



## EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Wilson

**Respondent:** Manchester University NHS Foundation Trust

**Heard at:** Manchester (by video)

**On:** 12-16, 9-21 January 2026,  
and 22-23 January 2026  
(in chambers)

**Before:** Employment Judge Slater  
Mrs S A Humphreys

### Representation

Claimant: In person

Respondent: Mr A Webster, counsel

## RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Tribunal has no jurisdiction to consider the following complaints:
  - a. The section 15 complaints at 2.1.2 and 2.1.5 in the list of issues.
  - b. Harassment allegations 1 and 2 in 5.1.1 of the list of issues.
2. The complaint of failure to make reasonable adjustments in relation to the PCP of the allocation of work verbally is well founded.
3. The other complaints of disability discrimination, including the complaint of discriminatory constructive dismissal, are not well founded.
4. The complaint of constructive unfair dismissal is not well founded.
5. There will be a remedy hearing on 20 July 2026 with a further day for the Tribunal only, if required to reach a decision, on 21 July 2026.

# REASONS

## The background to this hearing

1. The claimant submitted three claim forms, one before she resigned, and two after.
2. There were four private preliminary hearings for case management on 19 January 2024 and 14 March 2024, with Employment Judge Batten, on 12 June 2024 with Employment Judge Johnson, and on 27 September 2024 with Employment Judge Childe. Employment Judge Childe also made further orders and provided an updated list of complaints and issues in January 2025 following correspondence from the parties after the orders from the September 2024 hearing were sent to the parties. Employment Judge Childe allowed some amendments to the claims and refused others for reasons which he gave in writing.
3. This final hearing was listed to be heard by video conference at the request of the claimant who did not want to be in the same room as those she considered had discriminated against her. The respondent did not object to this request.

## This hearing

4. The hearing had been listed to deal with remedy as well as liability, but we agreed with the parties at the start of the hearing that we would deal with liability only at this hearing and arrange a separate remedy hearing, if required.
5. The claimant's preference was to receive our decision in writing, rather than orally. We, therefore, told the parties before they made their submissions that we would reserve our decision rather than trying to give oral judgment. In the event, given the number and complexity of the allegations, we would not have had time within the hearing time to reach our decision and give oral judgment.
6. We began the hearing as a three-person tribunal. Unfortunately, on the seventh day of the hearing, Mr Moules was unable to continue due to illness. We gave the parties the option of continuing with a two person panel, identifying Mr Moules as the tribunal member from the employee panel, or adjourning to dates sometime in the future when Mr Moules had recovered and everyone was available. The claimant asked whether the judge alone could continue with the hearing, expressing concern that the non-legal member from the employee panel was no longer available. The claimant said that she would agree to a two person panel rather than adjourn the hearing, if the Tribunal was not satisfied it had the power to change to judge alone or the Tribunal considered it not in the interests of justice to do this. The respondent's preference was to have a two person panel.
7. For reasons which we gave orally, we decided to proceed with the two person panel with the parties' consent. They provided this consent in writing.
8. The reasons which we gave orally for our decision were as follows.

- 8.1. On the basis of the limited consideration we had been able to give this matter, limited submissions on the point from the parties and lack of any authority we were aware of, we were not satisfied that it was clear that we could, at this point in the hearing, change to a judge sitting alone.
- 8.2. We did not consider it proportionate to spend more time considering whether we had the power to change to a judge sitting alone with the loss of time in the hearing that this would involve.
- 8.3. The presidential guidance seemed to us to be written on the premise of the decision as to the panel composition being made before the hearing began or after the liability hearing but before another hearing.
- 8.4. Whether or not we had the power to change to judge sitting alone, we considered the option of continuing with the two person panel with the agreement of the parties to be more in the interests of justice than either taking a course which we were uncertain was permitted by the rules or adjourning to dates potentially many months off when the three-person panel could reconvene. Taking this course would mean that the judge had the benefit of the input of views from Mrs Humphreys who, as a non-legal member, is subject to the same judicial obligations to try cases on the basis of the evidence before her, without bias, as the employment judge. In the case of disagreement, the employment judge would have the casting vote. We considered that the quality of the decision-making was more likely to be enhanced by input from Mrs Humphreys than this detracting from the quality of the decision-making.

## **Summary**

9. The claimant worked for the respondent from 20 December 2017 until her resignation on 18 June 2024. She worked in a number of roles during her employment. The claims relate to events from April 2020 until the claimant's resignation.
10. The claimant is autistic but was not diagnosed as autistic until November 2019.
11. The claimant was moved into a new role of Equality and Diversity Advisor with Manchester Royal Infirmary (MRI) in June 2020 at a time when she faced termination of her employment following an unsuccessful redeployment exercise. This role was later renamed Workforce Inclusion Manager. The claimant was transferred to another new role of MRI Senior Communications Officer in July 2022.
12. At all times, the respondent's managers were very happy with the work of the claimant.
13. In March 2023, the claimant was unsuccessful in an application for a higher grade role of Freedom to Speak Up Guardian.
14. On 18 May 2023 the claimant began a period of sick leave which continued until her resignation on 18 June 2024.

15. The claimant presented Dignity at Work grievances on 10 April and 26 October 2023. The grievances were not upheld.

16. The claimant had been invited to a stage 4 Attendance Management hearing when she resigned.

### **Claims and issues**

17. The claimant claims disability discrimination (failure to make reasonable adjustments, discrimination arising from disability, indirect discrimination, harassment and victimisation) and constructive unfair dismissal.

18. The respondent conceded that the claimant was disabled by reason of autism at all relevant times. The respondent also admits that it had knowledge that the claimant was disabled at all material times.

19. The claimant's complaints were clarified during the preliminary hearings and in the subsequent correspondence considered by Employment Judge Childe, resulting in the list of complaints and issues annexed to the orders sent to the parties on 14 January 2025 (367-374). This list cross-referred to numbered allegations in a document provided by the claimant on 13 February 2024 (150-175) ("list of allegations"). Not all of the allegations in this document relate to live complaints to be decided by the Tribunal. The parties agreed at the start of this hearing that the complaints to be decided by the Tribunal are those set out in the list of complaints and issues (367-374). The claimant confirmed her understanding that these were the complaints we were dealing with, again on 14 January 2026, although her witness statement referred to some complaints which were not in this list.

20. To assist the Tribunal, the respondent provided a document described as "Respondent's chronology and list of allegations" which they sent to the claimant and the Tribunal on 6 January 2026. This was not an agreed document. The claimant told us that she had not had time to look at this carefully. We said, therefore, that we would use it as an aid, but we would rely on the list of complaints and issues, cross referring as necessary to the February 2024 list of allegations, to identify the complaints we needed to decide.

21. The list of complaints and issues is annexed to this document. Where there are references to allegation numbers, these allegations are set out in full in our conclusions.

### **Evidence**

22. We heard oral evidence from the claimant and, for the respondent, from Mark Kelly, Stella Clayton, Leila Jones, Louise Royle, Nick Bailey, Simon Walsh, Jenny Ehrhardt, Anne Linsell and Alison Hughes. There were written witness statements for all the witnesses.

