



THE EMPLOYMENT TRIBUNAL

SITTING AT:

LONDON SOUTH

BEFORE:

EMPLOYMENT JUDGE ANDREWS

MEMBERS:

**Mr M Cann
Ms J Jerram**

BETWEEN:

Mr N Bola

Claimant

and

The Kemnal Academies Trust

Respondent

ON:

**10 November 2025 – 5 December 2025
(excl 3 & 4 December)**

**8-10 December 2025 and
13 & 14 January 2026 in chambers**

Appearances:

For the Claimant:

In person

For the Respondent:

Mr C Crow, Counsel

LIABILITY JUDGMENT

The unanimous decision of the Tribunal is that:

- 1) The complaint of unfair dismissal fails and is dismissed.
- 2) The following complaints of disability discrimination succeed:
 - a) the suggestion on 6 May 2021 that the claimant should meet with Ms Vellai and Mr Narain was a breach of the duty to make reasonable adjustments;
 - b) the failure to notify the claimant of changes to his class due on 7 May 2021 was a breach of the duty to make reasonable adjustments and arose from his disability;

- c) the inaccurate comment on 14 May 2021 regarding the claimant's marking was a breach of the duty to make reasonable adjustments and harassment; and
 - d) sending an email to the claimant from a generic email address on 22 November 2021 was a breach of the duty to make reasonable adjustments and arose from his disability.
- 3) The remaining complaints of disability discrimination fail and are dismissed.
- 4) Remedy will be considered at a hearing on **23 June 2026**. Directions for that hearing and further details appear below.

REASONS

1. By a claim form submitted on 28 February 2022, the claimant says that he has been unfairly dismissed and subjected to various types of disability discrimination. The respondent says that the dismissal was by reason of the claimant's capability and was fair. It accepts that the claimant was disabled at the relevant times by reason of ADHD, autistic spectrum disorder, dyspraxia and anxiety but denies they had knowledge of his ADHD until 21 January 2021 and say that they had no knowledge of his other disabilities until after his dismissal. In any event, they deny that he was discriminated against.
2. A number of adjustments to the Tribunal's usual process to ensure, as far as reasonably possible, the claimant's effective participation were agreed and set out in earlier case management orders. These were all fully implemented unless the claimant said they were no longer necessary. In particular, I intervened more than would be usual to bring the claimant back on topic and reformulate Mr Crow's questions (and sometimes the claimant's answers) when helpful. Despite my best efforts this was not always completely successful. As with all witnesses sometimes a long answer is simply giving necessary context to an eventual answer and nothing to do with any disability. It is not always easy to determine which is which.
3. In addition, additional adjustments were made during the course of the hearing e.g. the claimant was assisted by both Ms Sinclair and Mr Yeo, solicitors for the respondent, in finding pages in the very large paper bundle and Mr Crow setting out in advance for the claimant an indicative timetable of what topics he would be covering in cross-examination on which day. We are grateful to the respondent for the flexibility shown in these respects.
4. The claimant did request that his own notes of his cross examination of the respondent's witnesses be displayed on the large screen in the Tribunal room that was being used to record via CVP. This was refused as it would be technically difficult to achieve and he had his own laptop upon which he could view the document. He also asked to refer when cross-examining to a separate bundle he had prepared. Even though it was a clean copy and was a file of pages extracted from the main bundle, we took the view that this would cause too much of an interruption to the proceedings if he was working

from a different version of the documents. In the event, whilst cross-examining the claimant was able to navigate his way around the main bundle without apparent difficulty

5. The panel are grateful to both parties for the professional and civil way in which they engaged with the hearing process and the adjustments. This played a large part in the hearing concluding within the agreed timetable despite a few bumps along the way. We also wish in particular to compliment Ms Sinclair both for her personal efforts to work with the claimant during preliminary stages of this matter and for the way in which it was prepared for final hearing.

List of Issues (LOI)

6. A copy of the final agreed list of issues is appended to this judgment and is cross-referenced throughout by issue number (albeit the internal numbering of the document is at times incorrect). The issues relating to the withdrawn claim against the NEU are struck through.
7. On occasion the narrative in the LOI was not particularly clear and when necessary we have referred back to the claimant's amended particulars of claim in order to better understand the claim. As is often the way the scope of the evidence we heard covered much wider ground than that which was strictly required by the LOI. We reminded ourselves during our deliberations – and reminded the parties during the hearing – that it is only the issues in the pleaded claim as described in the LOI that we are deciding.

Evidence & submissions

8. The claimant gave evidence first over 10 days. It is clear from his own evidence, much of his correspondence at the time of relevant events, contemporaneous concerns expressed by colleagues and medical reports that the claimant had poor mental health throughout most of the period which we have considered (in addition to his ADHD). He appeared to be much better by the time of this Hearing, although not fully recovered, and his evidence certainly appeared to be genuine and heartfelt. In these circumstances we do not find the claimant lacks credibility as the respondent invites us to do (that having a pejorative tone) but rather that because of his mental health issues his perception of events at the time and his recollection of events now is not always reliable.
9. We also heard from Ms A Porter, the claimant's ADHD coach.
10. For the respondent we heard from:
 - a. Ms H Gascoige, Executive Head teacher of the school;
 - b. Mr C Cavanagh, Director of Education;
 - c. Mr G Davies, Director of Assessment;
 - d. Mr S Rose, former HR Director;
 - e. Dr K Roberts, CEO;
 - f. Ms E Thomas, former Trustee;

- g. Ms L Vellai, former Assistant Head Teacher of the school;
- h. Ms E Harrison, Deputy CEO ;

and, the claimant having confirmed that he had no questions for the witness, we also read the statement of Ms S Jacobs, Secondary Director.

11. We had an agreed bundle of documents before us that comprised a total of 5,028 pages. A small number of additional documents were also accepted for the reasons given at the time from both parties during the course of the hearing. In addition to the written documents we also watched a video recording of the stage 3 hearing that the claimant covertly recorded. It was of limited assistance both because it was recorded by the claimant's laptop facing only towards him and also because the recording had clearly been manipulated in places (e.g. sections speeded up, comments superimposed). It did however give us a flavour of the way in which the hearing was conducted.
12. There were references at times in both the documents and oral evidence to the fact of without prejudice discussions taking place between the parties in the period prior to his dismissal. We were careful to only refer to the fact of those discussions rather than the content of them. Inadvertently the claimant did on occasion referred to or hint at the content of those discussions and any such disclosure has not formed part of our deliberations.
13. Both parties made helpful oral and written submissions on the conclusion of the evidence.

Relevant Law

14. Unfair dismissal: The dismissal was admitted by the respondent and accordingly it is for the respondent to establish that the reason for the dismissal was a potentially fair one as required by section 98(1) and (2) of the Employment Rights Act 1996 ('the 1996 Act'). Those potentially fair reasons include capability, the reason relied upon by the respondent, which is to be assessed by reference to skill, aptitude, health or any other physical or mental quality (section 98(2)(a) and (3)(a)).
15. If the respondent establishes a potentially fair reason then it is for the Tribunal to determine whether the dismissal was fair in all the circumstances (including the size and administrative resources of the respondent business) having regard to equity and the substantial merits of the case (section 98(4)). In applying this test, the burden of proof is neutral.
16. In considering whether the respondent has acted reasonably in treating the claimant's capability as sufficient reason for dismissing him the Tribunal looks to whether the respondent's decision fell within the band of reasonable responses to the claimant's capability which a reasonable employer could adopt considering all the circumstances, both substantive and procedural.
17. In coming to this decision the Tribunal must not substitute its own view for that of the respondent.

18. In considering capability dismissals arising from long term sickness absence, guidance from case law can be distilled into three key principles:
 - a. each case is to be judged according to its own specific circumstances but in cases concerning long term absences the issue often amounts to whether the employer can be expected to wait any longer for the situation to improve;
 - b. the employer should consult with the employee before making its decision; and
 - c. the employer should take steps to discover the true medical position however the decision whether to dismiss is managerial not medical.
19. Underpinning all these factors is that a reasonable procedure should be followed by the respondent. If the employer has its own attendance policy, it will be expected to adhere to it although inconsequential breaches will not necessarily be determinative. The Tribunal's task is to consider the fairness of the whole of the process.
20. The fact that an employee's incapacity arises from a disability for the purposes of the Equality Act 2010 ('the 2010 Act') does not mean that a dismissal for a reason related to this must be unfair although consideration will have to be given to whether any adjustments to the process are appropriate. However a dismissal which has been found to be discriminatory under section 15 of the 2010 Act would also constitute an unfair dismissal.
21. Disability discrimination
22. Discrimination arising from disability: section 15 of the 2010 Act states:
 - (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.
23. 'Unfavourable treatment' is not defined in the Act, although the Equality and Human Rights Commission's Code of Practice on Employment 2011 states that it means that the disabled person must have been put at a disadvantage. The meaning of 'unfavourable' was considered in Trustees of Swansea University Pension & Assurance Scheme & anor v Williams ([2015] IRLR 885) and described as having the sense of placing a hurdle in front of, or creating a particular difficulty for or disadvantaging a person.
24. In Pnaiser v NHS England and anor ([2016] IRLR 170) the EAT summarised the correct approach to these claims as:
 - (a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
 - (b) The tribunal must determine what caused the impugned treatment, or what was the

reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act ..., the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) ... However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(i) ... it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of 'something arising in consequence of the claimant's disability'. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.'

25. The EAT in *Yorke v Glaxosmithkline* (UKEAT/0235/20/BA) has confirmed that where an employee has been dismissed because of absences resulting from a disability:

'48...It is unlikely that justification can be made out if there was a reasonable adjustment that would have permitted the employee to remain in employment, such as being moved to an alternative role.'

26. In *MacCulloch v ICI* ([2008] IRLR 846) four legal principles were set out with regard to determining justification (i.e. was the treatment a proportionate means of achieving a legitimate aim) of discrimination arising from disability (approved by the Court of Appeal in *Lockwood v DWP* ([2013] EWCA Civ 1195):

'(1) The burden of proof is on the respondent to establish justification: see *Starmer v British Airways* [2005] IRLR 862 at [31].

(2) The classic test was set out in *Bilka-Kaufhaus GmbH v Weber Von Hartz* (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need ... are appropriate with a view to achieving the objectives pursued and are necessary to that end" (paragraph 36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to

“necessary” means “reasonably necessary”: see *Rainey v Greater Glasgow Health Board (HL)* [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31.

(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it (*Hardy & Hansons plc v Lax* [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], per Thomas LJ at [54]–[55], and per Gage LJ at [60]).

(4) It is for the ET to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no “range of reasonable response” test in this context: *Hardy & Hansons plc v Lax* [2005] IRLR 726, CA.’

27. The duty to make reasonable adjustments (RAs): section 20 of the 2010 Act states:

‘(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.’

The duty does not arise however if the respondent did not know, and could not reasonably be expected to know, that the claimant was disabled and was likely to be placed at that disadvantage (*Wilcox v Birmingham CAB Services Ltd* UKEAT/0293/10).

28. Provision, criteria or practice (PCP) is not defined but is to be construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer disadvantage from a disability. It includes formal and informal practices, policies and arrangements and may in certain cases include one-off decisions. It has been confirmed however in *Ishola v TFL* ([2020] EWCA Civ 112) that PCP carries the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again and although a one-off decision or act can be a practice, it is not necessarily one.

29. Interpreting the duty does not contain a strict causation test but requires a comparative exercise to test whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have any disability. If so, the test whether it was reasonable to make a particular adjustment is an objective question for the Tribunal to answer (*Tarbuck v Sainsbury's Supermarkets* 2006 UKEAT with a focus on what is practical and will lead to a real prospect of alleviating the disadvantage caused by the PCP (*Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0052/10).
30. Harassment: section 26 of the 2010 Act provides that A harasses B if A engages in unwanted conduct related to a relevant protected characteristic and that conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. Further, that in deciding whether conduct has that effect the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect must be taken account.
31. In *Land Registry v Grant* (2011 IRLR 748) Elias LJ said:
- 'Where harassment results from the effect of the conduct, that effect must actually be achieved. However, the question whether conduct has had that adverse effect is an objective one – it must reasonably be considered to have that effect – although the victim's perception of the effect is a relevant factor for the tribunal to consider. In that regard, when assessing the effect of a remark, the context in which it is given is always highly material.
- Moreover, tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.'
32. Burden of proof: section 136 of the 2010 Act states:
- '(1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.'
33. Thus, at the first stage the Tribunal – having regard to all the evidence - has to make findings of primary fact. It is for the claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. A mere difference in treatment, without something more, will not be sufficient. The something more, however, need not be a great deal.
34. If the Tribunal so concludes, the burden then passes to the respondent to prove, again on the balance of probabilities, that they did not commit such an act.
35. Time limit for presentation of discrimination claims: section 123 of the 2010 Act provides:

- (1) Subject to section 140B [extension for ACAS Conciliation] proceedings on a complaint within section 120 may not be brought after the end of—
 (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 (b) such other period as the employment tribunal thinks just and equitable.
- ...
- (3) For the purposes of this section—
 (a) conduct extending over a period is to be treated as done at the end of the period;
 (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 (a) when P does an act inconsistent with doing it, or
 (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.
36. Consequently, a complaint will be in time if it relates to an act that ends in the primary time limit or it relates to a number of separate acts which taken together amount to a continuing act or state of affairs that ends within that primary time limit (distinct from an act with continuing consequences where time runs from the date of the act as above). If the complaint is outwith those provisions then the Tribunal has a discretion to extend time for such other period as it thinks just and equitable.
37. If considering whether there was a continuing act, it is the substance of the complaints in question - as opposed to the existence of a policy or regime - that is relevant and whether they can be said to be part of one continuing act by the employer (*Hendricks v Commissioner of Police for the Metropolis* [2002] EWCA Civ 1686). In considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents (*Aziz v FDA* [2010] EWCA Civ 304, CA).
38. However if any of the constituent acts are found not to be an act of discrimination, they cannot be part of a continuing act (*South Western Ambulance NHS Foundation Trust v King* 2019 UKEAT 0056).
39. In this case, the respondent says the relevant date of the bringing of the discrimination claims is the date they were particularised (19 June 2023) rather than the date of the submission of the claim form (28 February 2022). We do not agree for the reasons set out below in the conclusions section.
40. If considering whether to exercise the discretion to extend time, the burden is on the claimant to convince the Tribunal to do so (*Robertson v Bexley Community Centre* [2003] IRLR 434). The Tribunal's discretion is very wide and it is entitled to consider anything it considers relevant subject to the principle that there are good public policy reasons why time limits appear in our legislation and they should be exercised strictly in employment cases.
41. Lord Justice Underhill in the Court of Appeal has confirmed that the best approach for a Tribunal in considering the exercise of this discretion is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular the

length of, and the reasons for, the delay (Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23).

Findings of Fact

42. These findings are made on the balance of probabilities having assessed all the evidence, both oral and written, and the submissions made by the parties. Apart from some general introductory matters, the findings are set out as far as possible chronologically and where possible we identify the issue number relevant to particular events.
43. Only those findings of fact which describe the overall chronology, are relevant to the issues and are necessary for the Tribunal to determine are set out below. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. We do not refer to every document we read or were taken to but that does not mean it was not considered if we were taken to the document in evidence or as part of the reading list. Further, we only refer to those parts of documents that are relevant to our findings. The claimant's correspondence at the time of the events in question was often extremely long and detailed. It is not proportionate to reflect everything he wrote but we have considered the whole email when we refer to parts of it.
44. The claimant: the claimant started working for Debden Park High School (the school) on 1 September 2010 as a maths teacher. The claimant's employment transferred to the respondent on 1 April 2011. In 2016 he was promoted to Director of Mathematics and remained in that post at the date of his dismissal. It is apparent that he was well regarded by his employer and had performed very well prior to the events in question in this matter and his dismissal. He had been subjected to no disciplinary or capability processes before 2020.
45. As a teacher the claimant was expected to attend work as required and carry out his duties in accordance with national standards. Unsurprisingly the respondent accepts that these were PCPs they operated (issue 25(a)). It was common ground between the parties that marking of pupils' work forms part of normal classroom teaching duties as opposed to administrative work.
46. The respondent: The respondent is a large multi-academy trust operating across multiple sites. Each school has its own executive head teacher (Ms Gascoigne) and senior leadership team (SLT) with a trust wide management structure above them. There is also a school based HR Business Partner (Ms Costanza) reporting up to a Head of HR (Ms Sheehan) and then Director of HR (Mr Rose). The executive team is supported by a voluntary Board of Trustees which is responsible for the overall strategic direction and governance of the respondent. It does not get involved in day to day operational matters.
47. The respondent operates a number of policies of the sort typical of a large employer. Relevant to this matter in particular are the Absence Management Policy (AMP) and Grievance Resolution Policy (GRP).

48. Under the AMP sickness absence of more than four weeks is classified as long-term and is subject to a formal procedure. It states:

‘The Headteacher/nominated manager should use discretion in deciding when it is reasonable and justified to invoke the formal procedure, taking into account the employee's sickness absence record, medical condition, working conditions, recurring medical conditions etc. Each case will be considered on merit and in accordance with the Sickness Absence Procedure.’

49. The AMP provides for a stage 1 formal review meeting at which an appropriate review period will be agreed further to which there will then be further stage 1 review. If a return to work is achieved within the agreed time frame no further action is taken save for a written reminder of the need to sustain the improvement in order to avoid further action. It is not expressly stated but is implied that if the return to work is not so achieved the matter moves to stage 2 which has the same procedure and outcomes as stage 1 except that the decision can be made to refer to a panel for consideration of dismissal on the grounds of incapacity due to ill health.

50. In the event of an incapacity due to ill health hearing (stage 3) the procedure states that the panel will determine whether the employee remains in post or is dismissed taking into account:

- a. ‘Whether the targets or timescales set at stage 1 and 2 have been met or not.
- b. The improvement made during stage 1 and 2 if any and whether it was sustained.
- c. Advice from Occupational Health and whether this suggests that the employee will not within a reasonable timeframe be able to return to work or undertake the full duties of their role.
- d. What adjustments have already been made if any.
- e. The impact of the employee's absence on the academy.’

51. The outcomes available to the panel include termination on notice, redeployment, ill health retirement and a final warning with a final monitoring period of no more than 2 terms. There is one right of appeal against the outcome.

52. The GRP provides for resolution of grievances at three stages. First informally and if that is unsuccessful at a formal stage 2 with provision for an appeal at stage 3.

2019

53. On 5 April 2019 the claimant did not attend work. At 11.31 he emailed Ms Gascoigne saying:

‘I have had another mare of a night and lost my cards and phone. I probably need to see someone about my problems sorry about this again.
I have one lesson period 5 that will need cover as I have no way of getting in right now.
Sorry again’

54. She replied saying:

‘We have had yet another morning today worrying about your welfare. We do want to support you. Please book a meeting with Donna when we are back after Easter for me and you to

meet.'

55. It is apparent from this exchange that this was not the first time the claimant had had problems with attendance and also that he was acknowledging that he had problems of some sort.
56. On the same day in an exchange between Ms Gascoigne and Ms Haycock, Assistant Head, Ms Haycock said that 'we' need to meet him on his return and Ms Gascoigne said that she was preparing a 'letter of expectation' for the claimant. This is a mechanism the respondent uses to set out expectations of behaviour from employees. It is not referred to in the respondent's disciplinary process and they say it is not a disciplinary step but one of support and guidance. It can, however, and did in the claimant's case, result in a deduction from pay and can be taken into account in the event of further breaches of expected standards in taking action under the disciplinary policy. It is therefore in effect an informal first warning albeit outside the disciplinary process.
57. Ms Gascoigne and the claimant met on 19 April 2019. The respondent's case is that Ms Haycock was also present at this meeting although the claimant says she was not and he spoke to her a few days later. Given that the email exchange on 5 April 2019 indicates an intention that both Ms Gascoigne and Ms Haycock would meet the claimant, we find on balance that it is more likely than not that she was present. During the meeting the claimant said something to the effect that he believed he might have ADHD and that a family member had been so diagnosed. There is a dispute between the parties as to whether the claimant at this stage requested assistance from the school in obtaining a diagnosis. He says that he did. Ms Gascoigne's evidence was that he did not although Ms Haycock suggested to the claimant that he seek a referral through his GP. Given the later willingness of Ms Gascoigne to refer the claimant to the respondent's occupational health provider (OH) we conclude that if the claimant had expressly asked for a referral at this stage it is more likely than not that she would have agreed. We therefore prefer the respondent's evidence on this point.
58. On 23 April 2019 Ms Gascoigne sent the letter of expectation (issue 27(a)) to the claimant which confirmed he would not be paid for the day's absence and that any repeat breaches of expected standards could result in further action under the formal disciplinary procedure being taken.
59. The claimant was absent due to knee surgery in the latter part of 2019. He returned to work full time in January 2020.

2020

60. In January 2020 Ms Vellai was promoted to Assistant Head and became the claimant's line manager, having previously reported to him. The claimant relies upon various email exchanges they had in April and May 2020 to show that there was by then a plan to manage him out of his employment. We do not find that to be the case. Although there are emails that show unhelpful

behaviours by each of them towards the other we find that this reflects the difficulty they both had adjusting to the new reporting arrangement which resulted in tensions between them.

61. In June 2020 there was a particular dispute between the claimant and Ms Vellai regarding year 11 planning. In an email from the claimant to Ms Gascoigne following a meeting between them to discuss the difficulties that had arisen, the claimant requested the opportunity to transfer to a different school within the academy following the 2020-2021 academic year.

62. Ms Gascoigne replied:

‘Whilst it saddens me for you to ask me to look for career opportunities at another TKAT school for September 2021 I will of course make it known you are looking for a new challenge.’

63. The claimant was absent from work from 1 September 2020. He submitted a series of fit notes which gave the reason for his absence as depression or depressive disorder. On 3 November 2020 the claimant was referred to OH. The consequent report dated 11 November 2020 concluded that he was not fit to return to work, there were no adjustments required to facilitate a return to work, his absence was not work related and it was not considered that he was disabled under the 2010 Act.

64. In the meantime, at a school governors’ meeting on 4 November 2020 the claimant’s annual additional payment of £8,000 was specifically discussed (issue 27(o)). It is apparent from the minutes of that meeting that Ms Gascoigne had considered withdrawing the payment in the previous academic year but had not due to the risk of the claimant leaving with a resulting gap in maths provision. Further that she had decided to tackle the issue in the 2020/21 academic year but as he was by then on sick leave and she was referring him to OH, she decided to keep the situation under review.

65. On 13 November 2020 Ms Gascoigne wrote to the claimant pursuant to its absence management policy inviting him to a stage 1 formal review meeting on 10 December 2020 (issue 27(b)). This process started eight weeks after his absence had started, four weeks longer than the policy provides and the meeting was postponed once so that the claimant’s union representative could attend with him.

