deduction from wages

255. That leaves the unauthorised deduction from wages claim. This should have been presented within three months of the date on which the wages were paid from which the deduction was made. The complaint is about the reduction of the claimant’s pay to half pay in December 2022. She was paid full pay thereafter as an adjustment because the respondent was investigating a grievance which was about the causes of her sickness absence.
256. It appears from the payslip that the pay date was 22 December; that is the pay date on the payslip although the bank transfer may have been later in the month. In any event, by s.23 Employment Rights Act 1996, a claim should have been presented to the Employment Tribunal (or at least contact should have been made to ACAS) by the end of March 2023. In fact the claimant contacted ACAS on 11 May 2023 (to conciliate with the first respondent who is the respondent to this particular complaint). Therefore the claimant does not benefit from any extension of time due to early conciliation because the primary time limit for the

unauthorised deduction from wages complaint had already expired. It was presented on 3 August 2023 and was therefore just over four months late.

257. The Tribunal may not consider a complaint of unauthorised deduction from wages presented more than three months after the date of the payment from which the deduction was made unless it was not reasonably practical to present the claim in that time. We do not consider the fact that the claimant was pursuing an internal grievance to be a sufficient reason that means it was not reasonably practicable for her to present that claim. She had access to legal advice by way of union advice at that time.
258. In any event, so far as we can see, the respondents have paid the claimant in accordance with the contract. There is, as we have explained, some discrepancy between the way that that is articulated in Mr Hebblethwaite's letter notifying her of what she would be paid (that she has had 26 days' sick pay at full pay) and the contract itself (which states that she is entitled to one month's full pay). We think it is probable that the claimant has not lost money compared with the contractual entitlement in any event. But the reason we are dismissing this claim is because we do not have jurisdiction to consider it because it should have been presented within three months of the date from which the deduction was made. The claimant does appear to accept that she was paid in accordance with the contract and that was her oral evidence to us.

Approved by:

Employment Judge George

5 March 2026

JUDGMENT SENT TO THE PARTIES ON
6 March 2026

FOR THE TRIBUNAL OFFICE