23. We also read a statement from Caron Martin, a witness for the respondent, who was unable to give evidence due to ill health. The claimant objected to us

reading the statement but we decided to do so, for reasons we gave orally, after hearing submissions from both parties on the point. These reasons were as follows.

23.1. Caron Martin was the subject of specific allegations. We considered it to be in the interests of justice to admit her evidence and give the statement such weight as we considered appropriate. The claimant was able to give her own evidence on disputed points and make submissions as to the questions she would have asked Caron Martin had Ms Martin attended to give evidence, and why the claimant says we should prefer her evidence to that in Ms Martin's statement on any disputed points.

24. The parties had agreed a cast list.

25. We had an electronic final hearing bundle of 3110 pages and a supplemental bundle initially of 246 pages. During the course of the hearing, additional pages were added to the supplemental bundle, taking the numbered pages up to 264, with the agreement of both parties.

26. Numbers in brackets are references to page numbers in the final hearing bundle unless referred to as "SB[number]" which are references to pages in the Supplemental Bundle.

## **Facts**

27. The claimant began work for the respondent within MRI as a Clinical Governance Officer in December 2017. The claimant's substantive role at all times was a Band 6 role.

28. The claimant has a First Class degree in Social Policy and a Post Graduate Certificate in Public Health.

29. The claimant was diagnosed as autistic on 19 November 2019 (SB111). The diagnosis indicates difficulties in social communication, social interaction, flexibility of thought and unusual sensory experience, but does not set out any detail as to the extent or particular nature of the difficulties in these four areas.

30. The respondent has its own in-house occupational health advisers, known as the Employee Health and Wellbeing Service (EHW).

31. An EHW assessment on 27 November 2019 (395), at a time when the claimant was absent on sick leave due to stress and anxiety, suggested adjustments to the claimant's role in the short and long term to support her returning to and remaining in work including: having a clearly defined role and agreed duties; the reduction/elimination of emotional elements e.g. involvement with patient consultations, negotiation tasks; and the provision of a structured work environment with an identified desk in a quieter area. The advisor wrote that, if it was not possible to adjust her current role sufficiently to enable it to be suitable, then it might be appropriate for the respondent to consider an alternate role based on the advice given, within their service or other areas, on a trial basis initially to assess if it was suitable.

32. The claimant presented a grievance on 24 February 2020 (402) alleging disability discrimination in relation to requiring her to go through the Redeployment Policy in order to return to work and reducing her sick pay to half pay.

33. Mark Kelly joined the respondent as Deputy Director of Operations in March 2020, at the start of the Covid-19 pandemic. His first responsibility was to oversee within MRI the first suspension of activity in NHS history. Mr Kelly initially had a team of 2 people to assist him in the work. The claimant joined his team as a third member in around April 2020.

34. The claimant and Mark Kelly had a meeting on 29 April 2020. Neither of them made notes in the meeting. Mark Kelly, unsurprisingly, has little recollection of what was said at that meeting, although he acknowledges that he sometimes uses the phrase “square peg in a round hole”.

35. We do not rely on the claimant’s recollection now, nearly 6 years later, of what was said at that meeting. However, the claimant wrote two emails recording her recollection, one on 1 May 2020 to Sarah Greene (405) and the other, on 14 May 2020 to herself (414). She also set out a complaint about Mark Kelly (without naming him) in a letter dated 7 May 2020 adding to her existing grievance (413). We make findings based on what is recorded in those documents, although we do not consider that the claimant was likely, even as soon as 1 May 2020, to remember exactly the words used by Mark Kelly, given the unreliability of memory generally, rather than making any finding about the particular reliability of the claimant’s memory compared to that of others. We also note there are some inconsistencies between the two documents.

36. We find that there was some discussion about the claimant and autism. The claimant told Mark Kelly that she was struggling to find a suitable available role. There was mention of the claimant being a square peg in a round hole, the claimant having administrative skills that could be used elsewhere, such as in a staple factory, working in the NHS involving firefighting (not in a literal sense), Mark Kelly having made reasonable adjustments for someone with a bad back but that person complaining and the claimant being passionate about things, probably being passionate even about making a Christmas cake. There was a conversation to the effect that the NHS may not be the right environment for the claimant.

37. The claimant got upset in the meeting. The claimant referred to a matter of principle and unfairness that she was going to lose her job.

38. We find the claimant came away from the meeting with the impression that Mark Kelly was suggesting that she was not suitable, as an autistic person, to work in the NHS. However, we are not satisfied that Mark Kelly said that being autistic meant the NHS was not the right environment for the claimant.

39. Based on the email of 1 May 2020, we find that the claimant considered at that time that Mark Kelly was trying to help and she did not consider that he had made any comments maliciously but described them as uninformed.

40. On 6 May 2020, the claimant copied to Stella Clayton, Director of Workforce

and Organisational Development at MRI at the time, an email to Clare Challinor, expressing concerns about the redeployment process and that the system did not work for disabled members of staff (408).

41. On 7 May 2020 the claimant added to her existing grievance (411), as referred to previously, including a complaint about Mark Kelly, without naming him.

42. The claimant was facing termination of her employment on 24 June 2020 after a redeployment exercise had not resulted in finding a suitable post.

43. Stella Clayton tried to arrange a meeting with the claimant and assured her, in an email of 2 June 2020 (416), that her contract would not be terminated on 24 June until her concerns were addressed and they reached a solution.

44. Stella Clayton, met with the claimant on 4 June 2020. The matters they discussed included a possible role within Stella Clayton's team.

45. Stella Clayton sent a letter to the claimant on 12 June 2020 confirming their discussion (426). This stated that they had discussed and agreed that a position was available for the claimant as an "Equality & Diversity Adviser" at band 6 with a special interest in disability. They agreed that the post was based in MRI HR and OD and that the claimant's line manager would be Leila Jones. They had agreed that the claimant would return to work on 15 June 2020. Stella Clayton asked the claimant to confirm acceptance of the offer and confirm that the claimant's formal grievance process/ET was now withdrawn as the claimant had indicated.

46. By an email of 12 June 2020 (427), the claimant confirmed agreement to the role and wrote that she wished to formally withdraw her grievance with the Trust. She wrote that she appreciated the time and consideration Stella Clayton had given to finding a suitable outcome for the situation.

47. There was no job description setting out what was a new role but there was a job description for a job at Group level (398) which included some parts which could be done at hospital level by the claimant and some parts which could only be done at Trust level. The claimant had input into her job description for what was a new role (SB163).

48. The claimant began the new job on 15 June 2020.

49. The claimant had a meeting with Leila Jones, Louise Royle and Sarah Musique, a coach and mentor whose services were provided to the claimant through the Access to Work scheme, on 26 January 2021 (476). The purpose of the meeting included understanding the structure of the claimant's role and establishing how the claimant could have more to do. The claimant said she did not feel there was enough clarity on her core duties and she was not sure what she was meant to be doing despite wanting to be able to fill her time.

50. The claimant's job title was changed to Workforce Inclusion Manager in December 2021. The claimant confirmed that she was happy with the role as set out in the job description which she agreed with Leila Jones, with a few changes suggested by the claimant (SB158).