66. The minutes of the meeting show that it was conducted in a generally supportive way of the claimant and the claimant had a full opportunity to describe his then circumstances and their impact on his ability to work. His description of his situation was in keeping with the reasons for absence on his fit notes (depression). ADHD was not mentioned. On the following day Ms Gascoigne wrote to him confirming what had been discussed at the meeting and that the next steps were to:

‘...identify any reasonable adjustments that could support your return to work.
...continue in seeking medical guidance and support, and to keep us up to date on your general health and wellbeing.
...remain in contact whilst absent from work.’

and that part two of the stage one meeting would be held on 21 January 2021.

67. Also on 11 December 2020 Ms Gascoigne emailed the claimant more informally sending him contact details for organisations that he might find helpful if his GP referral for mental health issues was taking too long. She made herself available if the claimant ever wanted to talk and asked him to look after himself.

2021

68. The claimant privately funded a self-referral to Psychiatry UK who confirmed a diagnosis of Adult ADHD (predominantly inattentive subtype) in a report dated 19 January 2021 and set out a plan to commence stimulant medication under supervision by their titration service. It noted the possible physical and psychological side effects of this. The claimant was unsure whether he sent a copy of this report to Ms Gascoigne at the time. Her evidence was that he did not and there was no documentary evidence to suggest that he did.
69. The claimant attended the stage 1 part 2 absence review meeting with Ms Gascoigne and Ms Costanza on 21 January 2021 accompanied by his union representative. He told Ms Gascoigne that he had been diagnosed with ADHD and would be starting medication and counselling. He also indicated that he was expecting to return to work but with a phased return.
70. The minutes show that Ms Costanza summarised next steps under the process as:
- ‘As this process is designed to be a supported one that aims to get employees back to work and considering the level of absence we will continue with it and move to stage 2. We will set review periods and dates accordingly to ensure they are reflective and supportive of the return. We will also want to arrange another OH appointment, which will take into consideration the medical advice and support you have obtained and how we can support your return.’
71. This approach is consistent with the policy but does indicate, and this was supported by various of the respondent’s witnesses, that HR tended to lead on procedural decisions and their advice was almost inevitably followed. It does not however indicate, as the claimant alleged, that as soon as he told the respondent about his ADHD they automatically went to stage 2 to manage him out rather than pausing and reviewing the situation. The policy did anticipate that in situations such as this, the likely result would be to proceed to stage 2. On 22 January 2021 Ms Gascoigne wrote to the claimant confirming this outcome.
72. The first stage 2 meeting took place on 29 January 2021 (issue 27(c)) attended by the same people as stage 1. It was relatively short but the claimant was reassured by both Ms Constanza and his union representative that the process was aimed at supporting his return to work.
73. The position was confirmed to the claimant in a letter from Ms Gascoigne on

- 1 February 2021 (issues 27(d) & 29(a)). It confirmed that a further OH appointment was due to take place on 10 February 2021 and the stage 2 meeting would reconvene on 26 February 2021. The letter also warned the claimant that following the close of stage 2 there may be a referral to an absence hearing to consider dismissal on the grounds of incapability should return to work not be possible. The letter was drafted by HR for Ms Gascoigne's signature and was clearly mostly in standard form. It did not expressly refer to the claimant's ADHD.
74. The consequent OH report dated 12 February 2021 (issue 25(c)(i)) confirmed that the claimant reported longstanding concerns about impaired concentration and attention. Following his diagnosis of ADHD he had been prescribed medication which was due to start in approximately two weeks but the dose had to be gradually titrated and it may take several weeks or months to be effective. It reported that he would like to return to work in the near future however and was suggesting a return on 15 March which OH confirmed would be appropriate.
75. It confirmed that the disability provision of the 2010 Act was likely to apply and adjustments were recommended to help facilitate a return to work. Namely,
- a. a phased return to work starting on 50% of the normal teaching timetable and increasing gradually over a period of 4 to 6 weeks;
 - b. allowances during the day for him to take time out and go somewhere quiet;
 - c. use of technology such as his smartwatch and phone to help him manage in the workplace;
 - d. increased provision of support with administrative tasks, particularly those requiring writing;
 - e. allowance for more time and flexibility to complete tasks; and
 - f. flexibility regarding lateness at work.
76. Part 2 of the stage 2 absence management meeting was held on 26 February 2021 again attended by the same people including the union representative. The minutes show that they talked in detail about a phased return to work and how to make it work. Flexibility was shown by Ms Gascoigne in this respect. Although the minutes do not specifically mention the claimant's ADHD there was a discussing about his medication that the OH report had said he would be taking because of his ADHD.
77. The minutes show that Ms Gascoigne expressly questioned whether a proposed return to work on 15 March was appropriate but the claimant said:
- '15th March is a good goal. The earlier the better would be good for the transition. I need to be back in school, I need to experience it myself.'
78. In his evidence he said that he only said this because he was scared he would be sacked. Whilst that may be the case, it does not change that the respondent was not at this stage putting any pressure on him to return early and was generally being very supportive.

79. On 1 March 2021 Ms Gascoigne sent an outcome letter to the claimant (issues 27(d) & 29(a)). Again this was drafted for her by HR based on a standard letter although with more content specific to the claimant albeit still with no specific mention of his ADHD. It said:

'We agreed that your return will be structured within a phased return of 4 weeks which will work towards a gradual increase of your normal role responsibilities and activities.'

The claimant's evidence was that this was a threat. We do not agree. Whilst it quite properly sets out an aim it was written in entirely supportive and appropriate terms.

80. The letter continued:

'Whilst we work towards the return date of 15th March 2021, I have outlined some expectations for you to work towards with our support;

- *To gradually increase responsibilities and working pattern with the temporary support adjustments in place, in order to work towards and fulfil your contractual role.*
- *To continue to engage with us in relation to how you are feeling and any relevant updates around your health and wellbeing.*

...

At this stage there is no recommendation that your absence is referred to a hearing as per the Absence Management policy, however it is important that I inform you that the absence process is ongoing whilst the phased return is in place and therefore if absence is triggered the process will re-engage.'

81. On 10 March 2021 Ms Vellai and the claimant met online and agreed a phased return to work plan which she sent to him the following day. It provided for a gradual increase in hours over 4 weeks starting on the 15th with check-ins between them each day. Given that the claimant's usual hours were 50 per fortnight of which 36 were spent teaching, which equals 18 per week, and the claimant started on 7 teaching hours per week, this meant he was required to work less than the OH's recommendation that he start on 50% of his usual hours.
82. For the period 15 March to 7 May 2021, Ms Vellai kept a log of her daily contact with the claimant. This was not copied to the claimant at the time and he says it is not accurate nor contemporaneous. We find that in broad terms it is an accurate summary of their interactions prepared at the time from Ms Vellai's perspective and gives a good general description of events. We recognise that on points of specific detail the claimant's recollection or interpretation of events may differ.
83. Specific events within the log that are relevant to the issues are dealt with in more detail below but in general terms the log shows that at the beginning of the day on 15 March 2021 the claimant had a return to work meeting with Ms Gascoigne and Ms Vellai. Thereafter Ms Vellai met with him at the beginning of almost every day to check in with him as to his plans for that day and discuss any issues/outstanding tasks etc. It shows that the claimant worked the reduced hours as planned and whilst a good start was made, as the weeks progressed various issues occasionally arose regarding his

attendance (he was absent on 15 & 26 April, 6-17 May and 18 June) timekeeping (he both arrived late and/or left early on various and multiple dates in May and June) and relatively minor issues with other members of staff. It also shows that on 23 March 2021 there was a discussion between the claimant and Ms Vellai about whether he wanted to resume team leader responsibilities gradually. He said not yet and that he did not want to attend team meetings. It shows that the claimant was not required to attend various meetings and aspects of administrative work were being covered for him by other teachers. Further after half term in the week commencing 12 April 2021, the claimant's request was to slow down the process of return as he was finding it overwhelming. All of this was agreed.

84. The claimant and Ms Gascoigne have different recollections of a specific issue that arose at the return to work meeting on 15 March 2021 regarding his request for a faster laptop and larger screen (issues 14(a) & 27(e)). We prefer the claimant's recollection of this conversation because his is more likely to be accurate given that the issue was particularly important to him as it was technology that he believed would help him in his return to work. An email he received from the respondent's IT department on the same day also confirms that he was seeking help in improving the speed and memory capacity of his existing laptop. Accordingly, we find that the claimant did ask Ms Gascoigne whether he could use one of what he had been told was a number of spare larger, faster laptops used by the SLT. She did not refuse but said she would look into it. Unfortunately she then took no further action in that regard. Given the extra pressures put on the respondent, and no doubt particularly Ms Gascoigne, at the time as a result of Covid (the Prime Minister's announcement to stop non-essential contact was made the following day and the first lockdown commenced a week later), we are not critical of her for this oversight.
85. The claimant and his union representative met Ms Gascoigne and Ms Costanza on 26 April 2021 to review his phased return. It was at this meeting that there was a discussion into 'some form of training for staff around working with employees with ADHD' (and initial enquiries were undertaken by the respondent to find a suitable provider in the following weeks) (issues 14(b) and 27(f)).
86. The claimant also confirmed in a lengthy, detailed email on the following day a summary of what had been discussed generally at that meeting as well as his own insights about his behaviours. He opened by saying:
- 'Thank you for your time yesterday and sorry if it felt formal and difficult when you were expecting informal and light. As you can tell I am facing numerous new challenges at the moment and dealing with them, let alone expressing them in an organised manner is an ongoing process so thank you for your patience, prompts and time in the meeting today.'
- and later:
- 'Helen stated how difficult is for everyone and I fully understand how busy everyone is and appreciate all the support put in thus far. I feel that there is genuine care from Helen and the Debden family....'
87. He also made some requests in particular that his proposed timetable be

changed both in terms of number of teaching hours and distribution of those hours as well as flexibility to leave the building after his last teaching hour. These were subsequently agreed.

88. He also referred to a discussion about telling other staff members about his disability (given the adjustments that were to be made) and if so, how to do that (issue 24). It was subsequently agreed by Ms Gascoigne that she would tell the SLT but then she exercised her discretion and only told those on the SLT who were directly involved in working with the claimant which by then included Mr Davies. The claimant discovered that the agreement to tell the whole SLT had not been implemented in a text exchange with Mr Sim on 16 June, a member of the SLT, who had been involved in arranging cover for the claimant when necessary.
89. The claimant and Ms Gascoigne met again on 28 April, this time with Ms Vellai in attendance. The claimant says that he made five requests at the meeting (issue 27(g)), that they were all discussed and he left the meeting feeling much more positive. The five requests were:
- a. for wider paperwork, organisational and written aspects of his role (beyond classroom teaching and as noted above he accepts that marking was not included in this request) to be paused until he secured a workplace coach to assist him with coping strategies;
 - b. changes to his timetable, classes, pupils, teaching content or job remit not to be made without his involvement and without the extent of the change being clear (also issue 17);
 - c. his role be limited to that of a teacher during his phased return to work and not the wider leadership role he normally did;
 - d. any meetings with Ms Vellai to discuss any changes/issues to be attended by a buddy or mediator and for that not to be Ms Vellai's husband (Mr Narain - who was also a member of the SLT); and
 - e. flexibility for him to pick up more lessons from the classes that he has been allocated and leave site if he had a free period at the end of the day, rather than staying in school to do his planning and maintain his health routines which were essential to manage the symptoms of his disabilities.
90. Ms Vellai did not recall these being discussed although she did leave the meeting before it finished (and she emailed the claimant on 30 April 2021 confirming five specific changes to his timetable). Ms Gascoigne agreed that some specific changes to the claimant's timetable were discussed and agreed and also that changes would be notified in advance where possible (noting the difficulties still being presented by Covid) but she did not recall the other matters.
91. Thereafter and through to when the claimant last attended for work at the end of June 2021, all of those five matters were at various times and to various degrees implemented by the respondent (save where specifically found otherwise below). We therefore find that it is more likely than not that they were agreed at the 28 April meeting and indeed some had already been discussed before then in meetings between the claimant and Ms Vellai.

92. The claimant's evidence was that within two days of that agreement it was breached when on 30 April 2021 (issue 27(h)) Ms Vellai asked him in an accusatory manner why he had not assisted his colleague with a paperwork heavy task (which was established to have been marking). Ms Vellai denied that she had asked him to assist a colleague with marking whether in an accusatory manner or otherwise.
93. On that date Ms Vellai sent an email to the claimant confirming five agreed amendments to his timetable that had been agreed with him and that her log entry for that day was:

'LV received a morning text from PB (8:13) mentioning that he will be running late as he forgot that his car was in the garage. LV touched base with PB at break and mentioned that she will email (sent at 12:08) to confirm the time table changes as agreed on Wed is all finalised. LV touched base with PB at the end of the day. PB asked LV what was the plans for the weekend, LV mentioned that she was going to put up curtains. PB was very interested in the type of curtains, to which LV said she will send pics of the type of curtain.'

94. There was also an exchange of emails starting on 30 April 2021 between the claimant and Ms Gascoigne following up on the meeting of 28 April 2021 which led to Ms Avery acting as a peer representative/buddy for him. That exchange extended into the following week including references to Ms Vellai but the claimant said nothing about her having asked him about marking as alleged.
95. On 4 May 2021 in a text exchange with a colleague, the claimant said:

'Who teaches year 8? Had some strange request from Chris on Thursday to help with year 8 marking - I said sorry no - then [Ms Vellai] said last thing Friday to me something like 'so I can't do year 8 marking' mid sentence and then carried on a conversation about curtains.'

We find that even if something was said to the claimant on the 28th about marking, it was not said in an accusatory manner such as to amount to unfavourable treatment. If it had been we would expect the claimant to have referred to it in his emails with Ms Gascoigne.

96. On 5 May 2021 the claimant received an email from one of his pupils referring to 'sets being moved' and requesting to be moved up a set and out of a class that the claimant taught jointly with another teacher (Ms Townson). The claimant knew nothing about any changes. He made enquiries and discovered that some pupils had been moved out of that class and replaced by others (issue 17(a)). He was next due to teach the class on 7 May 2021. Ms Vellai had asked Ms Townson to tell the claimant but she had not done so, perhaps because he had been absent.
97. At least one of the pupils moving into the class had been involved in an incident in a class taught by the claimant on 21 April 2021 which had resulted in Ms Gascoigne having to be called and remove at least one student from the class as the claimant had not been able to manage the situation. That incident had caused the claimant considerable distress. In his email dated 6 May 2021 described below he referred to this incident saying:

'...how that ball of of anxiety over 25mins of pupil disruptions reached a size I wasn't sure I could keep a teacher demeanor.'

98. After receiving the email from the pupil, the claimant texted a colleague and said:

'Ok so 5 shites from [other teacher]'s class have been swapped today with 3 angels inc XXX. I have just found out now as YYY has emailed he wants to move (probably after see the shits coming) to mine'

'Lovely stuff, before I write this up to [Ms Vellai] cc [Ms Gascoigne] I need to be sure that [Ms Vellai] knew of these changes'

99. The colleague replied that Ms Vellai had known and the claimant replied:

'Big thank you. hope [Ms Townson] doesn't feel bad for not letting me know about pupil movements. I preferred it this way'

100. On 6 May 2021 the claimant emailed Ms Vellai cc Ms Gascoigne and bcc Ms Townson. He described recent events and in particular referenced the meeting they had had on the 28th and said:

'At the end of the meeting, you gave kind words, encouraged me to go at my own pace and asked if there is anything I need. I reflected the most difficult symptom to handle is emotional dysregulation - an impairment to regulate feelings - in the meeting I expressed, that at work I experience this when decisions leading to changes in my current situation and responsibilities, are made without any inclusion in the process or dialogue. All seemed in agreement that conversations can and would be had before any changes were made.

I now feel let down and upset. I suffer from a 'hidden' disability and it is my responsibility to make my symptoms known to you as line manager and leadership of the school for a shared duty of care. I overcame a trust barrier and opened myself up in that meeting, showed you the fragilities and problems I carry that I have not shown to anyone but [Ms Gascoigne] at work.'

101. Ms Gascoigne replied the same afternoon, copied to Ms Vellai, saying:

'Just to let you know I have talked this all through with [Ms Vellai] and [Mr Nurain] and hopefully when you are back tomorrow, they will meet with you first thing to talk through the concerns you have raised.

As I said in my earlier email I hope you are feeling better and that we will see you tomorrow.'

Given the content of the claimant's email in which he was plainly upset and was critical of Ms Vellai and that it had been agreed on 28 April 2021 that any meetings with Ms Vellai to discuss any issues would be attended by a buddy that was not her husband, it was inappropriate for Ms Gascoigne to suggest this meeting.

102. On 11 May 2021 Ms Gascoigne wrote to the claimant confirming that the reconvened stage 2 meeting under the absence review policy would take place on 14 May 2021 (issues 27(i)&(j) and 29(b)) and that the purpose of the meeting was to discuss:

'1. How you are feeling, and any feedback/ observations from your phased return relating to your health and wellbeing

2. To review the phased return period, including the extension to this time and temporary adaptations to your role
 3. To review, identify and agree any reasonable adjustments going forward
 4. To realistically and confidentially review and look ahead with expectations around role responsibilities
 5. To recap on the absence process we have followed in line with the TKAT Absence Management policy'
103. The claimant replied with a very long email sent early on 13 May 2021 setting out his view of recent events and his needs in advance of the meeting planned for the following day.
104. He referred again to the issue regarding students being moved into his class that he had discovered on 5 May 2021. He said that he was:
- '...frustrated and upset with a situation that occurred on the 5th May that could have been easily avoided
-the biggest setbacks faced have come from the way decisions have been directed and mistakes repeated in regards to my management causing ongoing setbacks that take up much of my time
- ... I had an unnerving feeling that my line manager had misguided me again
- ...It is clear to me now because of the experiences and heightened emotions I went through with management and leadership during a period of - gaslighting - 'a form of psychological manipulation in which a person or a group covertly sows seeds of doubt in a targeted individual' I now get this anxiety.'
105. He also included:
- 'A meeting arranged by [Ms Gascoigne], for me to meet with [Ms Vellai] and her husband, .. to mediate matters, of whom I have openly discussed in our review meeting ... I won't feel is impartial to matters.'
- in a list of matters that he said he had experienced negatively since his return although in the event the meeting did not happen.
106. Within that email he also refers to attaching his 'ADHD leads latest notes from our consultation on Tuesday' i.e. 11 May 2021. We find that those notes are the report from Psychiatry UK referred to in issue 25(c)(ii). Those notes included what were in effect suggested adjustments as follows:
- '[The claimant] to request further review with Occupational Health Department to begin the process of recommendations for reasonable adjustments to be made by the employer.
The adjustments could include dedicated time to complete administrative tasks regular breaks and changes in activity type
reflective management time to support adaption to the impact of treatment
flexible working hours
avoidance of rigid process adherence
- [The claimant] to self-refer to access to work ...
He would benefit from Mind View and task management software
He would benefit from ADHD Coaching
- ADHD Guide for Employers attached (this is a good one in my view as it highlights strengths as well as needs)'

107. Earlier in the month, the claimant had requested a meeting with Ms Gascoigne and Mr Cavanagh and this took place on 13 May 2021 (issues 27(k) & 29(c)). It was described as a 'confidential meeting' and no notes were prepared. The context for this meeting is shown in the claimant's email exchanges with Ms Gascoigne on 6 May 2021 where he said:

'What I need to prioritise is my health and getting my head back together. I need time to reflect on what I need right now for a safe rehabilitation process and what could be worked out with yourself which ever route to pursue.

I do not feel school is the best environment for me to be in during this time of high stress and with all the set backs that keep happening around me.

After yesterday my head is hurting and I feel sick at the thought of being in before the meeting on Wednesday. Therefore could I please request the time to clear my head, reflect on what has happened and next come in 1pm Wednesday for the meeting with yourself and [Mr Cavanagh].'

To which she replied:

'Am so sorry to hear that you are struggling and that you do not feel that you can be in school at the moment. You have to do what is best for you and take care of yourself....'

and then on 12 May 2021 he said:

'...I was hoping the meeting and initial conversations planned might feed to some practical working solutions and I could listen to any creative ideas you both might have. ... it is a start of a conversation.'

108. The specific complaints about that meeting are first that Ms Gascoigne questioned the claimant about whether he should have come back to work when he did. She accepts she said that but says it was because of genuine concern for his welfare and that she was worried about him. In the context of the correspondence leading up to the meeting we accept that.
109. Secondly, the claimant says that Mr Cavanagh said 'we are run like a business now' when talking about possible adjustments. Mr Cavanagh accepts that he said that or words to that effect but says the context was a discussion regarding roles the claimant said he wished to undertake and the remuneration he expected. In all the circumstances we accept Mr Cavanagh's evidence.
110. On the following day claimant emailed Ms Gascoigne and Mr Cavanagh and specifically referred to both of the comments in dispute and gave no indication that they were disadvantageous or offensive to him. In fact he acknowledged that Ms Gascoigne might have been right in what she said. Further, he said:

'How am I feeling? - much better after our meeting yesterday I feel we have broken through barriers of trust (both ways) and have a better understanding of each others observations. My mental health and well being has not been stable following last weeks incidence but I now feel supported by the school.'

and suggested that maybe he should not try to return to work until

September.

111. At the AMP stage 2 part 2 meeting on 14 May 2021 the claimant again attended with his union representative. Ms Gascoigne was assisted by Ms Costanza who explained that they were reconvening the stage 2 meeting and that at the end of the meeting they would determine whether the return to work was working and able to continue, or whether an absence hearing should be considered and if so what that would involve.
112. The claimant asked Ms Gascoigne to go through the points he had made in his email that morning which she did on his behalf. She also, in summary, noted that whilst the claimant had made progress since the previous year there were still significant issues with his attendance and capability to overcome. There was a lengthy discussion about what further steps could be taken to help the claimant return to work with specific possible adjustments to his role identified and debated. He also acknowledged that he had to decide whether he wanted to return to his full role as head of maths.
113. In the course of that conversation the notes show that Ms Gascoigne said (issues 27(l) & 29(d)):

‘We have done everything we possibly can. I don't know what else we can do. We extended the period of phased return, we are still at 28 periods, no marking has taken place. I in no place anticipated that paperwork meant marking.’

In cross-examination Ms Gascoigne said she obtained that information about marking from Ms Vellai who in her cross-examination said that marking was taking place but taking longer than usual. For whatever reason that comment by Ms Gascoigne in the meeting was inaccurate and an unfair criticism. This was a very important meeting and her belief about marking clearly formed at least part of her general view that she did not know what else to do.

114. The claimant expressly acknowledged that the school had made a number of very helpful changes to his role and he fully appreciated what had been tried. He did however say that a problem remained with his line management (i.e. Ms Vellai) who he believed posed a risk to him. The meeting concluded and it was agreed that Ms Gascoigne would consider the position and confirm next steps in writing.
115. After the meeting on 14 May 2021 the claimant emailed Ms Gascoigne and said:

‘Thank you for helping me feel safe at work. After yesterday it has allowed me the platform to look within and identify what is an emotional response in my ADHD symptoms and what I am really trying to say.

Thank you for trying to communicate my points today knowing and understanding my struggles in this process and sorry for unknowingly putting you in a difficult position....’

and then again on 17 May 2021 requesting not to teach a particular class and a further OH referral. He also attached a lengthy document entitled ‘can it work?’ in which he was complimentary about her management style and support she had given him including:

'Can I re-iterate I trust you will do what is best for the students school and my mental safety needs. It is the actions that was all I needed to see if I was heard this time but to be fair I knew from your face on Thursday that you genuinely care and listened this time...

These are qualities of leadership that makes this family outstanding which start at the top, these are the qualities in headship you have refined and they drive and motivate everyone below. These are the values I have instilled in my team on the ground as that is how you have raised and nurtured my talent. Please do not forget this.'

The claimant also described the features of a role that would suit him which included maintaining his salary but with restricted hours, teaching only four key stage 4 classes with 'full autonomy', flexibility to go home after his last class and to conduct any meetings from home (issue 14(d)).

116. In this email that the claimant said he felt micro-managed and bullied by Ms Vellai and that she was causing him stress. Ms Gascoigne decided to replace her as the claimant's line manager with Mr Davies and on 18 May 2021 she met him to inform him of this. It was not a minuted meeting but in a log separately prepared (it was not clear when or by whom or for what purpose) it states:

'HG & PB met for HG to explain about the Interim Line Manager GD and that the proposal of £45k and 4 KS4 classes could not work. PB asked HG to provide an alternative as whatever was suggested would influence his responses to the OH referral. HG advised PB to be honest in the OH appointment & to also discuss with his Union rep a way ahead. HG felt very uncomfortable in the meeting & decided she will hold no more meetings with him alone'

117. Later that day the claimant emailed Mr Davies in anticipation of their first line management meeting the following day saying:

'You have a massive pressure of time with timetabling right now and I don't want to these meetings to go on for too long so it would be a huge help for both parties if you could read this book'

and gave a web link (issue 27(m))

118. Mr Davies' evidence, which we accept, was that he did not refuse to read the book but that, understandably, he did not have time to do so before that first meeting. There was however no evidence that he did read the book. In itself this was not an unreasonable request by the claimant. Whilst there was no evidence that Mr Davies ever did read the book neither was there anything to indicate an express refusal to do so.

119. After that first meeting on 19 May 2021 the claimant emailed Ms Gascoigne and said:

'I feel drastically different today after meeting [Mr Davies], the rest of the day I felt calm and I could finally get on with my passions of helping the amazing pupils and staff around me without any worry.....

Thank you for showing patience where another Head would have not.'

120. Mr Davies met the claimant for between 30 minutes and 1 hour daily

- thereafter to ensure he was well enough to work, and check if he needed any further support that day. The usual amount of supervision time for teachers was 30 minutes per fortnight. In general Mr Davies made a number of adjustments to the claimant's working day including:
- a. reduced his teaching timetable (to 34 out of 44 lessons until May 2021 half term then increased to 36);
 - b. reduced the number of meetings he needed to attend;
 - c. provided requested equipment where possible;
 - d. removed some students from his timetable;
 - e. asked other staff to send him teaching resources; and
 - f. acting as editor on his emails to colleagues and being the one person from the school that would contact him via email and help him organise what was required.
121. An issue quickly arose regarding marking (issue 27(n)). On 21 May 2021 the claimant emailed a colleague referring to him having offered to help the claimant with his marking the day before. The claimant's case is that Ms Vellai had given the colleague that instruction. Ms Vellai's evidence was that she did not and that the most likely explanation for colleagues helping him was a generally supportive working atmosphere with a strong team ethos. Shortly afterwards the claimant sent a 3 page email Ms Gascoigne complaining about Ms Vellai 'gaslighting' him just one day after the change of line manager. It referred in particular to the offer to help with marking and another colleague returning some marking done on his behalf and that the claimant had been worried about as he could not find it. The claimant also referred to the issue of marking not being done having been brought up in his absence meeting. The tone of this email seems to show a deterioration in the claimant's mental health.
122. The evidence was unclear as to who, if anyone, asked or instructed the colleagues to do/assist with the claimant's marking. Our finding is that no express instruction was given by any manager for this to happen.
123. On 25 May 2021 Ms Gascoigne wrote to the claimant further to the reconvened stage 2 absence meeting on the 14th. She noted that:
- 'It is relevant to note that your phased return to work commenced on Monday 15th March which was planned for 4 working weeks, however remains ongoing. As part of this phased return reasonable adjustments have been put in place, including temporary change to your role responsibilities of lessons, leadership and paperwork, flexibility to your working pattern/hours, and attendance to school.'
124. She confirmed that the first step for obtaining assistance from AtW was for the claimant to apply direct and provided him with a web link. She also sent him a link to a gov.uk resource on reasonable adjustments for disabled workers.
125. As regards possible alternative roles for the claimant, she confirmed that they were unable to meet the specific request of a job creation but provided details of two maths teacher vacancies for his consideration and confirmed that both could be adjusted by reduction of one period of teaching per week. The claimant refused these without explanation.

126. She also confirmed that a further OH referral had been made, who had been trying to contact him, and a decision on next steps would be made on receipt of the OH report.
127. On both 25 & 27 May 2021 the claimant left work early due to anxiety.
128. The claimant attended the OH clinic on 9 June 2021.
129. On 10 June 2021 the claimant arrived late and at 10.19 emailed Ms Gascoigne thanking her for the line management support he had received in the last weeks saying he felt much better and that he was ambitious about what he could achieve long term. He also requested an in person meeting 'at the earliest opportunity' which he said could take between one and three. The claimant also told Mr Davies about his OH appointment in his meeting with him on the previous day.
130. At 17.45 Ms James, Ms Gascoigne's PA, sent an email to the claimant attaching a letter from Ms Gascoigne that said:

'I write in relation to the R&R allowance for your Director of Maths role, which you are currently in receipt of.

As you are aware, R&R allowances are temporary and are reviewed annually to ensure that they remain justifiable, and effective to meet and support the School's needs.

It is the School's decision at this time to end this allowance with effect from 31st August 2021. All other terms and conditions of your employment remain unchanged.

If you have any queries regarding the content of this letter, please do contact me.'

131. The R&R (recruitment and retention) allowance (issue 29(o)) referred to was a payment of £8,000 in addition to annual salary that had been paid to the claimant since at least September 2017. It was paid in accordance with the School Teachers' Pay and Conditions Document issued by the Department of Education which allows for such payments subject to regular formal review. The claimant was expressly told from 2017 that the payment would be reviewed annually.
132. Minutes of a Governors' meeting from 4 November 2020 show a decision was then made across the respondent to remove these bonuses from a number of people and specifically that the claimant's payment was not withdrawn at the same time. When asked why Ms Gascoigne said:

'...the only one she would have tackled last year would have been [the claimant], he does get a bonus, the issue we have is, last year she was ready to take this away. She was concerned during lockdown we were going to be left with a huge gap in maths, thought [the claimant] would leave and we would be in trouble. She said she made the decision this year to tackle the bonus he receives and would pull this back and he would move on. However, just before we came back in September, [the claimant], contacted her and said he was mentally unable to return to school, we have not seen him since July. He is in the middle of a nasty divorce, his doctor has referred him to a psychotherapist. [the claimant] made it clear before the summer, as a reaction to promoting LV, he would only do one more year at DPHS. HG said we pay him a lot of money and should be able to get two people for what we pay him. JL said he is paid a bonus for the work that he does, is this built into his monthly

- salary. HG said she is currently discussing this with HR. JL said the point is a bonus is performance related, HG is in the midst of sending PB to OH, she said she will keep LGB updated about the situation. JL said we need to have gone through the due diligence to see if we should be paying him this. HG said this was seen as an R&R, thinks it may be possible to retract it. HG added, knowing what he is going through makes it difficult. VM said he probably won't leave, where will he go, will he get another job? HG said she is on to this, he will receive six months full pay and then to half pay, she will keep LGB posted, she said usually the advice is at the discretion of the Head. JL said in that case, sounds as if she is going to pay it. HG said it is a very difficult situation.'
133. This shows an expectation by the other Governors that the claimant's payment should be withdrawn but a reluctance by Ms Gascoigne to do so given his personal circumstances. By June 2021 however, when the claimant had been back at work albeit with adjustments since that March, she decided to do so.
134. This background was however unknown to the claimant and in an email to his union representative at 18.01 on 10 June 2021 he clearly linked having discussed his OH appointment with Mr Davies and the withdrawal of the R&R payment on the same day. His representative queried the reasons and timing of the withdrawal with Ms Gascoigne who replied on 22 June 2021 with a short explanation summarising her reasons. Ms Constanza also replied in July to the claimant's queries regarding the issue with a similar explanation. In all the circumstances, in particular the timing of the withdrawal immediately after the OH appointment, it is regrettable that that explanation was not given to the claimant when the decision was first communicated to him. There was no evidence however that when Ms Gascoigne made her decision she was aware of the contents of the claimant's discussion with OH on 9 June 2021.
135. The OH report was produced on 11 June 2021 (issue 25(c)(iii)). It said that the claimant was fit for his role, including teaching and leadership responsibilities. The report also said:
- '[the claimant] is likely to benefit from a more tailored and supportive approach from Management. For instance, due to the nature of his condition, rigid Management processes are less suitable, and positive contact and achievable goals are likely to help build self-confidence and self-esteem.
- [the claimant] is also likely to benefit from a more tailored approach for completing his tasks. For instance, he may be more productive completing some of his tasks working from home and delegating those tasks requiring writing. [the claimant] also describes some positive attributes related to his condition, such as increased energy, which may be more useful for particular tasks.
- It is recommended that Management discuss any residual concerns [the claimant] may have with him and mutually agree, with his cooperation, resuming his other responsibilities. [the claimant] is keen to be involved in the formal planning and strategy for the next academic year.'
136. On 14 June 2021 at 7am the claimant sent a lengthy email to Mr Davies attaching the latest OH report, requesting changes to the agenda for their meeting that day and raising a number of concerns regarding his treatment together with extracts from a Guidance to Employers document regarding ADHD.

137. The claimant arrived late but he met with Mr Davies who produced a note of their discussion which was shared with, and commented on by the claimant. The claimant complains about statements by Mr Davies at this meeting (issues 27(p) and 29(e)) in two respects. First that he said the claimant could not return to his role (which we take to mean Director of Maths) unless he could perform written tasks and maintain punctuality and second that he said there was nothing he could work with in the OH report.
138. Neither of these comments are expressly referred to in the notes of the meeting but having considered them and the relevant witness evidence, we find that Mr Davies did say something to the effect of what is alleged even if not those exact words. As for the OH report in particular, Mr Davies was expressing disappointment with OH rather than the claimant.
139. Also on 14 June 2021, in response to an email that day from the claimant in which he referred to bullying and harassment, Ms Costanza emailed him, enclosing a copy of the grievance policy. She copied in Ms Salter, HR adviser, who emailed the claimant shortly thereafter seeking to clarify his concerns and offering to speak to him. A number of informal contacts followed between the claimant and Ms Salter where she tried to assist his understanding of the process.
140. Very early on the morning of 21 June 2021 the claimant emailed Mr Davies setting out criticisms of the way he was being managed, requesting amendments to minutes and requesting further adjustments. Specifically::
- Today's INSET I stay near my appointed buddies workstation - Sarah Avery, throughout the day and work in private on my planning
 - Future LM meetings only based around two priorities - clarity and improvement targets for pupil progress in current teaching and learning of timetabled classes -joint process of deciphering guidance from the occupational health report on how to manage me to succeed and thrive in respect of my ADHD characteristics and history of achievement
 - leaving site at the following times this week after lessons to prevent any risk of triggers from management whilst providing time needed on my day-to-day struggles and mental well-being - see Occu health report.
- Monday 3:15pm
Tuesday 11am
Wednesday 1:30pm
Thursday 4pm
Friday 4pm
- I am more than able to return to my leadership responsibilities, it seems however management is not trained/skilled to understand this new and improved me.'
- There was no evidence that these requests were not agreed.
141. On 23 June 2021 Mr Davies emailed the claimant as requested, with an agenda for a meeting the following day and confirmed that Ms Avery could attend with him.
142. Notes of that meeting show that Mr Davies made clear the expectation that the claimant would teach for 36 hours per fortnight and that he would do a

- full day's work on site including attending inset days and training. If he needed to go home early or during the day then he should follow the usual processes before doing so. There was a discussion regarding whether the claimant could resume his responsibilities as head of maths. Mr Davies said that before that could happen the claimant needed to be doing a full day and successfully attending team meetings. The claimant's view was that he was ready to resume his responsibilities immediately, as had been indicated by OH, and the respondent was not being inclusive and understanding. In summary, he said the problem with his return to full responsibilities was with management's attitude and a lack of understanding and training on how to deal with him.
143. During the course of the meeting Mr Davies asked more than once what he could do to help support the claimant. The claimant's replies were of a general, and sometimes confused, nature referring to managing him better/following the expert's advice or that it was an issue for Ms Gascoigne. The meeting ended without resolution.
144. Mr Davies met the claimant, again with Ms Avery, the following morning. He confirmed that he would line manage the claimant until the end of term and that they would now move to two one-hour meetings per week. There was again a discussion about what the claimant needed to do to get back to full responsibilities but without agreement or resolution. They both repeated their positions from the previous day.
145. The claimant's last day of attendance at the school was 25 June 2021. Also on that day he emailed Ms Gascoigne with details of a training provider called ADHD Wise as being potentially suitable to provide the requested management training. Ms Gascoigne asked Ms James to pursue that, suggesting that the training would be for herself, Mr Davies, Mr Narain and Ms Vellai. Ultimately it was through ADHD Wise that first the claimant and then the respondent were introduced to Ms Porter, although she works independently of them. Also at about this time the claimant applied to AtW for funding for the management training and the respondent separately confirmed to AtW their willingness to undertake it.
146. On 28 June 2021 minutes of a team meeting were circulated to the maths department, including the claimant, that included a request to avoid leaving any items/possessions on the desks of other members of staff (issue 29(g)). We accept Ms Vellai's evidence that the reason for this was the restrictions required because of Covid and the particular sensitivity regarding touch points whilst working in bubbles. The claimant says that this was directed at him as he had left a tub of hair wax on a colleague's desk a few days beforehand and was done deliberately to undermine/embarrass him. We find that the minutes as drafted and circulated were an entirely reasonable reminder to not leave items on others' desks in all the circumstances.
147. On 30 June 2021 the claimant sent a lengthy email to Mr Cavanagh, Ms Gascoigne, Ms Davies and cc'd to HR. It is at times difficult to follow due to a number of inserts and attachments. The first line read:

‘This will be my last email of length - followed by new representation of Grievance’

and continued to describe a number of issues that the claimant had with the way he was being managed both in relation to his mental health issues and also race. As well as criticisms of the support his union representative had been providing (and thereafter he did not use his union’s services) but was also very complimentary at times about individual managers.

148. This was forwarded to Mr Rose, who had met with the claimant’s union representative the previous week (and had also sought advice from an external HR consultant). He replied to the claimant later that day in very positive, constructive and encouraging tones. In order to simplify communication and for both parties to better understand the other’s position, he suggested a series of three meetings (issue 29(h)). The first would be for the claimant to present a list of 10-15 pre-prepared adjustment requests for the school to consider. The school would respond and present their own list of objectives at the second meeting. Then a third meeting at which the claimant would respond. He expressly asked for the claimant’s thoughts on whether this was a sensible way forward.

149. In terms of the grievance process, Mr Rose expressed a hope that this set of three meetings would effectively fulfil the informal stage by providing clarity, the right support and an agreed way forward but expressly said he could not advise the claimant on this and he should speak to his union representative in terms of how he wished to progress. If he wished to go to first formal grievance stage then he asked the claimant to complete and submit the ‘GR1’ form in the Grievance policy a copy of which he attached. He did say that the claimant’s request for paid time off whilst any grievance is investigated could not be agreed.

150. The claimant’s detailed reply on 1 July 2021 opened:

‘This is the first communication language and tone I have received since my return to work 14 weeks ago that is positive, progressive and respecting. This means I do not feel defensive as with the us and them approach experienced at Debden. Thank you Simon - your specialism in this department is instantly impressive and noted.’

but continued with details of his concerns and said that he felt he had no choice but to raise a grievance due to ‘leadership fostering unsafe cultures of diversity and inclusion in the workplace’. He also said that due to the unsafe environment and adjustments recommended by OH not having been implemented, he would not be able to return to work and that extended sick pay should be given in the interim (referring to case law). He concluded by saying that he would follow up with a reply to Mr Rose’s suggestions on meeting.

151. Later that morning Mr Rose set out to two presumably more senior colleagues a proposal that the claimant be allowed to remain at home on discretionary leave for the remainder of the academic year on the proviso that he agree to the suggested three meetings. Alongside this the school would undertake both anti-racism and managing employees with ADHD training. He expressly said that this was with a view to:

‘... try to reach an agreement on the way forward, which may involve more leniency shorter term, but hopefully to the benefit of the longer term relationship.

....

The aim of this would be to 'draw a line' and set both [the claimant] and the school up for a more positive start to the next academic year; as it stands, things are going round in circles.’

152. He presumably received the necessary agreement as he then wrote to the claimant later that day saying:

‘So my thinking regarding the way forward is this: -

We agree to place you on discretionary leave for the remainder of this term. This will not be recorded as sickness absence. However, the proviso is that this time be used effectively in addressing the issues raised. By this, I mean a commitment to the three 1-hour meetings on your part and a commitment to undertake managing ADHD and anti-racism training on the part of your chain of line management at the school, up to and including the Headteacher. I will also appoint the Head of HR, Emma Sheehan, to facilitate these meetings to bring a fresh pair of eyes as you have suggested. By the end of this term, and in preparation for next, all parties will have a clear understanding and commitment to agreed adjustments and ways of working from September onwards.

I hope this is a helpful proposal. We would not set any meetings for next week in order for you to have time to discuss with your union and prepare fully..... ‘

153. On the morning of 2 July 2021 the claimant emailed Mr Davies, copying one of the Trustees, saying:

‘I am not in today as it is unsafe for me to return to work until my employers have completed disability training and can demonstrate a change of management.

Thus challenging their own bias to mental disabilities and race and demonstrated they can fulfil their legal obligation to provide the biggest reasonable adjustment and barrier for inclusion of my protected characteristics and a duty of care.’

154. An hour later he emailed Mr Rose, copying further Trustees, first to give him Ms Porter’s details and to suggest the content of training that would be useful and for it to start in September and, a few minutes later, asking him to set a time for a zoom call that day or the next week. Mr Rose replied acknowledging his e-mail regarding management training, which he said they would look into, and saying

‘...I must also ask that you do not write to either Members or Trustees directly; this is not appropriate, unless you have a complaint about the CEO specifically. If you are unhappy with my own approach at any time, you are able to write to the CEO and/or Deputy CEO. I’m afraid I will also not agree to Zoom calls for now outside of the three 1-hour meetings we have offered.

These comments may come across as adversarial, but I can assure you they are made in the spirit of keeping us focused on what is important right now, which is facilitating understanding between yourself and the school and ensuring that we are able to support you effectively in your role. Once we have achieved this, I genuinely look forward to working with you on the wider issues you have raised – I think you are going to be an asset to the work we have planned in these areas.

I do hope that you will agree to my proposed course of action and look forward to hearing back from you.
All the best,’

155. Unfortunately the relationship between the claimant and Mr Rose started to deteriorate at this point as the claimant was critical of Mr Rose's approach but he did say in his email to him on 5 July:

'So I am happy to meet you in the middle here and yes to the informal meetings. I do not imagine I'll have NEU representation in the one that I am seeking however I am the best representation of myself so I can deliver this but in my style to honour the time given.'

156. The first of the three proposed meetings was arranged for 14 July 2021 and the claimant went on discretionary paid leave from 1 July 2021.

157. On 5 July 2021 Mr Rose confirmed by email to the claimant the purpose of the meetings, that they would be facilitated by Ms Sheehan and the school would be represented by Ms Willbourne, Secondary Educational Director. He offered to join the meetings if the claimant would find that useful and that it was agreed that the claimant could be accompanied by Ms Porter. He also reiterated his belief that the claimant's grievance could be resolved informally via this process but if the claimant did not believe resolution had been reached he could access the formal stages.

158. The claimant replied in another lengthy email on 9 July 2021. He took issue with much of what Mr Rose had said/done but did agree to attend the first meeting. He asked for it to be in person with Mr Rose in attendance and a display board to be available for his use.

159. There was a number of email exchanges between the claimant and Mr Rose on 12 July 2021. During the day the claimant sought confirmation of the arrangements and specifically asked for the whiteboard to be checked beforehand and a working pen calibrated with the board to be provided (issue 14(c)). In the evening Mr Rose emailed him apologising that due to a number of Covid cases in the school the meeting would have to be held virtually. He acknowledged the frustration that this would cause the claimant and reassured him there were no expectations regarding how he would provide the information and offered to help with anything he needed before the meeting.

160. The claimant replied the same evening reiterating that he wanted the meeting to be in person. He also made it clear that he preferred oral communication to written but asked that Mr Rose:

"confirm access arrangements for another site by tomorrow morning or feel free to give me a call to discuss"

161. Mr Rose emailed the claimant the following morning at 10.30 opening with:

'Thank you for your message. As always, it is not my intention to heighten your anxiety levels and I apologise if this has been the case. This decision was made in good faith and with the safety of attendees in mind.'

and confirming that an in person meeting could take place at another school with no Covid issues giving the details. He also said that a suitable room,

whiteboard and pens would be made available. He concluded by saying:

'I do want to assure you that nothing has changed in terms of the meeting structure and purpose; this is still an informal meeting with the sole aim of understanding your needs. I am not asking you to commence any formal process, however these of course remain open to you, as they do to any employee of the trust.

I hope this is all ok. Look forward to meeting you tomorrow.
All the best.'