51. As had been agreed as reasonable adjustments for the claimant, Leila Jones had regular meetings with the claimant to catch up on work and go through trackers and tasks. One of these meetings took place on 7 June 2022. The claimant got upset in the meeting. Leila Jones summarized the meeting in a letter of 16 June 2022 (775). Her summary included recording that the claimant had said that, given she was autistic, she did not feel the role of Workforce Inclusion Advisor was suitable for her. Leila Jones wrote

“I acknowledged that you have had a few episodes recently where you have been upset and stressed at work and because of this I needed to get an opinion from employee health and well being to understand if you were fit for work and the role you are employed in. I explained that I am conscious that we have been trying to make reasonable adjustments for you in this role for some time, however I did not want to continue to do this if despite efforts to make reasonable adjustments the role would still have a detrimental effect on your health. We discussed that if no further reasonable adjustments could be made for the role, then we would have to explore redeployment.”

52. Leila Jones wrote that she would continue to work with the claimant to do as much as she could to support her so that she could continue working with her in their team.

53. She concluded by writing that she trusted that the letter accurately reflected their discussion.

54. We find that the letter was not written by Louise Royle, as asserted, and Stella Clayton had not asked for the letter to be sent, other than advising Leila Jones to record things which had been discussed in writing.

55. The letter was sent to the claimant in draft at 10.57 am on 16 June 2022 (773). Leila Jones invited the claimant to share any comments so she could finalise and share a copy of the letter with Stella before their meeting the next week. The claimant provided comments at 11.51 that day. She wrote that she found the role “vague, unstructured and lacking any kind of purpose” (772). The claimant’s comments are shown on p.777. She did not seek to correct the statement that they had discussed that, if no further reasonable adjustments could be made for the role, then they would have to explore redeployment.

56. On 16 June 2022 at 15.43, Leila Jones wrote to the claimant, including reference to delivering a masterclass on autism and also about dedicating a newsletter that month to autism. This followed previous discussion and correspondence about doing this work. The points in the letter were in response to questions in an email from the claimant (SB252) at 15.13 that day.

57. On 9 June 2022, Leila Jones had written to the claimant, writing that Louise really liked the idea of the claimant using the monthly newsletter to focus on a particular learning difficulty or disability, starting with autism (SB248).

58. On 10 June 2022, the claimant had written to Leila Jones, writing “I am happy

to do the newsletter focusing on Autism for June” (SB248).

59. On 16 June 2022 at 6.37 p.m. the claimant wrote to Leila Jones (779), copied to Stella Clayton, writing that it was going to be difficult to concentrate, particularly now she was facing redeployment again. She referred to redeployment as having been one of the most distressing episodes of her life and asserted that none of the recommendations she had made in 2020 had been implemented. She wrote: “I will not be delivering a HR masterclass to relive this experience, especially now I am in such a precarious position.” She also wrote:

“The paper I have written has everything managers will need so the impetus for me to deliver a newsletter and master class so quickly I find extremely strange.

“I have been completely honest about my needs within the role and my experience so far, however I feel this is strategic move [sic] to push me over the edge, despite telling you how humiliated I feel within the team and how much I am struggling.”

60. In an email of 20 June 2022, Leila Jones wrote (781): “I understand that you were keen to deliver training and development so I am unclear why you have informed me that you will not be progressing the masterclass especially given this is one of the examples of work you expressed an interest in doing going forward.” She asked to discuss this with the claimant and assured the claimant that it was never her intention to cause her upset or distress.

61. Leila Jones discussed the situation with Stella Clayton. Leila James was concerned for the claimant’s health. She was concerned that the workforce inclusion advisor role was not working for the claimant and it was having a negative impact on the claimant’s health.

62. Stella Clayton had been discussing with Vanessa Gardener and the MRI communications team the possibility of appointing a band six senior communications officer specifically for the MRI. There was a Group position but not, at that time, a Communications Officer at hospital level. They had been employing someone external as an interim measure to support them part-time on a fixed term contract. Stella Clayton was about to advertise the role.

63. Stella Clayton thought the role might be suitable for the claimant. She met with the claimant on 5 July 2022 and suggested the role to the claimant. The claimant agreed to transfer to this role. The role was not advertised and the claimant did not have to apply for it. It was a new role. It did not have an established job description. The claimant did not raise any issues at the time regarding the process followed.

64. The claimant transferred to the new role from 11 July 2022. The claimant reported directly to Stella Clayton in this role.

65. The claimant attended the office on 11 July 2022 with the things she needed. The claimant had been allocated an office to share with others but, on arrival, the claimant decided that it was too noisy. Stella Clayton was not in the office when the claimant arrived so the claimant messaged her, writing (SB258): “Hi Stella I

have brought everything that I need but I have not set it up as I don't think I could be in that room it is just too noisy, would I be able to use anywhere else or the small room at the side?" Stella Clayton replied "You can use the small room. No problem."

66. We find the claimant met with Stella Clayton on 11 July 2022, after Stella Clayton returned to the office, and discussed the matters recorded in Stella Clayton's handwritten note (803). These notes were not provided to the claimant following the meeting.

67. The matters discussed included a discussion about the office. We find that the matters discussed about the office were as recorded later that day by Stella Clayton on an updated reasonable adjustments form (805) although, as found below, Stella Clayton did not ask the claimant to sign that form or provide her with a copy of it.

68. The matters discussed also included a number of items under the heading "Work Programme". Action points included "Prog to Oct".

69. The claimant agreed to attend senior MRI meetings, Hospital Leadership Forum and Clinical Service Unit (CSU) Boards. Stella Clayton considered these meetings had a defined purpose for her role.

70. On the same day as the meeting, the claimant emailed Fin McNicol, Group Director of Communications, seeking information on various matters to do with her new role (815). The emails included a request to be included in any of their team meetings which they thought would be relevant to her role within the MRI. Fin McNicol replied, writing that they had weekly planning meetings and monthly planners for the wider comms service and they would send the claimant the invite for those.

71. We find Stella Clayton updated a reasonable adjustments form, previously agreed with Leila Jones, after the meeting with the claimant on 11 July 2022 but did not provide the claimant with a copy of this and did not ask the claimant to sign this (805). The original form, done in February 2022, recorded that Leila Jones had discussed with the claimant the option of working on site in a quiet office with a window but there was no provision for that at present, and the claimant would, at that point, continue to work from home. The update noted that the claimant had requested to be based at the MRI as she had found working from home not suitable for her. Stella Clayton recorded that they had discussed options including a screened space in the MRI headquarters; the claimant did not feel this was suitable and had chosen a single person office, although it did not have a window. They had agreed to keep the door open as it was in a quiet area. It was noted that this was to be kept under review.

72. In relation to meetings, the adjustment to be only included in meetings which were structured and where the claimant was aware of them in advance was noted to be unchanged, although the update noted that the claimant had requested to be included in senior MRI meetings on a regular basis.

73. The adjustment for a template to be agreed which set out clearly what each

task the claimant was expected to deliver on and timescale included was noted to be unchanged. In relation to the claimant's previous role, Leila Jones had recorded that she and the claimant would work together on an agreed template which would set out a programme of work clearly. Stella Clayton recorded that this was unchanged and added "weekly touch base meetings."