162. At the commencement of the meeting on 14 July 2021 there were issues regarding the display board that had been provided. Mr Rose's evidence was that the board was working and was connected to a Microsoft windows PC but it would not connect to the claimant's Mac laptop and he offered alternative options. The claimant's evidence was that Mr Rose offered nothing to assist (Ms Porter could not remember either way) and that the failure to ensure an immediately accessible board was deliberate. The minutes of the meeting are silent on the issue. We conclude that a working board and pen were provided but they were incompatible with the claimant's personal IT equipment. Mr Rose did offer assistance not least because it would be so surprising not to and would be inconsistent with his general supportive and helpful approach to the claimant as demonstrated in their email exchange on 12 July 2021. We also find that any failure in this regard was not deliberate.
163. In any event the issues was resolved, although it did lead to a 15/20 minute delay in starting. The claimant made his planned presentation which consisted of more than 50 detailed slides. The meeting comprised almost completely the claimant putting his position forward with interjections from Ms Porter from time to time. Mr Rose made a very small number of comments during the meeting and it concluded with an expectation that they would meet again on the coming Friday.
164. On the Thursday evening however the claimant emailed Mr Rose saying that 'something does not feel right for tomorrow's meeting' and asked to be excused which he was. He then sent a much longer and wide-ranging email on the afternoon of Sunday 18th which set out his requirements for any further meeting. The tone of the email was very critical of the respondent.
165. Mr Rose replied on Monday 19th repeating his desire to facilitate the claimant's return to work into a role where he felt safe and valued. He referred to a number of requests made by the claimant during the meeting on the 14th, namely (issue 27(s)):

'...Instead of using the time to provide us with your thoughts on what reasonable adjustments you may require, you have instead asked for your R&R payment to be reinstated, for a year's paid leave whilst the school embark on a culture change journey and a three-year guarantee that, regardless of what other adjustments you may ask for such as part time working, your current full-time salary will remain protected. Regrettably, these requests can not be considered as reasonable and, as such, we are unable to accommodate them. You then withdrew from Friday's meeting...

To be clear, at this point in time, we do not believe that you have given us a clear indication of any outstanding adjustments you are reasonably requesting from the school to facilitate

your return, nor are we clear on the substance or subject of your grievance. I also believe that, as confirmed previously by your NEU representative, the school has acted entirely appropriately and accommodated all reasonable requests thus far.'

166. He also said:

'...having met you on Wednesday, Natalie and I picked up on a number of occasions where you mentioned your mental health (which we took as referring to your anxiety rather than ADHD). We were both left concerned that whilst your ADHD diagnosis is clearly something that we want to work with you on managing, it may be that managing your current mental health is an equal priority at this time.

With that in mind, I propose that we postpone any meetings this week pending a new referral to Occupational Health.

As always, this is not something you are obliged to agree to, however I genuinely believe that this will help us all make the progress that we are yet to see. I understand that the school h[as] shut down for the summer break, so I will ask Francesca in my team to make the arrangements, which I hope you will agree to.

In the meantime, we will of course consider any reasonable requests that you wish to make and look forward to receiving the response from Access to Work.

As I said previously, I hope you receive this message in the spirit in which it is meant; we want to work with you and we want you back teaching maths to children and being part of the departmental leadership team. Everything I have said here is with that goal in mind.'

167. The claimant replied to Mr Rose on 20 July 2021 saying that he would discontinue any further correspondence with him. The email was long (just over 6 pages of A4 text), wide-ranging and at times difficult to follow as other emails/documents are embedded within the text. It was highly critical of both Mr Rose (both his actions and communication style accusing him of white privilege and institutional bias) and the respondent generally. The claimant said there was no need for another OH referral. He also referred to wanting to raising matters with the CEO, Board and Members. He expressly asked that Mr Rose send no more emails to him except those regarding a meeting time and date or phone call.

168. On 21 July 2021 the claimant emailed Dr Roberts and copied Ms Harrison. He stated:

'Unfortunately, after three weeks of writing to [Mr Rose] as Director of HR, I have come to acknowledge he is not as versed as myself in law, governance, guidance, policies and procedures of my particular concerns. As a result, [he] is open to communications of malpractice and I do not think it best prudent to continue these emails for my mental health and the respect I have for the time and effort he has committed to this process.'

and asked for an informal meeting of an hour with her in person (issue 22(a)(b)). He also asked what steps would be needed to arrange a meeting with the 'Trust Members'.

169. On 23 July 2021 Mr Rose emailed the claimant (issue 29(i) email no 1). He did not acknowledge or deal with the claimant's previous request that there should not be any email communication from him. Mr Rose outlined a proposal for addressing his grievance(s) which was to proceed to stage two (first formal stage). He described the process and who would be involved.

He confirmed that apart from facilitating arrangements he would have no involvement in the process apart from responding to any requests from an external, independent investigator. He reiterated that the claimant was expected to report for duty on the first day of the autumn term unless he was absent due to sickness and that additional reasonable adjustments would be considered if presented ahead of the new term. He also reminded the claimant of the confidential helpline available to all employees and that the offer of an OH referral remained open.

170. Later the same day the claimant replied to Mr Rose, copying Dr Roberts, and expressly asked him to respect his request for no more communication from him by email and declined the proposal for a formal procedure to commence. He expressly referred to the OH report of June 2021 which called for 'a more tailored and supportive approach from management' and 'positive contact'. The claimant said that he had been harassed at work since 9 June and timely reasonable adjustments had not been put in place. He expressly asked Mr Rose not to write to him again although he was more than happy to discuss matters on the phone.
171. On 27 July 2021 Ms Sheehan emailed the claimant seeking to set up a telephone call to discuss the grievance resolution process including arranging for his concerns to be heard by a SLT member as well as his return to work in September 2021. She indicated that she could arrange her diary to be available when suited the claimant. In his reply the claimant, in summary, said that he could not commit time to meet anyone other than Dr Roberts and requested no further email correspondence although he was willing to speak by telephone with 'no agenda, active listening and constructive dialogue'.
172. In the early hours of 29 July 2021 the claimant chased Dr Roberts for a reply to his email of 21 July. He made it clear that not receiving a response was worrying him and that he felt:

'...undervalued, undignified and discriminated against when our Leaders do not respond to my serious concerns.'

Although the tone of the email was overall polite it was also critical of her, at times antagonistic and demanding. He required confirmation of a meeting with her by 5pm that day and that if that was not accommodated he would 'continue on to the Members'.

173. Dr Roberts forwarded the email to Mr Rose asking him to:

'...organise a reply in line with our policy.'

which he did on the same day when a letter was sent to the claimant in Dr Roberts's name saying:

'Thank you for your emails. I am aware that Simon Rose has written to you today setting out what has been done to date informally to assist you and advising you now of your formal options for raising any complaints or serious concerns. Our grievance and whistleblowing procedures are in place for a reason to protect and assist both parties to address and resolve

complaints and concerns appropriately. I would invite you to raise your concerns or complaints using the appropriate procedure in the first instance. For this reason, it is not appropriate for me to meet with you outside of these established processes at present.

If you have any questions in relation to either of these processes or any reasonable adjustments that you require being made, please contact HR in the first instance who will be able to assist you.'

174. The email also sent that day to the claimant from Mr Rose (issue 29(i) email no 2) opened as follows:

'As always, I hope this finds you well. I appreciate your request for no further contact from me, however I do need to write to you. This will be the last time I attempt contact with you ahead of the new academic year, unless it is in response to you.'

He then set out - in a list of 10 points - the respondent's position regarding future correspondence, meetings and adjustments with the claimant in light of his refusal to correspond with Ms Sheehan. In summary this was that the respondent would only engage with him via formal processes and that until those were exhausted, they would not consider arranging a meeting between the claimant and the CEO/Members/Trustees. He attached a copy of the whistleblowing policy and concluded by saying:

'You have been given details on how to engage positively with the trust to describe and resolve your grievance(s) and to discuss any additional reasonable adjustments you may require. These processes remain open to you and you can detail any additional requests for adjustments at any time If you follow these processes, with reasonable adjustments where appropriate, progress will be made. If you choose instead to continue to attempt to bypass these, it will not.'

175. In August 2021 the AtW grant for 12 ADHD coaching sessions and two half day disability awareness training sessions was approved. By this time, however, no progress had been made in making arrangements with ADHD Wise and it was agreed between Mr Rose and Ms Porter (subject to the claimant's agreement and proper governance) that she would provide the training independently. Ms Porter then emailed Ms James on 19 August 2021 confirming that she was available to provide the training from September and asked for convenient dates.
176. The claimant was signed off sick from work by his GP from 4 September 2021. This sickness period continued until his dismissal (the last fit note dated 11 January 2022 extended until 3 March 2022).
177. Ms Porter emailed Dr Roberts and Mr Rose on behalf of the claimant on 8 September 2021 (in a later email she confirmed that she copied all correspondence sent and received on behalf of the claimant to him). She advised that his medication was being changed and that he would be going through a titration process of between four and eight weeks. She also advised that the claimant would only accept telephone calls and emails directly from Dr Roberts and other Trustees of the respondent on a one-to-one basis with nobody else copied in. Also that he claimant may make contact with staff at the school if necessary but responses should only be sent if specifically requested and otherwise no contact should be made with him by the SLT. She confirmed that the claimant was happy for Dr Roberts

or any other Trustees to email Ms Porter and that she would share the content of any such emails with him. Also that Mr Rose was free to contact her regarding arranging the training for the SLT.

178. On 14 September 2021 Mr Rose replied. As far as the training was concerned he confirmed his understanding that 'employer training' was booked for the school leadership on 20 September 2021. Although he did not say it expressly, we find that that training was booked with Ms Porter.

179. With regard to the claimant's request regarding communication he said:

'In terms of communication, it is not the role of the Chief Executive Officer, Trustees or Members to engage with [the claimant] on any of the issues raised. We have established procedures and lines of management which we would expect [the claimant], along with any employee of the trust, to engage with. Any communication outside of these management lines will be forwarded on to the appropriate person for response. We have already made changes to [the claimant]'s direct line management as part of an earlier supportive adjustment and these remain in place.'

and

'We will be writing to [the claimant] under separate cover detailing next steps of the absence management process. I would urge [the claimant] to engage fully with this process and to comply with the absence management policy. Letters will be sent to [the claimant]'s home address with meeting dates, which I hope he is able to attend; we are happy to copy you on these letters if [the claimant] gives permission. We will ring him to let him know to expect a letter and will not email the letter as requested. We will give reasonable notice of any meetings, which you are also welcome to attend at [the claimant]'s request, and will look to make you aware of any letters that are sent to enable you to let [the claimant] know to expect these.'

180. In accordance with those arrangements (and on Ms Gascoigne's instruction) Mr Davies called the claimant on 16 September 2021 (issues 29(j) & 21(a)(ii)) to inform him he would be receiving an invite letter for the reconvened stage 2 sickness absence management meeting. The claimant refused to speak to Mr Davies and terminated the call.

181. That letter (issue 20(a)(ii)) was then emailed to the claimant the same day inviting him to a meeting on 24 September 2021 under the AMP and also to discuss any auxiliary aids and health equipment needs as mentioned in recent correspondence. He was advised to make all reasonable efforts to attend but if he was unable to it could be rescheduled once but any rescheduled meeting may proceed in his absence. He was reminded of his right to bring a representative and also told that Ms Porter could attend with him at the respondent's expense. The letter set out key dates of the process thus far, absence dates during the phased return and the dates of OH referrals. The respondent again requested that the claimant consent to a further referral.

182. Ms Porter's evidence was that Mr Rose emailed her on 17 September 2021 to tell her that the training would proceed on the 20th but with a different provider. Mr Rose denied that that was the case and no copy of that email was disclosed. We prefer Mr Rose's evidence and find that it was always the intention and expectation of the respondent that Ms Porter would be

delivering the training booked for 20 September 2021.

183. Although the circumstances are very unclear, the claimant cancelled that training. He had an acrimonious exchange of emails with ADHD Wise between 18 and 20 September 2021 which demonstrate that he believed the respondent had in some way tricked Ms Porter and ADHD Wise as to the nature of the training and that the training due to take place on the 20th would be by them rather than Ms Porter. His allegations escalated to include allegations of bribery and resulted in ADHD Wise ceasing all communication with him.
184. In any event, Ms James emailed Ms Porter on 23 September 2021 asking to book a date for the training and they continued to exchange emails with the view to arranging this through to 7 October 2021 where Ms Porter explained that she had to wait for confirmation from the claimant that he was satisfied the training arrangements would support his needs. She expressly acknowledged that Ms James had 'made an effort to organise this'.
185. Also on 23 September 2021 (issue 29(i) – email no 3) Mr Rose wrote to the claimant (copied to Ms Porter) to remind the claimant not to communicate with Dr Roberts (he had sent her an email marked without prejudice and containing detailed medical information a few days previously).
186. The claimant did not attend the planned stage 2 meeting on 24 September and it was at about this time that he filed a police report complaining of harassment by his employer. Ms Gascoigne wrote to him (by recorded delivery) inviting him to attend on 30 September. She also offered alternative modes of meeting if that would help (a neutral location, meet by telephone, representation solely by union representative or written submissions). He was again reminded that this meeting may proceed in his absence if he did not attend.
187. Very early in the morning of 30 September 2021 Ms Porter emailed Dr Roberts, copying in various others including Ms Gascoigne, on behalf of the claimant. She advised that he would not be attending the stage 2 meeting and, although not expressly stated, there were suggestions that he had not received the letter sent to him on 24 September 2021 rearranging it or a reminder email that Ms James had sent him on the 22nd. Ms Porter confirmed that the claimant's position was that he was more than open to discuss his absence from work but would only communicate with Dr Roberts, Trustees and Members by prearranged phone call with no agenda. Attached to that email was a 10-page document from the claimant which had embedded within it various other documents (text messages, further reading, images), was wide ranging and difficult to follow. Neither Ms Porter's email or the attached document from the claimant expressly said that he was not well enough to attend the meeting. Rather his reason for non-attendance was ascribed to the respondent breaching his required communication and 'accessibility' boundaries.
188. Ms Gascoigne continued with the meeting in the claimant's absence (issue 27(u)). In a comprehensive report dated 12 October 2021, she set out a full

- review of events and adjustments to date and recommended the matter to progress to consideration at stage 3 of the AMP. She also recommended a further OH referral and report to be obtained.
189. Also on 12 October 2021 (issue 29(i) email no 4) Mr Rose wrote to the claimant, copied to Ms Porter, informing him of this outcome and that he would receive details of that meeting - at which he would have the right to be accompanied including by Ms Porter - in due course. He also told the claimant that the respondent would be requesting an OH review and that he should expect direct contact from them imminently and included a consent form for his completion. He confirmed that if the claimant chose not to engage with OH then the hearing may proceed in any event. Mr Rose referred to the attempts to organise the ADHD training which had not by then been possible. He expressed the hope that this could be moved forward in a timely manner and expected to hear from Ms Porter that week.
190. Mr Rose also reminded the claimant that it was not appropriate for Dr Roberts to respond to his correspondence nor to meet with him outside established processes. He expressly confirmed that the respondent did not agree that allowing direct communication with the CEO and Trustees would be a reasonable adjustment until established procedures had been exhausted. As far as general communication was concerned, Mr Rose confirmed that the respondent had not agreed to the claimant's requests in this regard but that they may phone him to inform him that a letter was being sent and urged him to engage with such communication. He confirmed that they have a duty not only to maintain clear communications but to monitor the claimant's health and well-being. He further confirmed that it was not possible to agree to speak to him without an agenda as they were continuing to support him via the formal AMP.
191. The claimant replied to this by email very early the next morning to Dr Roberts in which he said that he believed he had been subjected to harassment, victimisation and a breach of the duty to make reasonable adjustments and that the respondent was failing to provide a safe working place. He said he would block all emails other than those sent by her but he was open to discussion with her by telephone with no agenda and no formalities. Dr Roberts forwarded this email to Mr Rose and Ms Sheehan for a reply.
192. On 22 October 2021 (issue 29(i) email no 5) Mr Rose wrote to the claimant copied to Ms Porter. In a covering email he said:
- 'I appreciate your request for no contact from anyone outside the CEO or Trustees, however we do need to communicate with you and it is not appropriate for this to come from the CEO or Trustees. ...
- [Ms Porter] – [the claimant] has suggested that emails from anyone other than our CEO or Trustees may now be blocked, so I do not know whether [he] will receive this message directly or not. Could I please ask that you forward this to [the claimant] at your earliest convenience?'
193. The enclosed letter replied to emails the claimant had sent to Dr Roberts on

- 15 and 20 October 2021. (We note that in both those emails the claimant referred to having sought legal advice specifically with regard to possible claims of disability and race discrimination in the Employment Tribunal. He also referred to case law concerning the duty to make reasonable adjustments and having researched the law regarding settlements.) It included that the ADHD training needed to be delivered to those responsible for the claimant's day-to-day operational management rather than, as the claimant wished, to Trustees/Board Members and the SLT. As the training was being funded by AtW, the claimant however had the final say on how those funds should be used and accordingly the parties reached a stalemate on that issue. Mr Rose also asked again that the claimant engage with an OH assessment but advised him that if they did not receive his consent by 12 noon on 1 November 2021, they would assume he was not so willing and any decisions taken would be based on the available information at the time. Another OH referral and consent form were attached.
194. A further report was produced by Psychiatry UK on 24 October 2021 (issue 25(c)(iv)). It described certain aspects of the claimant's condition including that he had neuro-developmental difficulties and cognitive overload. It recommended adjustments as follows:
- a. communication from the respondent to the claimant to be directed to a single point so that they may collate the information and discuss it with him in time-tabled meetings;
 - b. receiving communication at predictable times via predictable routes;
 - c. being given additional time and support to consider his responses to any new information;
 - d. an allowance of regular breaks during formal meetings to enable him to process the content and take a step back to regulate emotions.
195. That report was sent by the claimant to Mr Rose with a very lengthy undated letter but which was in turn attached to an email to Dr Roberts, Trustees and others (including Ms Harrison) on 1 November 2021. Both repeated many of the points already made by the claimant but in particular stated that he needed his auxiliary aids at a total cost of around £10,000 – 'the best and top spec family of apple products ...the best' - and that Ms Porter should be booked in to provide training to the Trustees. Also that a single member of the respondent not from the school or Mr Rose should act as sole communicator with him 'through both verbal and written channels'. He also said that he could not afford to continue using Ms Porter 'as there is no better advocator than my solicitor'.
196. On 2 November 2021 (issue 29(v)) Ms Porter emailed Dr Roberts, Ms Harrison and members of the Board introducing herself as working with the claimant through the AtW scheme and that he had requested she contact them to arrange a date for training for employers. She offered 9 December as the next available date. She then emailed again the following day offering further dates in November when the training could be delivered remotely. No direct reply to these emails was sent although on 16 November 2021 Ms Costanza emailed Ms Porter confirming that the respondent was looking to arrange ADHD training and wondered if she would be able to facilitate it and looked forward to hearing from her soon.

197. Ms Harrison emailed the claimant on 4 November 2021 introducing herself as Deputy CEO and line manager of Mr Rose and offering a proposal based on the Psychiatry UK report. She said she was happy to be a single contact for future communication via Ms Porter (at the respondent's expense) but required his agreement. She also requested that in the meantime, direct communications with Trustees and Members cease in order to maintain a constructive dialogue. Ms Harrison and the claimant subsequently had a number of telephone conversations and he agreed to her acting as a single point of contact but declined using Ms Porter to collate communication to present to him.

198. In an email to Ms Harrison on 9 November 2021 the claimant referred to:

"...the auxiliary aids needed for me to access health solutions and future employment/access to work.

These aid will assist me in my poor executive functioning, automate some working memory, monitor my health and routines, provide tuning and insight to my over sensory input, enable and code AI machine learning of my day-to-day struggles and provide solutions to eliminate these, plan and organise structure to my routines (especially if something changes unexpectedly), help me with my mobility concerns and access 3D virtual models of planning and preparing journeys outside of my community, visually mind map for improving my linear writing structures, mobile connectivity to my machine learning brain at home and much more. This will be my family of care for me to feel safe when I leave my front door and ways I can learn to improve some of my negative traits to free up time that 'normal' people have the pleasure of experiencing without constant mishaps and spirals out of control.

I have a friend in my apartment block that gets 17% staff discount and has offered this goodwill gesture to me (although not sure if apple care is included) and this minus the £931.64 from Access to Work brings total cost to £10,562.

After being assessed and reviewed critically these are considered 'standard items' I need to access the world built in neurotypical systems and any workplace job role including Director of Maths and begin a process of eliminating/suppressing the effect of my negative ADHD and Autistic traits I suffer from and hide daily. This will allow me to access long term sustainable employment with target of limited days of absence but as before but this time in a stable and maintained mental and physical health routine where I won't burn out, melt down or have a constant elevated pulse which will eventually reduce my life expectancy - this is a fact and a fear.'

199. He attached to that email a copy of the AtW grant letter dated 18 August 2021 which confirmed that they would fund equipment as follows:

- a. 'Adjustable Aluminium Laptop Stand £66.60
- b. Bose Noise Cancelling Headset £249.95
- c. Dell Inspiron 13 Laptop £819.00
- d. Grammarly Premium £180.00
- e. Samsung 32 Ultrawide Monitor £349.00

The total cost of this support is £1664.55. Access to Work will contribute a maximum of £931.64.

Support will start from 18/08/2021 until 17/02/2022 as long as your needs do not change.'

200. The letter continued to state that standard pieces of equipment for his role would not be funded by AtW as the employer should provide them 'if you need them as standard items'. Namely,

'27 inch IMac, LICB C cable + adapter , IMac stand, AirPods pro, LG ultrawide, Iphone 12, Ipad'

Whether deliberately or otherwise the claimant's interpretation of the AtW letter was flawed and he misrepresented its meaning in the email to Ms Harrison. They were plainly not saying that he required the listed Apple products but that if they were standard items the respondent should provide them. They were not standard items as the school used windows based products rather than Apple.

201. In any event Ms Harrison missed that the AtW letter was attached to the email. The claimant says that this was deliberate given that the funding from access to work would expire on 17 February 2022 whereas Ms Harrison says that it was an oversight. We accept Ms Harrison's evidence as all other indications were that she was genuinely trying to work with the claimant to obtain the best available outcome for him. She subsequently repeatedly asked the claimant for a copy (including on 6 January 2022 when she emphasised that he might feel it useful to share it with them before the then pending stage 3 meeting) which she eventually received on 18 January 2022.
202. On 22 November 2021 Ms Harrison wrote to the claimant inviting him to a stage 3 incapability due to ill health meeting on 9 December 2021. Regrettably the covering email to the claimant was sent from a generic HR email address rather than from Ms Harrison personally (issues 23(a) & 27(w)) and it was sent to him before she sent her email advising him that the invite letter was coming.
203. The claimant replied in the very early hours of the next morning expressing his 'confusion and displacement' at receiving the email in breach of the agreement had reached with Ms Harrison and explaining the impact that this behaviour could have on neurodiverse employees. This was certainly unfortunate although Ms Harrison did subsequently apologise.
204. In any event in that invite the claimant was advised that the hearing would determine whether he would remain in post or be dismissed from employment for incapability due to ill health and a further copy of the AMP was enclosed. He was advised of his right be accompanied both by a union representative, colleague or ADHD advocate. He was also advised that the usual process was adjusted so that three Directors of the respondent would comprise the panel with Ms Harrison as chair.
205. The details of what would be considered at the hearing were set out and the claimant was advised to make all reasonable efforts to attend but if he was unable to do so, he could be represented by a trade union representative or submit a written statement with the hearing proceeding in his absence.
206. At the claimant's request that hearing was rescheduled a number of times.

On 17 January 2022 he requested that it be postponed (again) for 5 weeks so that he could receive legal advice regarding his position and also because Ms Porter was not available to support him in person for the rest of the month. This request was refused but did lead to a final rearrangement to 27 January 2022 and the claimant was advised that arrangements could be made for Ms Porter to attend remotely. Also that if the prospect of a formal meeting of this scale caused him anxiety, those presenting on behalf of the school and trust could do so either remotely, or in writing. He would still have the opportunity to ask questions, however these could be directed through the panel rather than directly.

207. In addition throughout January 2022 there was a variety of exchanges of correspondence between the claimant and various members of the respondent. This included on 4 January 2022 an email to Dr Roberts chasing for a reply regarding the requested equipment, saying that he would need a new phone, the latest Apple product and portable iPads, as well as the management training. He referred to the delays in providing these as isolating him and leaving him absent at home. He also asked Dr Roberts to confirm her relationship to Ms Harrison. (The claimant had been researching members of the Board and had discovered that Ms Harrison's married name is Roberts. He concluded that they were related.)

208. Also, on that day the claimant forwarded that email Ms Thomas in her capacity as whistleblowing lead for the Board on 4 January 2022. He said:

'...can you help me I have very serious concerns on HR practices at TKAT and extend to CEO Karen Roberts and Elizabeth Roberts.

Due to my disability I cannot access the normal processes therefore I would like to know your ideas and I cannot access formal policies available.

My neurodiverse access arrangement for communication is verbal communication so please ring me on xxxxxxxx. I am available from Thursday.'

209. Ms Harrison replied to the claimant on 6 January 2022 replying to the various points he had raised (including regarding her surname) and asking him to send her a copy of the full AtW grant and she chased for this on 10 January 2022.

210. On 19 January 2022 Ms Thomes replied to the claimant's email of 4 January 2022 (issues 23(a) & 27(w)). She reminded him of the limits of her role but asked that if he had a concern that amounted to whistleblowing to give her a brief overview and that once she had read that if she considered they did amount to whistleblowing, she would arrange a call with him.

211. The claimant replied (from a business email address) on 21 January 2022, copying all the Trustees, with an 8-page document setting out various concerns and allegations (which opened with the words:

'Thank you for your email, my mission objective is complete, contact from an independent Trustee and Board of Governance of TKAT. Bear in mind no one has any idea this has been my measurable goal since March 2021...'

- He sent this email to them twice. Once to their Trustee email addresses and again to their either personal or professional email addresses. This resulted in a 'cease and desist' letter (issues 23(a) & 27(w)) to the claimant on 24 January 2022 from solicitors acting for the respondent because of alleged breaches of data protection rules regarding use of the Trustees' email details.
212. The hearing on 27 January 2022 was due to start at 10am. The decision panel consisting Ms Harrison, Mr Batchelor (Director) and Mr Lindsell (Director), supported by an HR manager not previously involved in the matter and a note taker, were ready to start at 10am but the claimant was not present. They waited for two hours for him to attend but then started at 12.10 in his and Ms Porter's absence.
213. Ms Gascoigne started to present a summary of events to date. At 12.16 Ms Porter joined the meeting remotely. Ms Gascoigne completed her presentation by 12.42 when Mr Rose joined the meeting and started to summarise his involvement. The claimant arrived at 12.47 at which point the meeting was adjourned so that the claimant could rearrange the room as he wished and also have a private discussion with Ms Porter.
214. The meeting resumed at 13.25 and Ms Harrison made introductions and told the claimant that additional breaks could be taken as and when required. Mr Rose restarted his presentation. The claimant interrupted or sought clarification from Mr Rose on a number of occasions. Ms Harrison allowed a number of those interruptions unchallenged but also told the claimant several times that he should wait for Mr Rose to finish his presentation and then he would have the opportunity to ask questions. When Mr Rose finished his presentation the panel asked their questions and then the claimant was invited to put any questions he had to Mr Rose. There was an adjournment between 14.19 and 14.37.
215. When the meeting resumed the claimant was given an opportunity to make his presentation although he said that he would rather do it by answering questions from the panel (though not from Ms Harrison). Mr Batchelor asked a series of questions and then so did Mr Lindsell. In the course of those exchanges the claimant said both that he was not well enough to return to work and that his preference was to teach adults rather than children.
216. Following another break between 15.17 and 15.36 the claimant was given another opportunity to ask any questions he had and Ms Porter was also given an opportunity to comment. The meeting ended at 16.09.
217. Ms Porter was particularly critical in her evidence of the format of this hearing which she said was wholly inappropriate for an individual with the claimant's known disabilities. She said that he requires in-person interaction to process information effectively and to manage the anxiety caused by his conditions. Further that he needed her continual, real-time support to navigate his thoughts and articulate himself which was impossible over video particularly as the connection had been poor and at one point cut out for approximately 15 minutes.

218. Ms Porter's evidence was also that the tone of the meeting was hostile and lacking in understanding of the claimant's condition. Having watched the covert recording of the meeting (albeit with its limitations described above) and read the notes of the meeting, we do not find the tone to have been hostile. It was certainly formal and the claimant was brought back to the point at various times and given instructions on when he could ask questions and when he had to allow others to finish. However he was also given a large amount of latitude at times in how he conducted himself during the hearing as well as adjustments having been made (his very late arrival, rearrangement of the room, frequent breaks etc).
219. Ms Harrison texted the claimant on 31 January 2022 (after trying to call him) to inform him that the decision letter would be emailed to him that day. The decision letter was lengthy so Ms Harrison summarised the outcome for the claimant in her covering email.
220. The decision letter summarised the adjustments made to the stage 3 hearing and the process followed by the panel. Ms Harrison fully set out the panel's deliberations and conclusions under the headings:
- a. impact of ongoing absence in relation to the needs of the school;
 - b. duration of absence, medical information received, correspondence to date and potential for redeployment;
 - c. whether any reasonable adjustments may facilitate a return to work;
 - d. likely duration of absence or continuation of the condition;
 - e. whether ill-health retirement was appropriate; and
 - f. whether in all the circumstances it was feasible for the claimant to remain absent;
- and an overall conclusion that for those reasons the decision had been made to terminate his employment on notice with a payment in lieu on the grounds of incapability due to ill health. His employment terminated on 31 January 2022. He was informed of his right of appeal to Dr Roberts. The notes of the stage 3 hearing were sent to the claimant on 1 February 2022.
221. The claimant submitted his appeal against dismissal by email to Dr Roberts on 10 February 2022. In the email he particularly referred to the difficulties he experienced during the stage 3 hearing by Ms Porter attending remotely he said:
- 'I needed her next to me as aide and confidante and not presented on the large projector excluded from an in-person dismissal panel hearing. I needed her as a priority next to me and not on the big screen and because of this the sound for [her] to hear was difficult from both the technical stability of internet connection and sound from individuals in the room.'
222. Ms Harrison replied on 14 February 2022 confirming receipt of his appeal and asking him to submit any comments on the notes of the meeting no later than three days before the appeal hearing (with a suggested date of 2 March 2022). In particular she referred to the issue of whether Ms Porter was able to properly participate in the hearing and confirmed that she had been asked a number of times in the meeting and during adjournments whether she could hear proceedings and that she had confirmed on each occasion that she could. Also she asked the claimant to provide his final grounds of appeal by 21 February 2022.

223. On 14 February 2022 the claimant again emailed Dr Roberts, copying numerous others including Trustees, complaining that he had not received a reply to his last email and making various allegations in very argumentative tones. He accused her of displaying a 'white apathy', various aspects of misconduct, 'suspicious activity to your transparency controls', autocratic dictatorship and a corrupt, distorted culture. The content and tone of the email certainly suggested that the claimant's mental health at this stage was very poor.
224. On 25 February 2022 the claimant confirmed that 2 March 2022 was acceptable as the date for the appeal hearing but he requested that it take place at what he described as 'my workplace' at the Truman's social club.
225. On 28 February 2022 Ms Harrison emailed the claimant advising him that after consideration the appeal hearing could not be held at the social club and offered to look into other respondent premises available and asked him which geographical area would suit him. The claimant replied on the same day. He stated that he had recently intercepted multiple cyber attacks on his phone which he believed most likely to have been instigated by a member of the Board and that because of that he would not feel safe on any respondent sites and asked for confirmation that the appeal would take place at the social club. He said that the refusal to hold the appeal there was an:

'aggravation of my protected characteristics. This has resulted in this current moment of psychological distress with extreme anxiety and mobility problems.'

Ms Harrison replied confirming that it was not possible, due to other diary commitments, for the appeal manager (Ms Jacobs) to attend the social club and the appeal hearing would take place at respondent premises. In his reply the claimant repeated that the social club was the only location at which he felt safe and requested that Ms Jacobs revisit her diary commitments. Ms Harrison replied at 18.05 saying that the request to hold the meeting at the social club was refused and it was not a reasonable adjustment. She said that the appeal would be held at 11am on 2 March 2022 at the Atkins Centre or other respondent premises and would proceed in his absence if he was not present and that this was a final decision.

226. In a lengthy reply on 1 March 2022 the claimant repeated that he would not risk damaging his health by leaving his local community and that he would therefore attend at the social club the next day at 11am and hold his appeal in Ms Jacobs' absence if she was not present. He questioned the validity of the reason given by the respondent for refusing to accommodate his request. Towards the end of that email he said:

'But I did warn you June 2021 if you prevent my opportunity to reconcile with my wife then I will have nothing left to lose and after your Vulture Solicitor and these cyber-attacks there are only three avenues of attack left - a smear campaign (difficult with my disability), manipulation of my personal data or shot!' (*claimant's own emphasis*)

227. In her reply on the same day Ms Harrison said:

'Thank you for your email. I am going to be completely honest with you, although I imagine what I say may be upsetting for you, which is why I have resisted before now.

During the course of our ongoing correspondence and communications, your accusations and conclusions have become more extreme and aggressive. This includes some of your behaviours at the stage three meeting in January. As discussed at that meeting, we have a document from Psychiatry UK, kindly provided by yourself, that suggests that you may have an additional, undiagnosed condition or conditions. We asked to refer you back to occupational health on more than one occasion and you declined. Given our perceived increase in your aggressive language and extreme accusations, it is our concern that one or more of these undiagnosed and therefore untreated conditions are impairing your judgement and contributing to increasingly erratic and unpredictable behaviour.

Our reason for not meeting outside of a TKAT premises is, therefore, the safety of our employees. We have contacted ACAS to see if it was possible to hold the hearing at their premises but unfortunately ACAS do not permit this'

She repeated the arrangements for the hearing and told the claimant he was welcome to attend in person as was Ms Porter and that joining virtually also remained an option as a reasonable adjustment.

228. The appeal hearing proceeded on 2 March 2022 at the Atkins Centre in the claimant's absence. Ms Porter did not attend. It was chaired by Ms Jacobs supported by Ms Sheehan from HR and Ms Salter as notetaker. Ms Harrison joined as a witness.
229. During the hearing Ms Jacobs reviewed the decision to terminate the claimant's employment based on the information available at the stage 3 hearing, the notes from that hearing by both the respondent and the claimant, the outcome letter and the emails from the claimant dated 28 February, 1 and 2 March 2022. She put various questions to Ms Harrison. She then adjourned the hearing for deliberation.
230. On 2 & 3 March 2022 the claimant submitted emails to Ms Harrison, copied to Ms Jacobs and others, enclosing notes of his own appeal hearing that he had held at the social club. Ms Jacobs considered those notes but concluded that they did not identify any further grounds of appeal against his dismissal. She reconvened the appeal hearing on 3 March 2022, set out how she had reviewed and considered the relevant information and upheld the original decision made on 27 January 2022.
231. On 11 March 2022, Ms Jacobs wrote to the claimant informing him of the outcome of the appeal setting out the process, the adjustments made, the information she had reviewed, summarising her deliberations and concluding that the original decision made by the panel was a reasonable and a proportionate outcome and therefore the appeal was not upheld. She confirmed the decision to terminate his employment on the grounds of incapability due to ill health.

Conclusions

232. These conclusions deal first with the disability discrimination claims set out by reference to issue number, brief description of type of claim and factual basis (e.g. 'issue 27(a) – arising from – letter of expectation') but as far as

possible in chronological order and grouping different heads of claim together that relate to the same underlying facts. However, the distinct issue (issue 26) of when the respondent acquired the necessary knowledge of the claimant's disability/ies is dealt with first (the fact of the claimant's disability at the material times by reason of ADHD, ASD, dyspraxia and anxiety having been admitted by the respondent). The further distinct issue of whether the discrimination claims were submitted in time is dealt with at the end of that section and we then deal with the claims and issues directly relating to the dismissal.

233. The respondent's knowledge of disability (issue 26)
234. The claimant says that the respondent had knowledge of his disability by way of ADHD in April 2019 when he was issued with the letter of expectation. We do not agree. His statements at the meeting were not sufficient to fix the respondent with knowledge. Even though he referred to ADHD during this meeting, even on his own case he said that it was a possibility that he had it and he had not yet been diagnosed. Further, even if he did have ADHD, this would not automatically mean that he was disabled as per the statutory definition. The impact of ADHD on any individual's ability to carry out normal day-to-day activities varies. At most, this meeting put the respondent on notice that it was possible the claimant had ADHD and it was possible that that might amount to a disability.
235. We have also considered if the stage 1 part 1 meeting on 10 December 2020 put the respondent on notice of the claimant's disability but conclude it did not. The information the claimant gave to the respondent was indicative, if anything, of depression rather than any of the claimed disabilities.
236. In contrast, at the meeting on 21 January 2021 the claimant told Ms Gascoigne that he had been diagnosed with ADHD and would be starting medication and counselling. This, together, with the respondent's recent experience of the claimant's behaviour was sufficient to give them the necessary knowledge, as admitted by them.
237. Although it makes no difference to the outcome, we find that the claimant also had knowledge of the claimant's autism from 11 January 2022 (or very shortly thereafter). The reason for absence given in the claimant's fit note of that date is 'ADHD with suspected autism and dyslexia'. This was expressly still speculative with no diagnosis until much later, and again autism is not automatically a disability. However, that description together with all the surrounding circumstances and the respondent's experience of the claimant's, at times, extreme behaviour since the summer of 2020 was sufficient to give them knowledge.
238. As for the claimant's anxiety, this was referred to in the Psychiatry UK report dated 24 October 2021 which was copied to the respondent within a week or so. It noted that living with an undiagnosed disability is of itself stressful and anxiety provoking but viewed the 'affective symptoms as a consequence of frustration rather than an endogenous phenomenon.' We have been referred to no formal diagnosis of the claimant's anxiety. We conclude that there was

- insufficient information available to the respondent at the material times whether express or to be inferred, to give them constructive knowledge of the claimant's anxiety such as to amount to a disability.
239. For completeness, we find that there was no information available to the respondent at the material times whether express or to be inferred, to give them constructive knowledge of the claimant's dyspraxia such as to amount to a disability.
240. Disability discrimination claims
241. All references below to the claimant's disability are references to his ADHD.
242. Given the number and complexity of the issues we have not separately analysed for each allegation whether the burden of proof has passed to the respondent. Rather, we have indicated where the underlying facts of each allegation have been made out and if so, whether they amounted to the type of discrimination claimed.
243. Issue 27(a) – arising from
– letter of expectation April 2019
244. It follows from the above finding on knowledge that this claim fails as the respondent did not have knowledge of the claimant's disability at the relevant time. For completeness, we find that a letter of expectation did amount to unfavourable treatment and in all the circumstances the relevant absence was more likely than not to have been because of something arising in consequence of his ADHD. However, issuing the letter of expectation was a proportionate means of achieving the legitimate aim of requiring the claimant to be able to fulfil his work obligations.
245. Issue 27(b) – arising from
– starting absence management process
246. Similarly, this claim fails as the process was started in 13 November 2020 before the respondent had knowledge of the claimant's disability. In any event, in all the circumstances – particularly that he had by then been off sick for 8 weeks - this was a proportionate means of achieving the legitimate aim of requiring the claimant to be able to fulfil his work obligations.
247. Issue 27(c) – arising from
– continuing absence management process
248. The decision to continue the process was made after the respondent had acquired the necessary knowledge of the claimant's disability.
249. It is conceded by the respondent as arising from the claimant's disability. We find that it does amount to unfavourable treatment but was a proportionate means of achieving the respondent's stated legitimate aim. In assessing proportionality, we have taken into account that the respondent did so with the intention (which was fulfilled) of seeking further OH advice and that of

- course the claimant at this stage remained off sick and had been since the beginning of the autumn term. It is the Tribunal's view that the respondent could have chosen not to progress through the stages quite as quickly as they did but, and in particular taking into account the fact that they started the absence process after eight weeks of absence when they could have started it after four weeks, this is not sufficient to make their decision disproportionate. This claim therefore fails.
250. Issues 27(d) – arising from & 29(a) – harassment correspondence 1 Feb & 1 March 2021
251. The failure by the respondent to expressly address the claimant's ADHD in this correspondence reflects the fact that the letters were based on standard HR letters. The choice of words does not arise from his disability nor is it related to it. In any event the failure to expressly mention ADHD in the context of what else was said in the correspondence and in the meetings, did not amount to unfavourable treatment nor violated the claimant's dignity or created the necessary environment such as to amount to harassment. Further, in the case of harassment, the choice of words certainly did not have that purpose and would not reasonably have that effect even taking into account the claimant's state of mind and sensitivities at the time.
252. These claims therefore fail but we would observe that whilst it is entirely reasonable for the respondent to rely on HR advice and drafting in the way they did, in a sensitive and complex case like this individual decision-making managers may want to pay more attention to tailoring standard letters to ensure that they reflect the particular circumstances at the time.
253. Issues 14(a) – RAs (auxiliary aid) & 27(e) – arising from larger, faster laptop March 2021 onwards
254. To the extent that Ms Gascoigne's failure to take further action in March 2021 with regard to the claimant's request amounted to a rejection of it, we do not find that the respondent caused the claimant a substantial disadvantage in comparison to non-disabled employees. There was no evidence to suggest that and indeed the OH reports in February and June 2021 (noting in particular the June report was prepared after he had returned to work and would know what in practice was and was not causing him difficulty) and reports from Psychology UK do not recommend that any upgrade of technology for him (other than a reference to him continuing using his phone and watch). The AtW grant obtained in August 2021 but only first sent to the respondent in November 2021, did cover a larger monitor and upgraded laptop but it did not fund the Apple versions which is what the claimant emphatically wanted (and at a much higher cost). The evidence was that the respondent would be willing to facilitate obtaining the AtW recommended products but by the time they became aware (or should have been aware) of the AtW grant matters had progressed such that it was not the absence of auxiliary aids that was precluding the claimant from returning to work. Accordingly the relevant reasonable adjustments claim fails.
255. The same facts are relied upon as an arising from claim. Ms Gascoigne's

- March 2021 failure did amount to unfavourable treatment (albeit minor) and the respondent accepts that the context of the request arose because of something arising in consequence of the claimant's disability. However, the failure did not. There was nothing to suggest that Ms Gascoigne's failure was anything but oversight. Therefore this claim also fails.
256. Issues 14(b) – RAs (auxiliary aid) & 27(f) – arising from failing to organise ADHD training 27 April 2021 onwards
257. The RAs claim related to the training issue is misconceived. Training does not amount to an auxiliary aid but even if it does, the claimant's request was for that training to be provided to other people not to himself. This claim therefore fails.
258. As an arising from claim, the alleged unfavourable treatment is failure to organise management training on ADHD from 27 April 2021 onwards. Whilst it is correct that the training did not happen, this was not due to a failure by the respondent. It was booked for 20 September 2021 with Ms Porter and that was cancelled by the claimant. Thereafter the respondent continued to try to organise it but agreement but could not be reached between the parties as to who should be trained. This claim therefore fails on the facts.
259. Issue 24 – RAs (PCPs) not telling SLT about claimant's disability
260. The PCP relied upon by the claimant is the respondent's alleged practice of not telling SLT when members of staff have a disability. On the facts this was not their practice. This is what happened on this occasion but this was in the nature of a one-off decision peculiar to the exact circumstances of this case. The claim therefore fails at that stage.
261. In any event, the pleaded disadvantage (lack of understanding of the claimant's disability and accordingly being held to the standard of someone who did not have his disabilities) was not made out on the evidence. The members of the SLT who were involved in holding the claimant to a standard, those dealing with him directly, did know about his disability. There was no evidence that Mr Sim, when arranging cover, would be holding the claimant to a particular standard. Although the claimant referred in evidence to potential embarrassment resulting from other employees not knowing about his disability but noticing his adjusted duties/new behaviours, embarrassment was not a pleaded disadvantage.
262. However even if there was that PCP that caused the claimant the alleged disadvantage, it was reasonably adjusted by Ms Gascoigne telling those members of the SLT directly involved in working with him.
263. Issues 17 - RAs (PCPs) & 27(g) – arising from adjustments agreed on 28 April 2021
264. Although the LOI refers specifically to 28 April 2021 as the effective date for these claims, it is apparent from paragraph 36 of the amended particulars of

claim (and the way the respondent presented its evidence) that these issues relate to alleged breaches on various dates after the agreement was reached on that date.