74. The adjustment for written instruction rather than verbal was also noted to be unchanged. Leila Jones had written that the template to be developed between herself and the claimant should ensure that there was a written document for tasks/workstreams and would form the basis of their reviews. Stella Clayton recorded that this was unchanged.

75. We find that the claimant was not given a clear written plan of what was expected of her each day. The claimant was expected to draw up a plan of what to do in agreement with Stella Clayton. Stella Clayton's notes of the meeting on 11 July 2022 (803) make reference to "plan to October". There is a reference in a message from the claimant to Stella Clayton on 31 October 2022 to the claimant having a "spreadsheet to plan my workstreams which we can look at together". If the plans were done, setting out tasks the claimant was expected to do, with timescales, we have not been shown them. We consider it likely that, if there had been such plans, in writing, agreed by Stella Clayton and the claimant, the parties would have been able to provide these.

76. We accept Stella Clayton's evidence that the claimant was expected to have a high degree of autonomy in the role as a band 6 role. The role required initiative and autonomy. This was not compatible with providing written instructions for every task. The claimant did take initiative in her role and came to Stella Clayton with insights as a result of her analysis of the staff survey and made suggestions for action, which they would agree.

77. We find that Stella Clayton and the claimant had one to one meetings to discuss work. We have seen notes to support there having been meetings on 11 July, 19 November 2022 and 22 February 2023 (863).

78. We have seen no evidence of weekly meetings as anticipated as an adjustment in the reasonable adjustments document which had been updated by Stella Clayton on 11 July 2022 (805). We have not been referred to notes of any meetings other than those of 11 July, 19 November 2022 and 22 February 2023.

79. In addition to one to one conversations, there were emails and texts about work between the claimant and Stella Clayton.

80. We accept Stella Clayton's evidence that, on a number of occasions, when she was discussing work with the claimant, Stella Clayton asked the claimant if she wanted her to write that down for her and the claimant declined.

81. After a time, the claimant and Stella Clayton agreed that the claimant would stop engagement with the CSUs because she felt that the engagement was not productive.

82. In a message on 28 October 2022 (2405) to Stella Clayton, the claimant raised various issues about the role including lack of structure.

83. The claimant stopped attending communications meetings. Cheryl Stevens, the interim deputy director of communications for the trust, wrote to the claimant on 2 February 2023 asking if there were any barriers preventing her from joining in (881). The claimant did not reply but forwarded the email to Stella Clayton (880). Cheryl Stevens then wrote to Stella Clayton 6 February 2023 expressing concern that the claimant had not been attending (881).

84. Cheryl Stevens had suggested that participants in the meetings share 3 things they were working on. The claimant did not feel she had anything to share, although Stella Clayton suggested to her things which she could share. Because the claimant was not comfortable with doing so, Stella Clayton agreed with the claimant that she no longer had to attend communications meetings.

85. Stella Clayton replied to Cheryl Stevens on 9 February, writing that she had agreed with the claimant that she did not attend the group comms meetings. She wrote that they had reviewed the claimant's role and this was now more aligned to how they were addressing culture through belonging and engagement (887).

86. In February 2023, there was an email exchange about the possibility of the claimant doing a different role: Project Manager (MRI Workforce) (893). The claimant, in an email of 23 February 2023 to Stella Clayton suggested this could be made specific to Workforce "so I can lead on pieces of work directed by you rather than being asked to support other teams with vague asks (Transformation, Ops)."

87. In March 2023, the claimant applied for a band 8a position of Freedom to Speak up Guardian. This was two bands above the claimant's band six role.

88. At this time, there was only one full time Guardian who was leaving. The recruitment process was to replace them. There was one other person who, as a result of a legacy arrangement, did some Guardian work for three hours per week in a North Manchester hospital. This person dealt with some cases in the North Manchester hospital. She and the full time Guardian did not work on the same cases or share information about cases.

89. The claimant was shortlisted for the role and then interviewed. There was an interview with a stakeholder panel, organised by Caron Martin and an interview with a panel of three, including Nick Bailey.

90. The job description for the Guardian role reflected that created by the National Guardian's office (391). This included upholding the values from the national job description: courage, speaking truthfully and challenging appropriately; impartiality, remaining objective and unbiased; empathy, listening well and acting with sensitivity; and learning, seeking and providing feedback and looking for opportunities to improve (974).

91. The respondent has a recruitment policy (2581). The policy does not set out in detail reasonable adjustments which might be made during the recruitment

process. However, it refers to sources of advice and guidance. The policy refers, at paragraph 1.6, to Trust guidance on reasonable adjustments available on the Trust intranet. 2.11 states that reasonable adjustments will be made in the recruitment and selection process for any disabled applicant, should this be required. The respondent has HR professionals who can assist managers dealing with requests for reasonable adjustments.

92. In response to the invitation to the interviews, the claimant wrote on 22 March 2023, requesting reasonable adjustments as part of the interview process (905). She asked to be advised of the identity of the stakeholders and to be provided with questions in advance. She also requested, for the main interview, the questions in advance, preferably within a reasonable timeframe to prepare.

93. Nick Bailey replied (904), writing that he intended to provide all candidates with the questions in advance, which he wrote was something he had found assisted in getting better responses from all candidates. In relation to the stakeholder group, he wrote that he intended to write to all candidates before the weekend to outline an area he would like them to discuss and present for 10 minutes to the group and then take their questions.

94. In the material sent to candidates in relation to the stakeholder engagement session, the candidates were informed that they would have 10 minutes to present with no presentation tools e.g. PowerPoint, on the topic of “how will you support a culture of speaking up in MFT. That was to be followed by a 30 minutes facilitated discussion session with stakeholders”. Initially, the areas on which stakeholders were to score the candidates were to include charisma and credibility. These were removed after representations from the claimant, Nick Bailey accepting the subjectivity of these categories (935). Nick Bailey also agreed that candidates could use PowerPoint if they wished to (936). He agreed to extend the time for provision of the questions before the interview to one hour.

95. Nick Bailey did not agree to provide specific questions to stakeholders. He wrote on 24 March 2023, “The nature of this exercise sadly is reflective of the types of scenario we know the FTSU Champion is likely to encounter, and as the questions relate to your presentation it would not be possible to predict the questions the stakeholders would ask.” (906).

96. The claimant disclosed in correspondence to the interview panel members that she was autistic (923 and 908).

97. The claimant wrote that she required as a reasonable adjustment the interview questions at least 48 hours in advance so she could prepare sufficiently for the interview (907).

98. In an email on 27 March 2023 (933), Nick Bailey set out his response to the claimant’s request for reasonable adjustments. This included reiteration of his refusal to provide standardised questions for the stakeholder panel. He wrote:

“I have considered this [the request for standardised questions] and feel that to do this would change the format of this exercise and would directly alter a relevant element of the assessment which is critical part of the role we are

aiming to recruit to. The ability to present and meet groups of colleagues, explain the role of the Freedom to Speak Up Guardian and promptly create a safe environment, where colleagues are confident to ask questions of the Guardian and sometimes in a heated and emotional environment ask questions and report situations does reflect the role and an area the selection process will be testing of candidates. I would suspect that based on your presentation, it would be reasonable to predict many of the questions the panel ask and prepare for these. But likewise, there may be a small number of questions which are not predictable but should be relevant to the role or your presentation (*if not they will directed to other relevant questions by the lead panel member*), and this would be reflective of an anticipated situation as a Guardian, whereby many questions would be predictable, but the emotion of some situations will inevitably mean unpredictable or unclear questions will be asked of the Guardian. The Panel will be made aware to try to be clear in their questions and there will be time for you to reflect and re-hear any question. I have allowed an additional allowance of time with the panel of 30 minutes should this be required.”