265. In respect of the RAs claim we find that the relevant PCP was in place and it did cause the claimant additional stress and anxiety as evidenced by his emails and conversations particularly with Ms Gascoigne and Ms Vellai in March/April 2021 onwards and in particular his emails of 6 & 13 May 2021.
266. On the facts the respondent did in general reasonably adjust that PCP where they could by notifying him of changes to classes and timetable in advance of implementation when possible taking into account the usual levels of organisational difficulty faced by a large school which at this time were particularly exacerbated by the effects of Covid. It would not be a reasonable adjustment to require such notification in every single case no matter the circumstances.
267. An exception to that general position however is in relation to events concerning the class the claimant was due to teach on 7 May 2021. The lack of prior notice to the claimant of those changes was avoidable and resulted from a communications error. In all the circumstances that was not good enough and could not be said to be proportionate.
268. Accordingly we find that in this respect only the claim for a breach of the duty to make reasonable adjustments is made out. Whether it was submitted in time is dealt with below.
269. The arising from claim related to the same meeting is described in wider terms including all of the adjustments then agreed. Save in two respects on the facts found all these adjustments were agreed and implemented as far as reasonably possible. The first exception is as above in respect of the 7 May class – it also being unfavourable treatment that could not be justified. The second is Ms Gascoigne's suggestion on 6 May 2021 that the claimant meet Ms Vellai and Mr Narain to discuss that issue. Although that meeting did not take place, the suggestion of it was enough to breach the agreement reached on 28 April and cause the claimant upset as described in his email of 13 May. Thus amounting to unfavourable treatment. In all the circumstances it could also not be justified as there were other ways that the issues could have been discussed without involving Ms Vellai's husband. Therefore in these two respects only these claims are also made out, again subject to time as below.
270. Issue 27(h) – arising from
30 April 2021 – marking comment
271. We have found that Ms Vellai did not make any comment in the relevant manner and therefore the claim fails.

272. Issues 27(i)&(j) - arising from and 29(b) - harassment
11 May 2021 – restarting absence management process
273. Important context for this claim is that, in accordance with its policy, the respondent had told the claimant in its letter dated 1 March 2021 that the absence process was ongoing whilst the phased return was in place and would re-engage should there be further absences. The claimant was then absent on various dates in both April and early May 2021.
274. In those circumstances it was reasonable for the respondent to restart the process. The original 4 week phased return had not succeeded as planned despite a significant number of adjustments having been put in place (and there being no general breach of the respondent's duties in this regard save for the one identified regarding the class changes on 7 May 2021).
275. Whilst restarting the process was unfavourable treatment that arose because of something arising etc, in all the circumstances it was a proportionate means of achieving the legitimate aim of requiring an employee to be able to fulfil their work obligations. Even if his absences in May 2021 were entirely attributable to the respondent's breach of their reasonable adjustments duties with regard to the 7 May class (and we had no evidence to that effect), the claimant had also incurred absences in April and the 4 week phased return had clearly not been successful as originally planned. Accordingly the arising from claim fails.
276. Similarly with regard to the related harassment claim, restarting the process was clearly conduct unwanted by the claimant that related to his disability. It certainly did not have the purpose of violating the claimant's dignity nor creating the necessary environment such as to amount to harassment. As to whether it reasonably had that effect on him, we find it did not even taking into account his state of mind and sensitivities at the time, as he was informed throughout of the respondent's actions and their reasons.
277. Issues 27(k) - arising from & 29(c) – harassment
comments at confidential meeting 13 May 2021
278. On the facts, the comments made by both Ms Gascoigne and Mr Cavanagh were not unfavourable treatment nor did they violate the claimant's dignity nor create the necessary environment. In all the circumstances they were reasonable comments and were well received by the claimant at the time. The claims fail.
279. Issues 27(l) - arising from & 29(d) – harassment
criticism for not finishing marking 14 May 2021
280. We have found that Ms Gascoigne's comment was an inaccurate and unfair criticism, though not deliberately so as she had been misinformed. As to the effect it had on the claimant, his evidence in cross examination was that he was crying 'a lot' in that meeting, he had 'the shakes' and that this exchange triggered him. In contrast to that his emails sent to Ms Gascoigne on the same day and next working day give no indication of such an impact. Indeed

- in those emails he was effusive in his praise of Ms Gascogne's treatment of him and her style of management. We find therefore that the criticism did not have the extreme effect on the claimant as described in his oral evidence but it was an unfair criticism and it did quite reasonably upset him as later demonstrated in his email of 21 May 2021.
281. Applying those findings to the alternative claims of arising from and harassment, we conclude first that the unfair criticism did amount to the necessary unfavourable treatment and unwanted conduct such as to found either claim. Further it was because of something arising etc and was related to his disability. Although the purpose of the criticism was not to violate the claimant's dignity or create the necessary environment such as to amount to harassment, it did in all the circumstances – particularly the inaccuracy of the comment - reasonably have that effect. Finally, for the arising from claim, it cannot be justified as it was inaccurate and therefore could not be proportionate. Thus both claims are made out subject to time (below).
282. Issue 14(d) – RAs (auxiliary aid)
alternative role requested 17 May 2021
283. This request was plainly not a request for an auxiliary aid and as described in the LOI the claim must fail. Even if we consider that that description inaccurately reflects the corresponding paragraph in the amended particulars of claim (46) and interpret it as a PCP-based claim, it is plain that the respondent had already agreed to and implemented the claimant performing a role with less responsibility and fewer hours by 17 May and continued to do so thereafter until he was dismissed the following year. On the facts therefore such a claim would fail.
284. Issue 27(m) – arising from
refusal to read book May 2021
285. Our finding is that Mr Davies did not refuse to read the book sent to him by the claimant but even if his failure to read it amounted in effect to a refusal, in all the circumstances (particularly the amount of time Mr Davies did spend with the claimant in their daily meetings) the non reading of the book did not amount to unfavourable treatment. Further, even if it did, Mr Davies's prioritisation of his time was in all the circumstances proportionate. This claim fails.
286. Issue 27(n) – arising from
instruction to do claimant's marking 21 May 2021
287. This claim as described in the issues is not made out on the facts and fails. In any event, assistance with marking could not amount to unfavourable treatment whether with or without the claimant's prior agreement.

288. Issue 27(o) – arising from withdrawal of R&R payment June 2021
289. The claimant's case is that the coincidence of timing between the withdrawal of the R&R payment being one day after an OH appointment which was broadly positive about his returning to work and which he had discussed with his line manager is compelling and betrays the real reason for the withdrawal. The respondent's case is that the timing of the withdrawal – and specifically that it was after they became aware of his diagnosis of ADHD five months before – is coincidental.
290. The withdrawal was unfavourable treatment and as indicated above it is unfortunate that a full explanation was not given to the claimant at the time, and we understand his suspicion. It is clear however from the Governors' minutes that consideration of the withdrawal, and some pressure on Ms Gascoigne to do so, was active well before the respondent became aware of the claimant's diagnosis and even before he had had any sick absence due to mental health issues. We find that the timing of the withdrawal was a coincidence albeit a clumsy one. It did not therefore arise in consequence of the claimant's disability and the claim fails.
291. Issues 27(p) – arising from & 29(e) – harassment comments on 14 June 2021
292. For the arising from claim, insofar as the comment made by Mr Davies about the claimant not returning to his role amounted to unfavourable treatment that arose because of something arising etc, it was in all the circumstances a proportionate means of achieving the legitimate aim of exercising the duty of care to protect the health, welfare and safety of employees because of the claimant's levels of absence and continuing occasional lateness, the contents of the OH report and the claimant's own reservations about performing his role as expressed in his emails and by the reality of what he was still at that stage unable to do. The respondent's actions to that point had also shown a willingness to make adjustments and that they were taking it step by step. Mr Davies said nothing to indicate that there was an unwillingness to continue to make reasonable adjustments.
293. As for the harassment claim, the comment about the OH report was made and it was unwanted conduct related to the claimant's disability. However given the efforts made by Mr Davies to engage with and support the claimant it was certainly not made for the purpose of violating the claimant's dignity or creating the necessary environment. We also find that in all the circumstances it could not reasonably have had that effect on the claimant. He was at that stage enjoying a good relationship with Mr Davies, appreciated his support and the OH report was on its face somewhat vague and unhelpful. He might have been disappointed that Mr Davies felt that way but disappointment is not alone enough to amount to harassment.
294. Accordingly these claims fail.

295. Issue 29(g) - harassment minutes circulated 28 June 2021
296. On the facts the contents of these minutes were entirely reasonable. They did not name the claimant, or even the object concerned, and there was no public reprimand implied as suggested by the claimant. Indeed there was no evidence to link the minutes and the claimant's actions. In any event the reminder did not have the purpose of violating the claimant's dignity or creating the necessary environment such as to amount to harassment nor is it reasonable for him to say that it had the necessary effect on him. In any event, it was plainly not related to his disability. This claim fails.
297. Issue 20(a)(i) – RAs (PCPs) & 27(r) – arising from July 2021, declining to discuss the arrangements for informal grievance orally
298. On the facts there was no request to discuss matters orally (although the claimant did offer to do so on 12 July 2021) and therefore no one from the respondent declined to do so. Therefore the PCP for the RAs claim is not made out and that claim fails.
299. There was however an express request by the claimant on 2 July 2021 to have a zoom call with Mr Rose which was refused. This was unfavourable treatment that added to the claimant's anxiety at the time and was because of something arising etc. However Mr Rose gave the claimant an explanation for his approach in very supportive and sensitive terms. Further, the correspondence at the time shows that the claimant was willingly engaging with communication by email. The respondent has shown this approach to be a proportionate means of achieving their stated legitimate aim and therefore this claim also fails.
300. Issue 21(a)(i) – RAs (PCPs) 13 July 2021 – late change of grievance meeting to in person - requiring prompt responses/communicating without prior warning
301. The full email exchange between the claimant and Mr Rose regarding the changes to arrangements for the 14 July 2021 meeting show that there was no practice of the respondent of requiring prompt responses. There were very unusual and fast moving circumstances at the time due to Covid. Further there was no substantial disadvantage to the claimant in the late change to the meeting arrangements. Indeed the last minute nature of the changes was a direct result of his request that the meeting be reverted to in person.
302. As to the alleged practice of communicating without prior warning, in the circumstances of this particular exchange and in light of the claimant's own request that Mr Rose confirm the position either by email or by call (acknowledging that it was clear he would prefer a call) this did not cause the claimant a substantial disadvantage. These claims therefore fail.

303. Issue 29(h) – harassment
up to 14 July pressure to follow informal process
304. The exchange of emails between Mr Rose and the claimant on 30 June/1 July 2021 show that Mr Rose expressly made it clear to the claimant that he had options with regard to how he proceeded with his grievance. This included pursuing it informally or completing the formal GR1 form. The claimant's reply shows that at that stage the approach of Mr Rose was not unwanted nor violating his dignity or creating the necessary environment.
305. We understand the claimant's argument in this respect to include that the alleged pressure came from the respondent's refusal to allow him paid time off whilst any grievance would be investigated. That in itself clearly was unwanted conduct but in the context of the correspondence at the time was certainly not with the purpose of violating his dignity or creating the necessary environment such as to amount to harassment nor could it reasonably have that effect given the tone of their email exchange. In any event, we do not find that that decision was related to the claimant's disability. Although his disability was clearly context for the whole situation, the refusal to allow paid time off was related to the respondent's own policies and procedures and efficient running of the school. Further, Mr Rose proposed an alternative which was discretionary leave and his emails with his colleagues at the time clearly show that the purpose of that was to support the claimant's and, hopefully, to achieve a positive long-term relationship with him. As to whether this approach reasonably had the necessary effect on the claimant, we find that it did not. Not least because of the claimant's own words in his email on 5 July 2021 where he said he was 'happy to meet in the middle'. Accordingly this claim fails.
306. Issue 14(c) – RAs (auxiliary aid)
14 July 2021 provision of working white board & pen
307. This allegation is not made out on the facts as a working board and pen were provided and the compatibility issue was resolved. Even if the 15-20 minutes delay in resolution amounted to a breach it did not put him at a substantial disadvantage. Although we recognise that the delay may have made the claimant somewhat flustered at the outset of the meeting, he was able to continue and make his detailed presentation. This claim therefore fails.
308. Issue 22(a)(a) – RAs (PCP)
rigid informal grievance procedure on 14 July 2021
309. The claimed PCP of the respondent rigidly applying their policies and procedures generally is not made out on the facts. Throughout their dealing with the claimant various members of the respondent showed great flexibility and their policies and procedures were adjusted on multiple occasions and was at times acknowledged by the claimant himself (e.g. delaying the start of the AMP by four weeks, senior members of staff holding additional meetings with the claimant, Ms Porter being allowed to attend meetings (at the respondent's expense) and adjusting the panel membership for stage 3 hearing).

310. The specific example claimed here, following a rigid informal grievance procedure, is also not proved on the facts. Indeed, the respondent demonstrated the opposite behaviour in that Mr Rose proposed, and the claimant ultimately agreed to, a process bespoke to the claimant's situation. In any event, it is apparent that the claimant had no substantial difficulty in communicating and participating effectively during the meeting. He had requested that the meeting take place in person which was accommodated at a time when in person meetings were difficult and his request for Ms Porter to attend as support was also accommodated. This claim therefore fails.
311. Issues 16 & 18 – RAs (PCPs) working on school premises & undertaking administration work
312. Although the two PCPs relied upon were in general applied to teaching staff and they did result in substantial disadvantage to the claimant, significant flexibility was afforded to the claimant upon his return to work in March 2021 through to the end of June 2021 when he started the discretionary leave. There were multiple occasions when he attended late or left early with no adverse consequence and it was expressly agreed with him more than once that he could perform aspects of his work from home. Further apart from marking, which it was agreed was not 'admin', he was not required to complete the usual admin attached to a teaching role during this period and other teachers covered for him in this regard. The respondent promptly put in place reasonable adjustments as requested by the claimant to alleviate the disadvantages he was suffering and these claims therefore fail.
313. Issues 27(s) – arising from 19 July 2021 rejection of requests for adjustment to role failure to suggest alternatives
314. Mr Rose clearly set out in his email dated 19 July 2021 why the requests made by the claimant, which related to his remuneration rather than his role, were rejected. This was unfavourable treatment that did arise because of something etc, but in all the circumstances – in particular the efforts that had already been made to accommodate and communicate with the claimant - they were a proportionate means of achieving the legitimate aims relied upon by the respondent. As for the claim that there was a failure by the respondent to propose suitable alternatives, this is not made out on the facts. In his email of 19 July Mr Rose expressly said they would consider any reasonable requests the claimant wished to make and proposed a new OH referral. This claim therefore fails.
315. Issue 22(a)(b)– RAs (PCP) & 27(t) – arising from 29 July 2021 refusal by Dr Roberts to meet
316. The findings above regarding this PCP generally also apply but on this specific occasion we find that there was a rigid application of policy as demonstrated by Dr Roberts' email to Mr Rose on 29 July and she clearly refused to meet the claimant as he had requested (the LOI dates the refusal as 19 July 2021 for issue 22(a)(b) although it is clearly a reference to the

- refusal on 29 July). However, that refusal did not result in the claimed disadvantage (difficulty in communicating and participating effectively). Whilst, on his case, he was denied the chance to communicate effectively with Dr Roberts, he had been given multiple opportunities to communicate orally with various members of the respondent and participate effectively in the processes. In any event, even if he did suffer that disadvantage, it would not be a reasonable adjustment in all the circumstances to afford the claimant direct access to the Chief Executive of the respondent given all of the other attempts that were made by the respondent to communicate with the claimant through a variety of methods and people. In particular both Ms Salter and Ms Sheehan had offered to speak to him about the process very recently.
317. The same facts are relied upon for an arising from claim. Again the refusal did amount to unfavourable treatment and arose in consequence etc but for the same reasons as above the respondent's actions were a proportionate means of achieving the pleaded legitimate aim. Therefore both claims fail.
318. Issue 29(i) – harassment
23 July – 22 Oct 2021 Mr Rose regularly emailing the claimant (5 examples)
319. On the facts there is no dispute that the correspondence complained of by the claimant was sent to him by Mr Rose and that this was after he had requested no more emails other than ones regarding a meeting time and date or phone calls (and so was plainly unwanted). There was nothing inappropriate on the face of any of the emails/letters. They were all written in professional, polite and supportive tones. On each occasion that Mr Rose wrote to the claimant there was a valid business reason for doing so. Even if we accept that they related to the claimant's disability (which is arguable), they were clearly not written with the purpose of violating his dignity or creating the necessary environment. Further we find that they could not reasonably have that effect on the claimant even given his state of mind and sensitivities at the time. Although it is unfortunate that Mr Rose did not always acknowledge the claimant's request not to email him, given the numerous attempts by others within the respondent organisation to communicate with him and his apparent requirement that he would then only communicate with the CEO/Board, which he had been told was unavailable save in very specific circumstances, it was reasonable for Mr Rose to continue to do so. In particular there was a clear pattern of the claimant consistently taking offence at various managers' approach towards him even when he had at first welcomed their input. The respondent could reasonably have assumed that even if another manager was tasked with communicating with the claimant, that would have again been the result.
320. Mr Rose's email of 29 July 2021 in particular showed a marked difference in approach to the claimant as until this point a great deal of flexibility had been shown to him. In light of the frequent, very long and at times antagonistic content of the emails from the claimant to various people within the respondent (including the CEO) over the previous weeks/months, this was not an unreasonable approach by the respondent notwithstanding the advice given by OH and Psychiatry UK in their various reports. Although the

- claimant's preference was for oral communication only, it was completely understandable why the respondent required written communication as was expressly explained by Mr Rose in his letter dated 12 October 2021. There is only so far an organisation can take into account an employee's preferences. Therefore the claim fails.
321. Issues 29(i) – harassment & 21(a)(ii) – RAs (PCP)
21 Sept 2021 – call without warning from Mr Davies
322. The harassment complaint (incorrectly dated as 21 rather than 16 September 2021) is that this call was made without any prior warning in breach of the adjustments requested on 8 September via Ms Porter. That request was for calls and emails only and directly from Dr Roberts and other Trustees. Mr Rose clearly refused that request in his reply dated 14 September 2021 but he did agree that calls would be made to the claimant to advise him when letters were being sent to him. On these facts, even though the call was related to the claimant's disability (given that it was about the AMP) its purpose was clearly not to violate the claimant's dignity or create the necessary environment such as to amount to harassment nor could it reasonably have had that effect on him. It was specifically to advise the claimant that a letter was being sent to him and thus help him manage his reaction to the situation and the claimant had been informed (via Ms Porter) of this approach. This claim fails.
323. As a RAs claim it also fails. There was plainly no PCP of communicating important information without prior warning. The purpose of Mr Davies's call was expressly to give the warning of the forthcoming invite letter (the adjustment sought).
324. Issue 20(a)(ii) – RAs (PCP)
Sept 2021, declining to discuss the arrangement for absence management orally
325. The basis of this claim and the adjustment sought (to email the claimant to organise an agreed time to speak in advance of any meeting) contradicts the basis of the preceding claim of harassment and RAs. In any event, whilst on the facts given the contents of Mr Rose's email of 14 September 2021 there was a PCP of communicating in writing, that same email contained an adjustment of calling the claimant beforehand to warn him that that communication was coming and an offer to copy in Ms Porter if the claimant gave permission. Also, the express offer made by Ms Sheehan in July 2021 to discuss on the telephone his return to work had been refused by the claimant. This claim therefore fails.
326. Issue 27(u) – arising from
holding meeting on 30 Sept 2021 in claimant's absence
327. The alleged unfavourable treatment is holding the meeting 'when he was not well enough to attend due to his disabilities'. This is not made out on the facts. Although the claimant was at the time signed off sick from work and was behaving in a way that suggests his mental health was problematic,

- neither he nor Ms Porter gave the reason for his non-attendance at the meeting on 30 September 2021 as not being well enough to attend. Rather, the claimant indicated that he was willing to discuss his absence from work but only with certain people and only in a certain format. As a claim of arising from, therefore, it fails.
328. In any event, even if Ms Gascoigne could/should have implied that the claimant was not well enough to attend the meeting, in all the circumstances, it was proportionate for her to proceed in his absence given the operational needs of the respondent. He had been absent for a significant period of time, he had stopped engaging with OH, he had been warned that if he did not attend the hearing it could proceed in any event he had been offered alternative formats and he did not ask for an adjournment on health grounds.
329. Issue 27(v) – arising from failing to respond to Ms Porter re organising training 2&3 Nov 2021
330. On the facts this claim fails. Ms Costanza emailed Ms Porter on 16 November and although it was not a direct reply to her emails, it was a substantive reply. This claim therefore fails. In any event, the respondent had demonstrated that it was willing to organise the training but a stalemate was reached because of the parties' disagreement about to whom it should be provided.
331. Issues 23(a) – RAs (PCP) & 27(w) – arising from not using single point of contact (3 examples)
332. The three pieces of correspondence complained of were all sent by the respondent and they were sent after the agreement was reached in early November 2021 between the claimant and Ms Harrison that she would act as the single point sending communications to him from the respondent. (At that time the claimant expressly said that he did not want those communications sent to Ms Porter on his behalf as had been recommended by the Psychiatry UK report of 24 October 2021).
333. The generic email from HR on 22 November 2021 was clearly sent in breach of that agreement. The PCP relied upon for the related RAs claim is not made out on the facts. Although on this occasion an error was made, it was a one off error and Ms Harrison apologised. The RAs claim therefore fails. For the arising from claim, however, the error did amount to unfavourable treatment (albeit at the lower end of the scale) and although the reason for sending the email was an error it was – given that it was enclosing the invite to an AMP meeting - sufficiently closely linked to the claimant's disability to be something arising from etc and, as it was sent in breach of the agreement reached, could not be proportionate. This claim is made out subject to time below.
334. The email from Ms Thomas dated 19 January 2022 was sent to the claimant in direct response to his email to her. Although in that email he did indicate that he wanted to speak to her rather than email, he also did expressly ask her to contact him (and this complaint is not about being contacted in writing)

- which was also in breach of his original request on 1 November 2021 about the single point of contact to be both re written and oral communications. Further, his email dated 21 January 2022 shows that her email was not unwanted. In fact he positively welcomed it. For the RAs claim, the PCP is not made out as again it was a one-off event and for the arising from claim it was not unfavourable treatment. This claim fails.
335. The cease and desist letter was of a different nature to the other correspondence complained about. It was not sent in breach of the agreement reached with Ms Harrison as that related to correspondence from the respondent. This letter was sent quite properly and reasonably by solicitors acting for the respondent. The PCP relied upon for the RAs claim is therefore not relevant and although it amounted to unfavourable treatment for the arising from claim that arose from etc, the recent behaviour by the claimant (including researching and writing to Trustees at their private and professional addresses) was a proportionate means of achieving the stated legitimate aim. This claim fails.
336. Issue 25 – RAs (PCP)
Failure to implement recommendations from medical reports Feb – Oct 2021
337. The alleged PCP is in three parts. The first two overlap with issues 16 & 18 above and for the same reasons, insofar as issue 25 is a general allegation, we find that significant and reasonable adjustments were made by the respondent both immediately upon the claimant's return in March 2021 and thereafter. The third part (alleged refusal to implement adjustments recommended by OH and other medical reports) is more specific and on the facts is not made out. There was certainly no overall refusal by the respondent to so refuse. To the contrary the respondent showed considerable willingness to engage with the claimant and flexibility on these matters throughout. All of the recommendations identified in the LOI were either fully or partly implemented by the respondent. Indeed in some respects they were exceeded. The claimant did not always agree with the respondent's assessment of what they could do and when but what they did do was reasonable. This claim therefore fails.
338. Issue 22(a)(c) – RAs (PCP)
declining adjustment so representative could attend 27 Jan 2022
339. The findings above regarding this PCP generally also apply and specifically regarding this claim, it is also not made out. Whilst the respondent did refuse to postpone the hearing beyond the end of January 2022, this was in the context of the first date having been offered as early as 9 December 2021 and it then being postponed a number of times at the claimant's request (in itself showing no PCP of refusing such requests). In these circumstances, his request again on 17 January 2022 that it be postponed for a further 5 weeks was not reasonable. Further, the reason for the request was not solely because of Ms Porter's non-availability (which it would appear would require a postponement of only 2-3 weeks) but because the claimant wanted to take legal advice. Finally, Ms Porter was able to attend remotely and no explanation was given as to why she could not attend in person. This claim

therefore fails.

340. Issue 27(x) – arising from asking the claimant to stop questioning the panel at hearing on 27 Jan 2022
341. There were occasions during this hearing that the claimant was asked to stop asking questions but overall he was allowed to do so. There were no examples in evidence of him being prevented from asking questions specifically of the panel. The claim therefore fails on the facts. In any event, even if he was so stopped and that amounted to unfavourable treatment, it did arise from etc but it was certainly proportionate.
342. Issue 29(m) - harassment Ms Harrison's email 1 March 2022
343. The complaint about this email is that Ms Harrison labelled the claimant 'extreme and aggressive' which is factually correct. However the context is very important as is the insight Ms Harrison herself showed in her opening paragraph where she acknowledged that the claimant might find its contents upsetting.
344. The tone of the emails sent to Ms Harrison and others at the respondent over the previous weeks and months had been rude, offensive and antagonistic. To what extent this was a consequence of his disability, his general mental health or otherwise is unclear but we accept that it was at least to some extent related to his disability. Further, the most recent email from him had referred to him having nothing left to lose and he had also been researching personal matters about individual employees and Trustees. In these circumstances Ms Harrison's choice of words was a reasonable reflection of her perception of the claimant's behaviour.
345. She did not send the email with the purpose of violating the claimant's dignity or creating the necessary environment, its purpose was to explain why his request for the appeal to be held off site had been refused. Given that the email was broadly accurate, it could not reasonably have had the necessary effect on the claimant. This claim fails.
346. Issue 22(a)(d) – RAs (PCP) rejecting request for change in location of appeal hearing to Mar 2022
347. The findings above regarding this PCP generally also apply and specifically regarding this claim as drafted in the LOI, it is also not made out. The respondent offered to change the location to any respondent premises to suit the claimant but would not change it to his specifically requested location – a social club. Even if we interpret this claim as relating specifically to the social club, the respondent's refusal amounted to an isolated event and not indicative of a general PCP. Again, therefore, the claim fails. Further, although the claimant told the respondent he felt unsafe at their premises and/or leaving his local area, no medical evidence was provided by him at the time to support that. In any event, given the increasingly erratic nature and content of the correspondence from the claimant in the months prior to

- the appeal hearing and his actions in researching individual members of the Board, Ms Harrison's reasons for refusing the request were reasonable and she did convey them to him on 1 March 2022. Whilst we may doubt her labelling the claimant at that stage as 'aggressive' his behaviour was certainly extreme and concerning.
348. Were the discrimination claims that have otherwise been made out submitted in time?
349. The respondent's original case was that any claim relating to events that pre-date 17 October 2021 were out of time (based on the date of submission of the claim form on 28 February 2022) but that was amended shortly before this Hearing to any claims pre-dating 20 March 2023 based on the claimant's case having been properly pleaded for the first time on 19 June 2023.
350. The procedural history is important when considering that argument. When the claim form was first submitted on 28 February 2022 the boxes indicating claims of unfair dismissal, race discrimination and disability discrimination were ticked. Six short paragraphs of narrative were included that expressly acknowledge the need for more detail to be provided: The first three read:
- 'I have no help or accessibility to write this claim statement in an organised manner or constructive manner as I have both Dyslexic and Autistics traits.
- I have just sent my case of for a legal opinion and review and once complete I hope to have the relevant details written in the form needed for this process.
- I am not going to risk a sub-sufficient or unclear description of my claim without the necessary support of accessibility needed that you do not seem to have for people of neurodiverse characteristics.'
351. The claimant then went on to very briefly summarise his claim as follows:
- 'Only basic I can give are I have 12 years of top performance and experience in education. From being a Teach First outstanding trainee and ambassador. To classroom teacher, KS3 co-ordinator, KS4 co-ordinator, Head of Mathematics and Director of Mathematics. I have the highest level of proven progress in the classroom and create safe and ethical team cultures to accelerate future leaders to thrive.
- Since declaring to my employer that I believe I might have ADHD I have been bullied and 'pushed out'. Since this bullying and subsequently a long period of depression I formally received my Adult ADHD diagnosis. And unfortunately, since my employers received notice of my diagnosis and information of my triggers - I continued to be a source of target of exclusion in the most unethical and damaging psychological ways.
- The size of my Trust meant that as my profile grew in terms of my stance of zero tolerance to bullying, racism and disability discrimination. The unproportional manners of attack grew larger and more corrupt involving deceit of many third parties, members of staff and became a national security concern and unfit for purpose leadership of Public Money.'
352. The claim was accepted by the Tribunal on 21 March 2022 and was served on the named respondents who at that stage were all individuals
353. In respect of the individuals connected to the current respondent, a response and grounds of resistance were filed and accepted by the Tribunal on 12 May

2022. Subject to perfectly valid points being made about the correct identity of the respondents and the need for further particulars from the claimant, a relatively detailed chronological account of events was given by the respondents and a detailed defence to the claim of unfair dismissal. As far as the discrimination claims were concerned there was a request for them to be struck out
354. In the order following the first case management preliminary hearing on 5 October 2022 Judge Dyal wrote:
- ‘6. In this case, a fundamental difficulty is that as yet the detail of the Claimant’s claim is unknown to the tribunal and the respondent. I explained that a ‘red line’ – an absolute requirement for there to be a fair hearing - was that the tribunal and the respondents need to know the detail of his complaints. Who is alleged to have done what, when, and in what type of claim is made about each allegation? The case cannot significantly progress until this is known.
7. The Claimant fully accepts that the tribunal and the Respondent need to know what his claim is. The issue is that his communication abilities are such that he cannot straightforwardly relay this in a way that is coherent to others. He accepts that the details of his claim cannot be in a mind-map. The challenge for the Claimant, and for the tribunal, is how the detail of his claim can come to be identified to others.’
355. A series of correspondence and orders followed which resulted in the claimant, with the assistance of his then legal representative, filing the detailed particulars of claim document on 19 June 2023. It was on the basis of this document that the agreed list of issues was produced at a case management preliminary hearing in September 2023
356. It is apparent from this chronology that the claimant recognised from the very outset that further details of his claim were needed and that he had every intention of providing them. His disability was undoubtedly a major reason why he did not provide them at the very outset.
357. The respondent’s argument, very much in summary, is that in the absence of those details they did not know the case they had to answer and they refer to the extensive and well known case law on the importance of a claim being properly pleaded and that a claim form is not simply a way of ‘getting the ball rolling’.
358. However, section 123 of the 2010 Act talks about bringing a claim within the time; not pleading a claim. It is very common for further particulars to be provided after a claim is first brought in particular when the claimant is acting in person (and although it is clear that the claimant had had access to legal advice he was acting in person when he submitted the claim form). One of the difficulties in finding that the time limit clock is only stopped when a claim is properly pleaded is that that is a moving target. There is a certainty in contrast of knowing when the claim form was received by the Tribunal.
359. In this case the provision of further particulars by the claimant was never treated by either party or Judge Dyal as an application to amend. No objection was made by the respondent at the time that this amounted to an application to amend. It was accepted as particularising claims that had

already been brought.

360. For these reasons we find that the claim was brought on 28 February 2022 and the time limits will be calculated accordingly.
361. The discrimination claims that have been made out that relate to events on 22 November 2021 are therefore in time and succeed. The claims that have been made out that relate to events in May 2021 are prima facie out of time unless they amount to conduct extending over a period that ended after 22 November 2021. We find that they do not. They were of course part of the overall management of the claimant that continued through to his dismissal in January 2022 but they were in the nature of exceptional failings that were not typical or representative of the way he was managed over this period. We find that even though they were linked with each other in that they involved marking, they were one off events that were not repeated after 22 May 2021. Those claims are therefore out of time and can only succeed if we extend the time period because it is just and equitable in all the circumstances.
362. It is clear that throughout 2021 the claimant was able to write lengthy, detailed documents and liaise with outside authorities (e.g. filing a police report). He referred to relevant case law in early July 2021 and first referred to taking legal advice in an email to his AtW advisor in August 2021. He said that he had lawyers ready and was ready to build a legal argument but not a legal case as he had no aids to do so nor the executive functioning. Also apparently in August 2021 in a long document (it is unclear to whom it is addressed), the claimant refers to research he had done regarding Tribunal claims and expressly referred to a '3 month window for contacting a tribunal regarding disability harassment' but again says that he does not have the aids he needs to build his arguments with a particular reference to his 'global thinking'. In a WhatsApp message he sent also in August 2021 he referred to 'starting' his legal case. On 6 September 2021 in an email to family members he referred to 'collating' a legal case. In October 2021 in emails to Dr Roberts he referred to legal concepts such as victimisation and automatically unfair dismissal. He also said that he was sending a 'collated case bundle' to a legal representative and one of his options was to instruct his lawyer to commence proceedings. Similarly in mid-October he emailed Mr Rose that his case was about to 'turn legal' and a few days later he told Dr Roberts that he had signed a retainer for legal representation to access legal proceedings including discrimination claims. Then in November 2021 in his email to Mr Rose he referred to the 3 month period and ACAS dates and in a later email that month refers in detail to the cost of taking advice from Counsel which strongly indicates that he had been liaising with Counsel or at least their clerk.
363. Those facts would ordinarily almost inevitably lead to a conclusion that the claimant was well informed and very capable of submitting his claims of discrimination in time. Indeed in light of all that activity it is surprising that he did not submit his claims in respect of the May 2021 claims in time. However, it is also very apparent that throughout this period, and certainly from mid-May 2021, the claimant's mental health was poor and deteriorating. Both he

and the representatives of the respondent commented on this in concerned tones from that time. He was also on new medication from January 2021 which was changed and having to be titrated to find the right dose from September 2021. Mindful of those difficulties and the impact of his disability on his executive functioning confirmed in particular by the reports from Psychiatry UK, we conclude that it is on balance just and equitable to extend the time limit.

364. Consequently the claims of a breach of the duty to make reasonable adjustments, arising from and harassment regarding:
- a. the failure to inform the claimant of changes to the class on 7 May 2021;
 - b. the inaccurate comment on 14 May 2021 regarding his marking and the suggestion that he meet with Ms Vellai and Mr Narain; and
 - c. the email sent from the generic email on 22 November 2021;

all succeed.

365. The dismissal

366. Turning then to the dismissal itself which is claimed to be unfair, discrimination arising from the claimant's disability (issue 27(y)) and harassment (issue 29(l)).
367. At the time of his dismissal in January 2022 the claimant had been absent from work since late June 2021 and was certificated as unfit for work until 3 March 2022. He had also had a previous period of sickness absence from September 2020 to mid March 2021 and adjusted duties from then until his final absence began.
368. The respondent had obtained three OH reports and implemented, as far as they could, the suggested adjustments to the claimant's role and duties. They had also agreed to additional adjustments requested from the claimant from time to time and considered the claimant's own reports from Psychiatry UK. They had encouraged the claimant to attend a further OH referral before the stage 3 hearing but he had declined.
369. In addition, the respondent had consulted on numerous occasions with the claimant regarding his health and his ability to attend work with and without adjustments. The claimant's ability to engage with those consultations varied from time to time according to his health issues but the respondent did their best to obtain his views. The claimant says that the respondent's efforts were flawed, particularly in the later stages of the process, as they were not in person nor oral which was the type of communication he required. Given the efforts made by the respondent earlier in the process to communicate with the claimant face to face and his resistance at times to that, and the serious stage which matters had reached, it was reasonable for the respondent to require a certain amount of communication to be formalised in writing especially as they had offered to conduct this correspondence via Ms Porter (at their expense).

370. The possibility of employment in alternative roles was canvassed with the claimant at an early stage (May 2021). By the time of his dismissal however it was reasonable for the respondent to conclude that alternative employment was not a realistic option both because of the claimant's lengthy continuing absence (which had no real sign of ending) and his own statements about the respondent (which indicated the necessary relationship could not be sustained), his own future career plans and not wanting to return to the school. Further, in effect, in the summer term of 2021 the claimant had undertaken an alternative role, given the very significant adjustments made to his contractual role, but had been unable to sustain it.
371. In terms of the process followed by the respondent, they adjusted their own AMP where appropriate. The claimant had an opportunity to participate and comment throughout with the support of both his union representative and Ms Porter (again at the respondent's expense). For the reasons given above on the discrimination claims, it was not unreasonable for Ms Gascoigne to proceed in his absence in September 2021 and for the stage 3 hearing to proceed with Ms Porter attending remotely (there was no record in the notes of the hearing (and it was not put to the respondent's witnesses) that any objection was made by the claimant or Ms Porter at the time about her remote participation). Similarly, for the reasons also given above on the related reasonable adjustments claim, it was not unreasonable to refuse the claimant's request for a change in location of the appeal hearing. At both dismissal and appeal stages, the decision makers considered all of the relevant matters and gave a full and logical explanation to the claimant of their decisions. The decision to dismiss was not, as the claimant has alleged, predetermined. The respondent, through all its senior managers who dealt with the claimant and his absence, genuinely attempted to work with him and made numerous adjustments to their usual policies and processes to try to accommodate him including adjusted attendance times, duties and discretionary leave for a prolonged period.
372. A key argument of the claimant is that he could not return to work as he had not been provided with the auxiliary aids he had requested and he was not safe until the management training had been provided. He says that Ms Harrison asking for the AtW letter when he had already sent it to her was a blatant box ticking exercise, that he was baffled by the request and it shows that the dismissal was predetermined. We do not agree. Although Ms Harrison overlooked that she had received the AtW letter already, this was an oversight and she was genuinely asking him to send the letter in as it might be relevant to the dismissal decision. In any event, she did take it into account when making the dismissal decision.
373. For the reasons set out above these claims have failed as discrete disability discrimination claims but even looking at them more generally we conclude that they do not undermine the reasonableness of the respondent's decision to dismiss the claimant. It was apparent on the facts at the time that there were broader issues that reasonably led the respondent to the conclusion that dismissal was the appropriate outcome.

374. We have expressly considered the impact, if any, of the successful discrimination claims upon the reasonableness of the dismissal. The factual matters underlying those claims, however, form a small part of the many complaints made by the claimant and the overall factual context. We find that they did not lead or significantly contribute to the claimant's absence or prolong it. They do not therefore preclude a finding of fair dismissal.
375. Overall, this was a very fact specific case where the claimant had significant health difficulties, he had been off work for a long time and there was no prospect of him returning to work within a reasonable timeframe. The respondent consulted with him as far as they could and took all relevant medical matters into account. They followed a fair and reasonable process, the meetings and hearings conducted with the claimant were done in a measured and professional manner and the respondent could not reasonably be expected to wait any longer for the claimant to return to his senior role within the school. In short, the respondent's decision was well within the band of reasonable responses and the claim of unfair dismissal fails.
376. With regard to the arising from claim it also fails as although the dismissal was clearly unfavourable treatment arising from the claimant's disability, it was a proportionate means of achieving the respondent's stated legitimate aim for the same reasons that it was fair. As for the harassment claim, again clearly the dismissal was unwanted conduct related to the claimant's disability (in that it was because of an absence caused by that disability) but the dismissal did not have the purpose of violating his dignity or creating the necessary environment nor could it reasonably have that effect upon the claimant given the full explanations given to him in both the dismissal and appeal letters as well as the supportive correspondence and communication from various of the respondent's managers prior to that. That claim also fails.

Remedy

377. The parties are encouraged to seek to agree the appropriate remedy for the successful claims between themselves without the need for a further hearing. The parties are reminded that the services of ACAS remain available to them. It may be of assistance to the parties to know, as a preliminary indication only, that the Tribunal is currently minded to award total compensation within the lower band of the Vento guidelines in respect of all the successful claims. We do not currently consider that this is a case where aggravated damages would be appropriate.
378. If a remedy hearing is required it will be held in person on **23 June 2026** at London South Employment Tribunal commencing at **10am**.
379. No later than **1 May 2026** the claimant shall send to the respondent a statement setting out the reasons for the remedy he seeks together with copies of any relevant supporting documents and an updated schedule of loss relating to the successful claims only.
380. On or before **22 May 2026** the respondents shall send to the claimant any

witness statements and counter schedule of loss upon which they wish to rely in relation to the remedy sought together with copies of any additional documents they say are relevant to the issue.

381. The parties shall seek to agree a bundle of documents for use at the remedy hearing and file one electronic and three hard copies with the Tribunal no later than **16 June 2026**.

APPROVED BY JUDGE ANDREWS

Employment Judge Andrews
Date: 11 March 2026

Appendix: List of Issues (liability)

Jurisdiction:

2. In respect of the Claims brought by the Claimant, did any or all of the matters complained of occur outside the primary three month limitation period?
 - a. The Trust says any s.15 (discrimination arising from disability), s.20 (failure to make reasonable adjustments) and s.26 (harassment) complaint against it that occurred on or before 20 March 2023 is outside the limitation period.
 - ~~b. The NEU says any complaint against it that occurred on or before 27 October 2020 is outside the limitation period.~~
3. If so, did any of those acts amount to conduct extending over a period ending within the primary limitation period?
4. In respect of any which are not, is it nonetheless just and equitable under Section 123(1)(b) Equality Act 2010 to permit the Claimant to pursue his claims brought under the Equality Act 2010?

Unfair Dismissal:

5. Did the Trust have a potentially fair reason for dismissal under Section 98(1) or 98(2) Employment Rights Act 1996? the Trust relies on the potentially fair reason of capability (ill-health) under Section 98(2)(a).
6. Did the Trust follow a fair process in so far as:
 - a. Did the Trust take steps to establish the true medical position? East Lindsey District Council v Daubney [1977] ICR 566
 - b. Did the Claimant refuse to engage or agree to be referred back to occupational health when requested?
 - c. Adequately consult with the employee before deciding to dismiss? East Lindsey District Council v Daubney [1977] ICR 566
 - d. Consider the availability of alternative employment before dismissing?
7. Could the Trust be expected to keep the Claimant's job open any longer at the date of dismissal? Hart v A R Marshall & Sons (Buiwell) Ltd [1977] IRLR 61
8. Did the Trust act reasonably in dismissing the Claimant for that reason with regards to the circumstances (including the size and administrative resources of the Trust's undertaking) and the substantial merits of the case as per Section 98(4) Employment Rights Act 1996?
9. Was the decision to dismiss made prior to implementing all the reasonable adjustments referred to:
 - o in the occupational health report on 21 February 2021 and 9 June 2021;
 - o as requested by the Claimant on 21 April 2021 (in particular ADHD training).No adjustments were requested on 21 April. We contend that the Claimant may be referring to his alleged requests on the 28 April 2021;
 - o as requested by the Claimant on 8 September 2021 by his disability representative;

o in the letter from Psychiatry UK on 24 October 2021.

10. If so, given the circumstances, was it reasonable to do so?

11. In addressing the issue of fairness under Section 98(4), did the Trust's decision to dismiss the Claimant fall within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted.

Disability status

12. Was the Claimant a disabled person within the meaning of the Equality Act 2010 at the relevant times?(a) He relies upon the following impairments: ADHD, autistic spectrum disorder, dyspraxia and anxiety.

13. The Respondents admit that the Claimant was a disabled person at the relevant times.

Failure to make reasonable adjustments

Auxiliary aids based adjustments

14. But for the provision of the following auxiliary aids would the Claimant have been put at a substantial disadvantage compared to other employees who are not disabled?

a. Paragraph 111.1

- i. The auxiliary aid: from 15 March [2021] onwards a larger screen and faster computer/laptop to work on.
- ii. The disadvantage: difficulty in maintaining concentration.

b. Paragraph 111.2

- i. The auxiliary aid: from 27 April 2021 onwards, management training covering ADHD to ensure a safe environment for the Claimant at work (continuing).
- ii. The disadvantage: a lack of understanding of the Claimant's disability led to extreme levels of stress and anxiety and deterioration in the Claimant's mental health.

c. Paragraph 111.3

- i. The auxiliary aid: on 14 July 2021, a working electronic white board and pen.
- ii. The disadvantage: the Claimant's struggled to stay on point in a conversation. The kit would have assisted him to do so. As a result the Claimant had to rush through his points leading to additional stress and anxiety.

d. Paragraph 111.4

- i. The auxiliary aid: a role with less responsibility and fewer hours for the Claimant to undertake whilst he was still getting used to his medication and finding ways to deal with his disabilities effectively? (requested 17 May 2021). (N.b. The trust says that alternative employment was offered 25 May 2021 but there is a dispute about whether it met the criteria described in this auxiliary aid).

- ii. The disadvantage: added to the Claimant's stress and exacerbated his mental health symptoms.

Provision, Criterion or Practice (PCP) based reasonable adjustments

15. Did the Respondent:

- a. apply the following PCPs?
- b. If so did they put the Claimant at a substantial disadvantage compared to other employees who are not disabled?
- c. If so did the Respondent fail to take such steps as were reasonable to remove the disadvantage?

16. Paragraph 112.1:

- a. The PCP: the requirement for members of staff to work from the School premises for their full working day (circa 14 June 2021).
- b. The disadvantage: C found it very difficult to concentrate on site so wanted to work elsewhere outside of teaching periods. The PCP meant it took him substantially longer to complete his work and worsened his mental health and made it harder to implement health routines.
- c. The steps: flexibility as to place and time of work when not teaching.

17. Paragraph 112.2:

- a. The PCP: the requirement for members of staff to accept unilateral changes to their classes and timetable (28 April 2021).
- b. The disadvantage: additional stress and anxiety
- c. The steps: agree changes to C's classes and timetable in advance of implementing them.

18. Paragraph 112.3:

- a. The PCP: the requirement for members of staff to undertake a certain level of administration work.
- b. The disadvantage: C struggled to complete such work in a timely manner because of concentration and communication difficulties arising from his disability.
- c. The steps: support with and dedicated time to complete administration work and a reduction in administration work where possible.