99. The claimant replied later that day (932), confirming that she was happy with the adjustments Nick Bailey had agreed to implement.

100. All candidates were sent the questions for the formal interview two days ahead of the interview.

101. Two candidates were interviewed by the stakeholder panel and the interview panel for the Freedom to Speak Up Guardian role.

102. The stakeholder panel took place on 28 March 2023. On the basis of the feedback from the stakeholder panel, the interview panel considered that both candidates were appointable.

103. The claimant was interviewed by the interview panel on 29 March 2023.

104. In a message to Stella Clayton on 29 March 2023, the claimant wrote that she was very happy with the process (2415).

105. The claimant alleged that Caron Martin discussed with the stakeholders that the claimant was autistic. We have no evidence that she did. We find that Nick Bailey asked Caron Martin to communicate to the panel that the claimant had requested a reasonable adjustment and would be having an additional 30 minutes. We do not consider that it can be inferred from providing this information that Caron Martin informed the panel that the claimant was autistic.

106. The claimant also alleges that Nick Bailey informed Caron Martin that the claimant was autistic without her permission. Based on a finding in the partial outcome letter of 22 August 2023 (1421), made after interviewing Nick Bailey closer to the relevant events when his memory was likely to be fresher, we consider it more likely than not that Nick Bailey did inform Caron Martin that the claimant was autistic. The finding was that Nick Bailey made the stakeholder panel aware that they would be interviewing a candidate with autism, asking them to keep the questions single-tiered and allow the candidates time to answer. The finding did

not say that he identified the claimant as the autistic person. However, given that he told Caron Martin the claimant was to be given 30 minutes extra as a reasonable adjustment, if he told her that they were to interview an autistic candidate, we consider it more likely than not that he did inform Caron Martin that the claimant was autistic. However, the claimant had been open about her autism to the interview panel, not just Nick Bailey, when requesting reasonable adjustments, and had not asked that this information about her be kept confidential from the stakeholders.

107. The interview panel decided that neither of the candidates were appointable. The respondent readvertised the role on 30 March 2023, not allowing either candidate who had progressed to the second stage to be considered.

108. On 31 March 2023, at a time when Stella Clayton was not at work, the claimant had a conversation with Louise Royle. The claimant had gone to see Vanessa Gardener, the MRI chief executive, to express a concern that there was urine in the hand basin in a unisex toilet. Vanessa Gardener had sent her to speak to Louise Royle. Louise Royle and the claimant went to look at the toilet together. Louise Royle expressed the view that what the claimant had seen was juice. There is a dispute about exactly what was said as the claimant went back to her office, but Louise Royle considered she needed to speak to the claimant further. The office was small and Louise Royle stood in the doorway to speak to the claimant, blocking the doorway. There is a further dispute about exactly what Louise Royle said when she got to the claimant's office. The claimant's accounts have varied and we do not consider her evidence to be reliable on the exact words said, so long after the event. The claimant's witness statement did not deal with this allegation. In cross examination, the claimant said that Louise Royle had said "can I ask you why you thought it appropriate to speak to Vanessa" and then that she said "what gives you the right to bring it to Vanessa." We cannot take account of new evidence about this incident given by the claimant in her closing submissions.

109. After the conversation, the claimant messaged Stella Clayton, writing (2415): "I have just had Louise demanding I report to her in your absence as she is the deputy I asked Vanessa something and she asked me to ask Louise who then took the opportunity to tell me not to speak to Vanessa." The claimant did not record the words Louise used which she had interpreted as a demand to report to her. Stella Clayton replied that the claimant reported to her and she supported her going to Vanessa.

110. There is common ground that something was said about the appropriateness of the claimant raising the matter with the Chief Executive and that Louise Royle was deputizing for Stella Clayton in her absence. We find the claimant understood from this that Louise Royle was meaning that the claimant had to report to her. We are not satisfied that Louise Royle demanded the claimant report to her or that she told her that she had no right to speak to the Chief Executive.

111. On 6 April 2023, the claimant presented a dignity at work complaint about the Freedom to Speak up Guardian recruitment process (1163).

112. On 19 April 2023, the claimant messaged Stella Clayton (2417). She wrote:

“To be honest Stella I am not ok I do not have enough work to do and I am completely isolated. The GP was going to sign me off as sitting in that windowless room with no structure is sending me under. I don't think you quite get the lack of work I have, to put it in perspective my emails were done by 9.15 a.m. I probably only got about 6 more today which was sorted within minutes, my office phone rings about once a week and I have hardly any interaction with anyone other than Steph.”

113. We prefer the evidence of Stella Clayton over that of the claimant in finding that the claimant did not raise issue of rooms again from 11 July 2022 until April 2023. The claimant's preferred method of communication is in writing. We think if the claimant had raised it in the intervening period, she would have recorded it at some stage in writing. We would also have expected to see evidence of attempts to find an alternative room as happened once the claimant raised it in April 2023.

114. OH reports refer to the claimant requiring quiet space but the issue of needing natural light was only referred to in the OH report in September 2023 after the claimant had started sick leave.

115. Once the claimant raised the room as an issue in April 2023, attempts were made to find her a suitable alternative room. The claimant corresponded with Ben Mountford, Estates and Facilities Operational Manager who wrote that there was very limited capacity across the site at the time, with numerous ongoing works and closed locations (1220). Stella Clayton wrote to him on 11 May 2023, writing that she realised this was a huge problem, but asking him to see what the opportunities might be for the claimant (1220). A week later, the claimant began sick leave which continued until her resignation.

116. The claimant wrote to Stella Clayton on 21 April 2023 (1179), setting out what she wanted to discuss in a meeting planned for that day. The topics for discussion were: job plan, structure, development, the office and isolation. Included in the matters for discussion about a job plan, the claimant wrote: “I need a clear work plan with work streams.” She also referred to being given tasks not in keeping with her band 6 role. In relation to structure, she wrote “I completed a risk assessment last year stating the impact having no set work plan was having on my mental health and the same is happening again, as you can appreciate having a diagnosis of autism means I need structure, routine and clear expectations of what I am delivering, this is not happening. In relation to the office, the claimant wrote that working in a windowless office with no air conditioning was making her ill. She also wrote that she felt her skills were completely underutilized and the lack of challenge and being able to use her brain on a daily basis was making her feel undervalued.

117. On 24 April 2023, Stella Clayton sent the claimant an email with the heading “risk management committee - papers and exam questions.” (1189). We find that this email related to a piece of work Stella Clayton had asked the claimant to do. It was not any form of test in relation to a proposed new job. It was not an exam. “Exam question” is a phrase Stella Clayton uses often to mean the requirement, what they are looking for, or “the ask”. We accept that Stella Clayton was trying to provide clarity to the claimant as to what was asked of her. The claimant replied with a clarification question about the work (1188).