~~19. Paragraph 112.4~~

- ~~a. The PCP: the NEU's practice of communicating via email/by letter: in around June 2021, the Claimant tried to communicate with Mr Sackwild orally about his informal grievance, but he was required to deal with it in writing.~~
- ~~b. The disadvantage: the Claimant finds it very difficult and extremely time consuming to communicate in writing.~~
- ~~c. The steps: to communicate verbally.~~

20. Paragraph 112.4

- a. The PCP: the trust's practice of communicating via email/letter:
 - i. In July 2021, declining to discuss the arrangements for the informal grievance orally with claimant.
 - ii. In September 2021, declining to discuss the arrangement for absence management orally with the claimant.

- b. The disadvantage: the Claimant finds it very difficult and extremely time consuming to communicate in writing.
- c. The steps:
 - i. Use verbal communication
 - ii. Whilst on sick-leave to email C to organise an agreed time to speak to him in advance of any meeting.

21. Paragraph 112.5

- a. The PCP: the practice of requiring prompt responses to communication and communicating important information without prior warning in particular:
 - i. 13 July 2021: told the grievance meeting changed to in-person 1 day before it took place;
 - ii. 21 September 2021: called without warning to be invited to a capability hearing in a few days' time.
- b. The disadvantage: stress and anxiety on receipt of important/substantial communications without prior warning or with tight deadlines.
- c. The steps:
 - i. allow additional time for the C to respond to communication
 - ii. where possible, to inform the C in advance that sizeable or important correspondence would be sent to him.

22. Paragraph 112.6

- a. The PCP: the Trust's practice of rigidly applying their policies and procedures by:
 - a. following a rigid informal grievance procedure on 14 July 2021;
 - b. Dr Roberts refusing a request for a meeting on 19 July 2021;
 - c. Declining request for adjustment of ill health capability hearing so a representative could attend on 27 January 2022;
 - d. Rejecting request for a change in the location for the appeal hearing so the Claimant could attend in person on 2 March 2022.
- b. The disadvantage: difficulty in communicating and participating effectively.
- c. The steps: flexibility in applying the Trust's policies to enable the Claimant to communicate and participate effectively.

23. Paragraph 112.7

- a. The PCP: the practice of using multiple individuals to contact employees rather than using a dedicated single point of contact:
 - i. by receiving communications from someone other than Ms Harrison on 22 November 2021, namely and HR officer by email,
 - ii. by receiving communications from someone other than Ms Harrison on 19 January 2022 namely Ms Elaine Thomas by email,
 - iii. by receiving communications from someone other than Ms Harrison, namely Katherine Sinclair on a solicitor instructed by the Trust on 24 January 2022
- b. The disadvantage: stress and anxiety.
- c. The steps: maintaining contact through single point of contact.

24. Paragraph 112.8

- a. The PCP: the Trusts practice of not informing the senior leadership team of members of staff who have disabilities. (A member of SLT informed the Claimant he knew nothing of the Claimant's disabilities on 17 June 2021)
- b. Disadvantage: lack of understanding of C's disability and accordingly being held to the standard of someone who did not have his disabilities;
- c. The adjustment: to inform the SLT of the C's disabilities.

25. Paragraph 112.9

- a. The PCPs:
 - i. the requirement to carry out job duties
 - ii. the requirement to attend work
 - iii. the Trust's practice of refusing to implement the adjustments referred to in occupational health reports and medical reports prior to concluding their absence management process.
- b. The disadvantage: unable to return to work and ultimately being dismissed.
- c. Steps: implement the recommendations from OH and other medical reports (OH report of, Psychiatry UK report of May 2021, OH report of 9 June 2021, Psychiatry UK report of 24 October 2021) prior to looking to dismiss C for ill-health.
 - i. OH report of 10 February 2021:
 - 1. phased return to work at 50% of hours for 4 weeks;
 - 2. time to take breaks each day of work;
 - 3. delegation of writing tasks to assist and more flexibility of timeframe for completion;
 - 4. flexibility of approach if late to work.
 - ii. Psychiatry UK report of May 2021:
 - 1. Allow C more time to complete administration and paperwork and where possible remove the requirement for him to do so or invest in technology to assist in this regard;
 - 2. Allow C to adapt his treatment prior to formally reviewing his capability;
 - iii. OH report of 9 June 2021
 - 1. A tailored and supportive approach from management to avoid rigid process and allow flexibility
 - 2. A tailored approach for C to complete his tasks i.e., working from home where possible and delegating tasks.
 - 3. The trust to discuss residual concerns and mutually agree with the Claimant him resuming other responsibilities.
 - 4. Supporting C in his RTW.
 - iv. Psychiatry UK report of 24 October 2021:
 - 1. Understanding and allowance that C is likely to interpret communication literally and be quite rigid in his response.
 - 2. Adjustment to the language used to avoid ambiguity in communication.
 - 3. Adjustments to the provision of communications via predictable times and predicable routes.
 - 4. Additional time and support his consider his responses to any information.

- 5. Allowance of regular breaks during formal meetings to enable C to process the content and take a step back to regulate his emotions.
 - 6. To be provided with a single point of contact.
26. Did the Respondent know or could it reasonably have been expected to know:
- a. That the Claimant was a disabled person?
 - b. That but for the provision of the auxiliary aid he would be put at a substantial disadvantage?
 - c. That the PCP put him at substantial disadvantage?

Discrimination arising from a disability

27. In relation to each Respondent did they know or could they reasonably be expected to have known that the Claimant was a disabled person at the time of the impugned treatment?

28. Was the Claimant:

- a. subjected to the following treatment?
- b. if so was it unfavourable?
- c. If so was it because of something arising in consequence of disability?
- d. If so was it a proportionate means of achieving a legitimate aim?

27. The complaints:

a. Paragraph 114.1

- i. The treatment: in April 2019 issuing a letter of expectation. (Respondents argue unconnected and discrete act)
- ii. because of something arising?: yes, no dispute
- iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations.

b. Paragraph 114.2 —.

- i. The treatment: the decision to start absence management proceedings due to absences caused by the Claimant's disabilities after he informed the Trust that he believed he had undiagnosed ADHD in January 2021
- ii. because of something arising?: yes, no dispute
- iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations.

c. Paragraph 114.3

- i. The treatment: the decision to continue absence management proceedings on 29 January 2021 due to absences caused by the Claimant's disabilities rather than seek to implement reasonable adjustments or support the Claimant in light of his ADHD diagnosis;
- ii. because of something arising?: yes, no dispute
- iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations

d. Paragraph 114.4

- i. The treatment: the Trust's failure to address the Claimant's diagnosis of ADHD in their absence management procedure and letters created as part of this on 1 February and March 2021.
- ii. because of something arising?:
 - 1. C says this was inherently related to disability.
 - 2. the Trust accepts that the issuing of letter arose in consequence of disability but does not accept that the omission to mentioned ADHD in letters arose in consequence of disability and says that ADHD was referred to in the minutes of the meetings and records of reasonable adjustment made and actions taken.
- iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations.

e. Paragraph 114.5

- i. The treatment: On 15 March 2021, rejecting the Claimant's request for a larger, faster laptop. Respondents argue unconnected and discrete act).
 - ii. because of something arising?:
 - 1. Claimant's case is that he needed the laptop to assist him carry out his tasks as a result of his disability.
 - 2. The Respondent accepts context of request arose in consequence of disability but says that the refusal did not.
 - iii. the legitimate aim relied on: good stewardship of public funds and the need for equipment to be provided to be compatible with all school systems.
- f. Paragraph 114.6
- i. The treatment: failing to organise management training on ADHD from 27 April 2021 onwards.
 - ii. because of something arising?:
 - 1. C's case is that the need for training arose straightforwardly because of his disability.
 - 2. R's case is that it did not fail to organise the training (rather agreement could not be reached with the Claimant about certain details of the training so it could not go ahead).
 - iii. the legitimate aim relied on:
 - 1. to provide safe supportive and effective working environment;
 - 2. to ensure training is provided to staff where it will have the greatest impact.
- g. Paragraph 114.7
- i. The treatment: allegedly failing to adhere to the five reasonable requests for changes re allocation of admin work, communication and changes to routine on 28 April 2021 (paragraph 36 of the PoC).
 - ii. Because of something arising?: yes, not in dispute. (But the Trust does not admit it failed to make the changes requested.)
 - iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations
- h. Paragraph 114.8
- i. The treatment: on 30 April 2021, Ms Vellai asking the Claimant in an accusatory manner why he hadn't assisted his colleague with a paperwork heavy task. (Respondents argue unconnected and discrete act)
 - ii. because of something arising?:
 - 1. the Claimant's case is that he did not assist this colleague because he was already struggling with his own administrative work on account of disability and had made requests for a reduction of that in the case of his own work.
 - 2. the Trust's case is that if the Claimant did not assist it accepts that this arose in consequence of disability, but it does not accept that the comment by Ms Vellai, if it was made, did.
 - iii. the legitimate aim relied on: maintaining Teachers' Standards, Part 1 Section 6, which is that a teacher must give regular feedback both orally and through adequate marking and encourage pupils to respond to feedback.
- i. Paragraph 114.9

- i. The treatment: on 11 May 2021 the decision to restart the absence management process for absences which related to his disability.
 - ii. because of something arising?: yes, not in dispute.
 - iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations
- J. Paragraph 114.10
 - i. The treatment: on 11 May the decision to restart the absence management process prior to allegedly implementing the relevant reasonable adjustments referred to under the heading failure to make reasonable adjustments.
 - ii. because of something arising?: yes, not in dispute
 - iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations
- k. Paragraph 114.11
 - i. The treatment: on 13 May 2021 Ms Gascoyne questioning whether the Claimant should have come back to work when he did and Mr Cavanagh stating "We are run like a business now" when speaking of potential adjustments for the Claimant allegedly inferring they weren't willing to make them. (Respondents argue unconnected and discrete act)
 - ii. because of something arising?: yes, not in dispute
 - iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations
- l. Paragraph 114.12
 - i. The treatment: on 14 May 2021 the criticism of the Claimant for not finishing his marking.
(Respondents argue unconnected and discrete act)
 - ii. because of something arising?: yes, not in dispute
 - iii. the legitimate aim relied on: maintaining Teachers' Standards, Part 1 Section 6, which is that a teacher must give regular feedback both orally and through adequate marking and encourage pupils to respond to feedback.
- m. Paragraph 114.13
 - i. The treatment: on 18 May 2021 the Claimant's interim line manager allegedly refusing to read the book that was suggested would assist with managing a person with the Claimant's condition. (Respondents argue unconnected and discrete act)
 - ii. because of something arising?: yes, not in dispute
 - iii. the legitimate aim relied on: the requirement for staff to prioritise their immediate workload.
- n. Paragraph 114.14
 - i. The treatment: on 21 May 2021 instructing another member of staff to mark the Claimant's work for him without seeking his prior agreement. (Respondents argue unconnected and discrete act)
 - ii. because of something arising?: yes, not in dispute
 - iii. the legitimate aim relied on: maintaining Teachers' Standards, Part 1 Section 6, which is that a teacher must give regular feedback both orally and through adequate marking and encourage pupils to respond to feedback.
- o. Paragraph 114.15

- i. The treatment: on 10 June 2021 the decision to stop the Claimant's recruitment and retention payment. (Respondents argue unconnected and discrete act)
- ii. because of something arising?:
 - 1. the Claimant says that this happened because of disability related absences and difficulties in fulfilling all of his work duties.
 - 2. The Trust says it did not arise in consequence of Claimant's disability but was part of a wider school project.
- iii. the legitimate aim relied on: requirement to continuously review recruitment and retention payments as per the School Teachers' Pay and Conditions Document.

P. Paragraph 114.16

- i. The treatment: on 14 June 2021 the Claimant was allegedly informed by his line manager that he could not return to his role unless he could perform written tasks and maintain punctuality. (Respondents argue unconnected and discrete act)
- ii. because of something arising?: if factually this happened accepted, yes, not in dispute.
- iii. the legitimate aim relied on: the exercise of the employer duty of care to protect the health, welfare and safety of employees.

~~q. Paragraph 114.17~~

- ~~i. The treatment: Between May and June 2021 (in particular on 25 June 2021) the Claimant's requests from Murray Sackwild for verbal communication were repeatedly refused. The requests referred to are the emails between the Claimant and Mr Sackwild between the 23 June 2021 and 26 June 2021 (the email exchange appeared between pages p85 — 92 of the bundle that the NEU served on 30 August 2023)~~
- ~~ii. 'something' arising:
 - 1. The Claimant's case is that he needed oral communication because of difficulty accessing written information.
 - 2. The NEU's case is that the treatment was because Mr Sackwell wanted a brief written response from Mr Bola about a proposal agreement between Mr Sackwell and Mr Rose prior to having a verbal conversation.~~
- ~~iii. the legitimate aim relied on:
 - 1. the entitlement of an advisor to give frank and full advice to a member (including in this case passing on the Trust's views and Mr Sackwell's own views)
 - 2. entitlement of an advisor to make reasonable arrangements to prepare for verbal communication meetings and to manager generally the relationship with a member.~~

r. Paragraph 114.18

- i. The treatment: in July 2021, Simon Rose refusing the Claimant's request for a short Zoom meeting or telephone call to discuss and agree the arrangements for the informal grievance meeting. (Respondents argue unconnected and discrete act)
- ii. because of something arising?: yes, not disputed (but R's position is that the Claimant had not asked for oral communication)

- iii. the legitimate aim relied on: a requirement for clarity and simplicity in a complicated process.
- s. Paragraph 114.19 i. The treatment: on 19 July 2021 allegedly rejecting the Claimant's request for adjustments to his role to assist with his disabilities (specifically his request for his pay to be reinstated and to be allowed time away from the workplace whilst the Trust became a safer place for him through implementing ADHD training and failing to propose suitable alternatives to the points the Claimant raised in the event they were not able to agreed.
 - ii. because of something arising?: yes, not dispute.
 - iii. the legitimate aim relied on:
 - 1. in relation to one year paid leave: requirement for a director of maths or maths teacher who was able to fulfil their work obligations
 - 2. rejecting request for retention and recruitment payment to be reinstated: requirement to continuously review recruitment and retention payments as per the School Teachers' Pay and Conditions Document.
- t. Paragraph 114.20
 - i. The treatment: on 29 July 2021, Karen Roberts refusing the Claimant's request for a telephone call to discuss his concerns about the conduct of Simon Rose and his disabilities. (Respondents argue unconnected and discrete act).
 - ii. because of something arising?: yes, not disputed.
 - lii, the legitimate aim relied on: to protect and assist parties to address and resolve complaints appropriately, specifically, avoiding risk of disqualifying CEO from dealing with C's grievance or hearing any appeal under its grievance or whistleblowing procedures, which would have left no-one to deal with his complaints.
- u. Paragraph 114.21
 - i. The treatment: on 30 September 2021, holding the Claimant's absence review meeting in his absence when he was not well enough to attend due to his disabilities
 - ii. because of something arising?: yes, not disputed.
 - iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who was able to fulfil their work obligations
- v. Paragraph 114.22
 - i. The treatment: on 2 and 3 November 2021 failing to respond to the Claimant's representative's emails regarding organising ADHD training
 - ii. because of something arising?:
 - 1. C's case is that the need for training arose straightforwardly because of his disability.
 - 2. R's case is that it did not fail to organise the training (rather agreement could not be reached with the Claimant about certain details of the training so it could not go ahead).
 - iii. the legitimate aim relied on:
 - 1. to provide a safe, supportive and effective working environment for employees.
 - 2. ensure training provided to staff where it will have the greatest impact.
 - 3. to comply with request for single point of contact

w. Paragraph 114.23

- i. The treatment: from 4 November 2021, despite being provided with a single point of contact, the Claimant subsequently continued to receive emails from a number of other individuals employed by the Trust in breach of this provision in particular:
 - 1. on 22 November 2021 someone in HR officer by email (email did not identify the name of sender),
 - 2. on 19 January 2022 email from Ms Elaine Thomas,
 - 3. on 24 January 2022 a letter sent by email from Katherine Sinclair
- ii. because of something arising?:
 - 1. the Trust's case is that:
 - a. the email of 22 November 2021: yes, not disputed.
 - b. the email of 19 January 2022 related to a whistleblowing matter not disability.
 - c. on 24 January 2022 a letter sent by email from Katherine Sinclair was in relation to GDPR breaches
 - 2. C's case is that:
 - a. because of his disability that the single point of contact had been agreed and it matters not what the subject of the email was of 19 January 2022;
 - b. because of his disability that the single point of contact had been agreed and it matters not what the subject of the email was of 24 January 2022.
- iii. the legitimate aim relied on:
 - 1. the email of 22 November 2021: requirement of role of the Deputy CEO to draw on support with administrative tasks.
 - 2. The email of 19 January 2022 To protect employees from detriment when they raise a concern.
 - 3. The letter of 24 January 2022 Legitimate aim was to prevent the misuse of trustee personal data ensuring compliance with GDPR.

x. Paragraph 114.24

- i. The treatment: on 27 January 2022 asking the Claimant to stop asking questions of members of the Board at his stage 3 absence management hearing.
- ii. because of something arising?:
 - 1. C the dialogue in the hearing including his questions related to Disability.
 - 2. R denies that the request to stop asking questions was because of something arising in consequence.
- iii. the legitimate aim relied on: requirement for a fair hearing ensuring all parties are heard, so that parties have clear information on which to base their decisions.

y. Paragraph 114.25

- i. The treatment: on 31 January 2022 dismissing the Claimant for ill health capability due to absences and lateness caused by his disability and the Trust's failure to implement adjustments to assist him to return to work
- ii. because of something arising?: yes, not disputed
- iii. the legitimate aim relied on: requirement for a director of maths or maths teacher who is able to fulfil their work obligations.

~~z. Paragraph 114.26~~

- i. ~~The treatment: from July 2021 — January 2022 NEU refusing the C's requests for a telephone call to discuss his concerns regarding Murray Sackwild as a reasonable adjustment in order to accommodate the communication difficulties that he faced in light of his conditions. The requests are:~~
 - 1. ~~Email exchange between Darren Smith and the Claimant on 14 July 2021 (p106-108 of the NEU bundle referred to above).~~
 - 2. ~~Email between Paul McLaughlin and the Claimant of 17 November 2021 (p119-120 of the NEU bundle referred to above).~~
 - 3. ~~Email exchange between Paul McLaughlin and the Claimant on 7 January 2022, (p123-129 of the NEU bundle referred to above).~~
- ii. ~~because of something arising?:~~
 - 1. ~~The Claimant's case is that he needed oral communication because he has disability related difficulties in accessing written information.~~
 - 2. ~~The NEU, does not accept the treatment happened, but in any event does not accept that the treatment was because of something arising in consequence of disability. It does not necessarily offer members an oral discussion in those circumstances.~~
- iii. ~~the legitimate aim relied on:~~
 - 1. ~~to enable senior officials in the union to rely on written communications from members and reports from colleagues to respond to complaints;~~
 - 2. ~~provide responses to complaints in writing.~~

29. The Respondents say the complaints at paragraphs 114.1 - 114.20 are out of time.

Harassment related to disability

29. Was the Claimant subjected to the following conduct and if so was it unwanted?
- a. Paragraph 117.1 — the Trust's failure to address the Claimant's diagnosis in their absence management procedure and letters created as part of this on 1 February and March 2021.
 - b. Paragraph 117.2 — on 11 May 2021 the decision to restart the absence management process against the Claimant for absences which related to his disability.
 - c. Paragraph 117.3 — on 13 May 2021 Ms Gascoyne questioning whether the Claimant should have come back to work when he did and Mr Cavanagh stating "We are run like a business now" when speaking of potential adjustments for the Claimant, inferring they weren't willing to make them. (Respondents argue unconnected and discrete act).
 - d. Paragraph 117.4 - 14 May 2021, the criticism of the Claimant for not finishing his marking. (Respondents argue unconnected and discrete act).
 - e. Paragraph 117.5 — on 14 June 2021 the Claimant's line manager allegedly stating "There is nothing we can work with in the report" after receiving an occupational health report which suggested a tailored and supportive approach to assisting the Claimant with his disabilities. (Respondents argue unconnected and discrete act).
 - f. Paragraph 117.6 — on 25 June Murray Sackwild criticising the tone and content of the Claimant's emails.

g. Paragraph 117.7 — on 28 June 2021 minutes were circulated to the Claimant and other members of the maths department stating "Please avoid leaving any item/possessions on other member's desks" following the Claimant accidentally leaving some items on another staff desk. (Respondents argue unconnected and discrete act).

h. Paragraph 117.8 — up to 14 July 2021, Simon Rose allegedly pressurising the Claimant to follow an informal grievance process. (Respondents argue unconnected and discrete act).

i. Paragraph 117.9 - from 23 July 2021 Simon Rose allegedly continued to email the Claimant on a regular basis regarding his disabilities, despite the Claimant informing him of the detrimental impact these emails had on his health and having previously

requested that Simon no longer contacted him due to this:

- on 23 July 2021, Mr Rose emailed the Claimant;
- on 29 July 2021 Mr Rose emailed the Claimant attaching a copy of the whistleblowing policy;
- on 23 September 2021 Mr Rose emailing the Claimant inviting him to an absence management meeting;
- on 12 October 2021, Mr Rose emailing the Claimant informing him of outcome of stage 2 of absence review meeting and asking for additional OH report
- 22 October 2021, Mr Rose emailing the Claimant.

J. Paragraph 117.10 — on 21 September 2021 Gareth Davies calling the Claimant without any prior warning in breach of the request for adjustments he had made through his representative on 8 September 2021 to invite him to an absence management meeting.

~~k. Paragraph 117. 11 — On 17 November 2021 an NEU representative informing the Claimant that he emphasised with him but it was not always the case that verbal communications were inherently better than written form after provision of medical report, which showed the Claimant had great difficulties communicating in writing as a result of his disabilities, NEU belittling the Claimant's request for verbal communications and Murray Sackwild's refusal to adhere to it.~~

l. Paragraph 117.12 — on 31 January 2022 dismissing the Claimant.

m. Paragraph 117.13 — on 1 March 2022 Ms Harrison's email to the Claimant labelling his behaviour at the ill health capability meeting as "extreme and aggressive".

30. Was the unwanted treatment related to the Claimant's disability?

31. If so, did the unwanted treatment have the purpose or effect of violating the Claimant's dignity and/or creating a hostile, degrading, humiliating or offensive environment for the Claimant?

32. Was it reasonable for the conduct to have that effect, bearing in mind the Claimant's disabilities?