118. On 12 May 2023, an investigatory meeting was held with Nick Bailey in relation to the claimant's grievance (1256). He was asked whether there were any elements of the role which could be undertaken by someone else who was not a Guardian. He said no, as it needs a degree of independence (1262).

119. On 18 May 2023, the claimant wrote to Stella saying that she had reached the point where she needed to take some time off as she did not feel OK within herself (1318). She wrote: "I think the whole issue with the FTSU job and subsequent grievance has taken its toll on me. It feels like I am in a constant state of anxiety at the moment which is made worse by the lack of consistency and structure. I feel completely isolated." She asked to be referred to the specialist nurse from EHW who she believed had an understanding of autism. She wrote that she dreaded coming into work "as despite you giving me things to look at, it still has no structure or timescales, and I can't work like that."

120. On 18 May 2023, the claimant began sick leave. She did not return to work before her resignation on 18 June 2024.

121. Stella Clayton considered that the claimant performed very well in her role and produced high quality work. Feedback from others about work the claimant had done had been very positive.

122. Stella Clayton attempted to make a referral to EHW in June 2023, following the claimant's request to make such a referral, but subsequently discovered that she had not submitted this correctly. Victoria Goulden, Fitness for Work Team Manager, EHW, confirmed on 10 July 2023 that there was no referral in the system for the claimant, following an enquiry from the claimant (1332). Stella Clayton correctly submitted the referral on 11 July 2023 (1338). Stella Clayton wrote to the claimant on 12 July 2023 to say that unfortunately the referral she thought she had made was "saved" and not submitted but she had submitted it correctly the previous day (1348). She wrote that they had come back to her to ask for further information.

123. Also in the email of 12 July, Stella Clayton wrote that she had chosen not to manage the claimant's absence through the attendance policy as the claimant had hit triggers and did not want to enact the policy formally with HRBP involvement "as I thought (apologies if you disagree) that you wouldn't want the extra pressure. If I have got this wrong, please let me know and I'll commence working with you through policy." The claimant did not respond to say that she wanted her attendance managed through the attendance policy.

124. The claimant engaged in early conciliation with ACAS between 15 June and 27 July 2023.

125. On 22 August 2023, the claimant was provided by Peter Blythin, Group Executive Director of Workforce & Corporate Business, with a partial outcome to her grievance (1419), after an investigation by Tracey Lakin. The investigation report was attached. Peter Blythin wrote that it had become evident to him, whilst drafting the outcome letter, that there were elements of the claimant's grievance which the report did not appear to address adequately. He, therefore, provided her with a partial outcome to avoid further delay, and asked Tracey Lakin to address a

number of outstanding matters. Peter Blythin accepted some shortcomings in the interview process for which he apologised on behalf of the Trust.

126. The claimant presented her first claim to the employment tribunal on 22 August 2023. This included complaints about comments alleged to have been made by Mark Kelly, a lack of structure in her role managed by Stella Clayton and the recruitment process for the Freedom to Speak Up Guardian role. It appears the Particulars of Claim may have been drafted before the partial outcome to the grievance since they make no reference to this.

127. The claimant had two appointments with EHW in September 2023. The reports (1444 and 1453) expressed the view that the claimant was unfit for work. The first report wrote that it appeared the claimant had experienced burnout. It referred to the claimant reporting having had several job roles where she felt the duties and roles lacked structure and were not clearly defined, leading to reduced workload and ambiguity. It wrote that the claimant, prior to returning to work, was likely to benefit from a clear and detailed job plan and that a document clearly outlining tasks, duties and role expectations for the day/week/month could be helpful.

128. The claimant wrote to Stella Clayton and Peter Blythin on 17 October 2023, writing that she did not feel ready to return to work, but, when she was ready, she did not want to return to the MRI, she wanted to be moved to somewhere else in the Trust and managed by someone outside MRI.

129. The claimant declined to attend a health review meeting with Stella Clayton on 19 October 2023. Stella Clayton wrote to the claimant on 24 October 2023 setting out what she would have preferred to discuss in person. The letter referred to various recommendations in the EHW reports. In reference to a recommendation that the claimant have regular well being contact with someone independent from her current department, Stella Clayton wrote "Leila Jones Senior HR Business Partner your previous line manager was fulfilling this role during your absence, however I have been made aware that you have requested that Leila does not contact you and that Bethan Abbott Jones has been asked to provide you with well-being support."

130. Leila Jones had been meeting the claimant occasionally outside work, in the capacity of a friend. This was not a formal role as a well being contact, although Stella Clayton was aware that Leila Jones had been meeting the claimant and had been pleased to know that Leila was able to check on the claimant's well-being.

131. The claimant wrote to Stella Clayton and Peter Blythin on 26 October 2023 (1551) making complaints largely relating to Stella Clayton. This included writing that she had not had enough work to do on many occasions over the preceding year. This letter has been described in the list of complaints and issues as the second Dignity at Work grievance. The letter included the claimant writing that she had never agreed for Leila to be a point of contact to check in on her; she met Leila in what she thought was the capacity of a friend outside of work, not as a substitute manager. She wrote that she had asked, since 2020 as a reasonable adjustment, for a structured work plan and an environment supportive of her needs but this had never been implemented adequately.

132. Peter Blythin replied on 27 October 2023 (1558). He informed the claimant that, in response to her request for her sickness absence to be managed by a manager from outside the MRI, Simon Walsh, Group Director of Procurement, would be appointed. He asked for clarification as to whether the claimant was raising matters in her letters of 17 and 26 October 2023 to be reviewed formally under MFT policy. He wrote:

“It is important that we have the information necessary to enable us to address all of the issues which are of concern to you, and which may be preventing you from returning to work so that we can find a constructive way forward for a return to the workplace. To that end, if there are any issues which you would like us to look into, please list them when you reply to this letter.

“I must let you know that any historic concerns (i.e. which pre-date your reply to this letter) not set out in your reply to this letter but raised by you subsequently will not be considered by MFT under its policies. I am sure you will agree that it will be helpful to draw a line so that you can move on and start working towards a return to work and I am keen to support you in that.”

133. On 31 October 2023, the claimant wrote to Mark Cubbon (1567) expressing shock and dismay at the letter from Peter Blythin. She asserted that she considered his email constituted further victimisation and asked for her concerns to be escalated under the appropriate policy, either the Whistleblowing policy or the Dignity at Work policy.

134. On 3 November 2023, Simon Walsh wrote to the claimant inviting her to a stage one health review meeting on 13 November 2023 at his office at Trafford Hospital (1630). His letter concluded: “I would like to meet you and discuss your circumstances on the 13<sup>th</sup> of November – if this is not possible, we could consider an alternative date/location though ideally, I would not want to add further delay.”

135. The claimant wrote again to Mark Cubbon on 3 November 2023 (1583), having not, at that stage, received a reply to her email of 31 October 2023. She complained about her autism diagnosis having been shared with Simon Walsh. She also complained that there had been no discussion around what reasonable adjustments she might require to be able to attend the meeting.

136. On 7 November 2023, the claimant sent a formal grievance under the Dignity and Respect at Work policy to Mark Cubbon (1633). She wrote that she was raising concerns about the MFT Dignity at Work Policy, Louise Royle, Stella Clayton, Peter Blythin and MFT Corporate HR, alleging harassment, victimisation, direct and indirect discrimination. She referred to her ongoing employment tribunal claim.

137. The respondent decided to outsource the investigation of the claimant’s grievances. They appointed Anne Linsell of Ibex Gale to initially establish the Terms of Reference and then to carry out the investigation.

138. Peter Blythin advised the claimant in a letter dated 7 November 2023 (1640)

that the Trust was appointing an external investigator to undertake an investigation and the investigator would meet with the claimant to establish the specific concerns she wanted the Trust to look into. Jenny Ehrhardt, then Group Chief Finance Officer, wrote to the claimant on 20 November 2023 to inform the claimant that Ibox Gale would be conducting the investigation and to set out the next steps (1673).

139. In an email of 23 November 2023 (1685), the claimant raised queries with Jenny Ehrhardt about the experience of the investigator, asking whether the respondent would consider commissioning a neurodiversity specific organisation to work with the external investigator to ensure that the investigation was not being conducted through a neurotypical lens only.

140. As a result of enquiries made by Alison Hughes, about Anne Linsell's experience, and the fact that Anne was a professional investigator working for a reputable organisation, Jenny Ehrhardt considered Anne had the skills and experience necessary to undertake the investigation fairly without additional input from a neurodiversity specific organisation. She also considered that finding an additional organisation to work with Ibox Gale that would be acceptable to all parties could be difficult and time consuming, causing delay to the process. She also considered that the cost to the tax payer of paying an additional organisation would be disproportionate.

141. Jenny Ehrhardt sought to reassure the claimant as to the credentials and experience of Anne Linsell in a letter dated 28 November 2023 (1695). In a subsequent letter of 1 December 2023, Jenny Ehrhardt wrote to the claimant (1704) that, if Anne Linsell believed she needed additional specialist witness input, this would be sought at the time.

142. Anne Linsell held an online meeting with the claimant on 7 December 2023. Unknown to Anne Linsell, the claimant recorded the meeting. We have a transcript of the recording in the bundle (3074). Anne Linsell told the claimant that her remit, at that point, was to understand the claimant's story and the impact of things which had happened so that they could then agree on what needed to get investigated.

143. Anne Linsell referred to the investigation report (3077) and initially said the claimant would get a copy of that report. When the claimant said she had been told by Alison Hughes she would not get a copy, Anne Linsell said she would need to check that. They spoke about adjustments the claimant would need in their conversations (3079).

144. We find that there was a genuine misunderstanding between the claimant, Anne Linsell and Jenny Ehrhardt in terms of what the claimant was requesting. Jenny Ehrhardt thought the claimant had been asking the respondent to confirm that she would receive a copy of the final investigation report, rather than asking for a copy of the terms of reference. On 1 December 2023, Jenny Ehrhardt had replied to questions from the claimant including one about whether she would receive copies of all evidence submitted to the investigator and a copy of the final report under the old Dignity and Respect at Work policy (1704). Jenny Ehrhardt had replied:

“Neither the new nor old policy have a provision for the employee to receive the investigation report. Once I receive the report, I will give due consideration to the findings, determine if further action is required and provide feedback to you. I will take into account the confidentiality of individuals that are named in the report, including yourself and whether there would be an impact on repairing relationships when the matter is concluded before deciding if the report will be shared.”

145. It would not have been standard practice, in accordance with the respondent’s policies, to provide the investigation report.

146. By a letter dated 13 December 2023 (1731) Jenny Ehrhardt wrote that it could be that, at the end of the grievance process, they could share the full report with the claimant but at this stage she could not guarantee that would be the position. She encouraged the claimant to take part in the process and meet the investigator so that they could look into and address the claimant’s concerns. She wrote that, in the meantime, the Terms of Reference would be drawn from the written documentation the claimant had previously provided and the investigation would proceed.

147. The claimant refused to participate in the investigation process after the meeting on 7 December 2023. Anne Linsell drew up Terms of Reference, also referred to as a scoping report, based on what the claimant had written in her grievances and other correspondence.

148. On 25 January 2024 Jenny Ehrhardt provided the claimant with a copy of the Terms of Reference for the Dignity at Work investigation.

149. Jenny Ehrhardt, when she realised the misunderstanding as to what the claimant had previously requested, wrote to the claimant on 9 February 2024 to explain this (1954). In this letter explaining the “cross-wires misunderstanding”, Jenny Ehrhardt encouraged the claimant to meet with Anne Linsell “so we can understand all the detail and if you feel there are aspects of the terms of reference that are not accurate these can be addressed.” The claimant did not agree to meet again with Anne Linsell.

150. Anne Linsell produced an investigation report after interviewing various people, but not the claimant, who had refused involvement. The draft report was provided to the respondent for the correction of any factual inaccuracies and typographical errors. We find no evidence that the respondent “edited” the report to change the substantive content.

151. On 9 April 2024 the claimant was provided with a copy of the grievance investigation report, without the appendices (2161). The claimant requested copies of the appendices but the requests were refused. Refusal was in line with the respondent’s policies. Paragraphs 7.2 and 7.3 of the Dignity and Respect at Work policy provide:

“7.2 Should a case be referred to a disciplinary hearing the investigation report will only be shared with the person about whom the allegations have been made and the relevant parties involved in the disciplinary hearing

process.

“7.3 Should the case not be referred to a disciplinary hearing the investigation report will not be made available to limit the ability for it to further affect the relationships within the team or department. However, it is important that the manager of both the complainant and the person who the complaint relates to is provided with relevant feedback.”

152. By a letter dated 2 May 2024 the claimant was provided with the grievance outcome (2188). Some parts of the grievance were upheld or partially upheld. Other complaints were not upheld. The claimant was advised of her right to appeal within 10 working days of the letter. The claimant did not appeal.

153. Simon Walsh managed the claimant's absence under the Absence Management Policy from November 2023. Simon Walsh reported to Jenny Ehrhardt.

154. The management of the claimant's absence was kept separate from the investigation of her grievances. Jenny Ehrhardt considered it important that Simon Walsh maintained a relationship as constructive and supportive as possible with the claimant and considered that would be more difficult if Simon Walsh was involved with the issues about which the claimant was in dispute with the respondent. This is supported by her email to Simon Walsh of 4 December 2023 (1702). Jenny Ehrhardt considered it was possible for Simon Walsh, working with the claimant, to find a way to get her back to meaningful work while the Dignity at Work process was ongoing and that this did not require Simon Walsh to become involved in the issues being investigated by the Dignity at Work process.

155. Mark Cubbon informed Simon Walsh about the concerns the claimant had raised after receiving Simon Walsh's letter of 3 November 2023. Simon Walsh wrote to the claimant on 8 November 2023 and apologised for failing to offer alternatives to the in-person meeting. He asked whether she would prefer the meeting to be over Teams and told her it would be an introductory meeting to discuss her concerns and the support they could offer to facilitate her return to work (1645).

156. The claimant and Simon Walsh met over Teams on 13 November 2023. Simon Walsh wrote to the claimant summarizing their discussion on 14 November 2023 (1656). This included that he had confirmed their focus was solely on the management of her absence but noted there was the potential for cross over if wider circumstances prevailed.

157. The claimant made complaints about Simon Walsh which were added to the complaints being investigated by Anne Linsell.

158. In December 2023, the respondent agreed to fund some sessions of autism specific counselling for the claimant.

159. There was a stage 1 meeting on 2 January 2024. Simon Walsh reiterated that he was focused on her return to work and wanted to keep that separate from other ongoing issues that were outside of his remit. The claimant said that if they did not

acknowledge the reasons behind her situation then she could be put in the same situation again if she returned to work. Simon Walsh expressed the view that they did not need to get involved in the grievances to be able to understand what she needed. The claimant expressed concern about returning to work while the employment tribunal issue and Dignity and Respect at Work grievances were ongoing.

160. Simon Walsh identified a potentially suitable role for the claimant, within the Communications team. Simon Walsh wrote to the claimant about this role on 2 February 2024 (SB68). The claimant refused the opportunity, giving a number of reasons, stating that she was currently unable to return to work and did not see this changing.

161. Simon Walsh informed the claimant by email of 7 March 2024 that they would be moving to stage 2 of the Attendance Policy and suggesting a further EHW report (SB71).

162. Simon Walsh suggested, by email of 13 March 2024, a meeting, proposing an agenda, including discussing further counselling requested by the claimant (SB73). Simon Walsh and the claimant had a discussion over email about a potential meeting via Teams on 2 April to discuss the claimant's request for an Independent Health Report which she wanted before a meeting and further Trust funded counselling. The claimant refused to attend the meeting but agreed to answer any questions in writing.

163. On 1 May 2024, Simon Walsh sent the claimant a letter inviting her to a Stage Two Health Review Meeting on 7 May to be conducted on Teams (2183). He wrote that, in line with the Trust's Attendance Policy, it would be helpful to meet again to discuss the claimant's continued absence from work and any support that he and the Trust might be able to provide to facilitate a return to work. He wrote that, at the meeting, they would discuss the following points:

- "Update from you on how you are and fit note.
- Update from me on sickness pay.
- Your request for an Independent Health Report.
- Your request for further Trust funded Counselling.
- Support to return to work.
- Next steps."

164. The claimant replied by email on 2 May 2024. She wrote that she was currently unable to return to work due to the discriminatory actions of senior managers representing MFT over a four year period. She said she would not be attending any online or face to face meetings but was prepared to engage with Simon Walsh via email. She wrote that she was not willing to put her health at further risk by attending a meeting. She included in her email the following:

"You have made it clear you will not discuss the harassment, victimisation, disability discrimination or lack of reasonable adjustments which has led to my long-term absence or the ongoing Employment Tribunal case against MFT."

165. The claimant included various points she wished to be considered, including full pay to be reinstated and backdated “to take into account the failure of MFT to acknowledge my absence as ‘work related ill health’” and for MFT to pay for an independent report as part of the absence management process. She wrote that she was not currently well enough “to relive the trauma with somebody who does not know my situation or my experience of being autistic.”

166. Acting on advice from Sue Britland Jones, Simon Walsh emailed the claimant on 3 May 2024 to say that the Stage 2 meeting would go ahead on 7 May (2198). He wrote that, if she did not attend, they would review her sickness absence and the points she provided in her email. He wrote that they had wanted to explore the requests for an independent health report and further Trust funded counselling at the meeting to understand the benefits counselling gave her and the purpose of the report. He asked her to let him know, in writing, if she did not feel able to attend the meeting, how she felt such a report and further Trust funded counselling would help them review her absence and return to the workplace.

167. The claimant emailed Jenny Ehrhardt and Simon Walsh on 4 May 2024 to say that she would not be attending any meetings (2199). Jenny Ehrhardt replied (2205) to say that they could only find resolutions and engage in meaningful discussions if they met. The claimant replied to confirm that she would only communicate over email, suggesting that alternative forms of communication to a face to face meeting would be a reasonable adjustment (2206).

168. Simon Walsh and Sue Britland Jones reviewed the position on 7 May 2024 in the absence of the claimant. Simon Walsh did not make any decisions at that time, pending any further comment or information from the claimant.

169. On 9 May 2024, the claimant emailed Simon Walsh with a further fit note to cover her absence until 4 August 2024 (2209). She wrote that the grievances she had raised had not been adequately investigated and the absence management process being implemented did not take account of factors she had outlined about her long term absence being directly caused by the actions of senior managers within MFT. She referred to her ongoing Tribunal case and wrote that any attempt to end her contract of employment on the grounds of ill health would result in a further claim of unfair dismissal against the respondent.

170. Simon Walsh replied on 14 May 2024 (2211), writing that he was only dealing with the absence management process so could not comment upon other internal or external processes. He wrote that he had not yet made a decision on the next steps pending receipt of information from her and that, if she did not feel able to let him have the information by email, he would make a decision on the basis of the information they had. He asked for any further information by 10 May 2024. He noted the claimant’s allegation that her illness had been caused by the Trust and that those issues were the subject of a Dignity and Respect at Work Process to which she had received an outcome. He wrote that he had requested a copy of the DAW outcome and would consider this before making a decision on the next steps in terms of the management of her sickness absence. He wrote that he would consider that outcome insofar as it made findings about the Trust’s actions which might have contributed to the claimant’s health and absence.

171. The claimant raised a third grievance with Mark Cubbon on 19 May 2024 regarding the conduct of Jenny Ehrhardt and Simon Walsh (2216). Simon Walsh was not copied on the grievance and was not aware of this at the time. Mark Cubbon considered that the complaint relating to Jenny Ehrhardt ought to have been addressed as part of an appeal against the outcome of the claimant's second Dignity at Work complaint, which she had not appealed, so those complaints would not be taken forward. He considered that the complaint about Simon Walsh should be dealt with under the dignity and respect at work process. He asked Alison Hughes to take this process forward.

172. On 23 May 2024 Simon Walsh sent the claimant a letter with the outcome of stage two health review meeting (2221). The claimant had not sent any further information. Simon Walsh wrote that they noted the information in her email of 2 May and her fit note. He informed the claimant that her half pay arrangement would end on 16 June 2024. He wrote that they had considered the claimant's request for an independent health report from her counsellor but, without further information from her as to the purpose of the report and how this would help her return to the workplace, were not able to take a request any further. He wrote that, if an independent health report was to be required, this would be sought through the Trust's EHW, as was the Trust's usual process. He asked her again to reconsider the option for a Trust EHW referral. Simon Walsh was acting on the advice of Sue Britland Jones that they would not usually obtain an independent health report where the claimant had been offered the EHW service. I accept Simon Walsh's evidence that he acted on this advice because he did not see what benefit they would gain from an independent health report when they had already referred the claimant to the EHW service and funded autism specific counselling.

173. Simon Walsh wrote that they had considered her request for further Trust funded counselling. He wrote that, without the further information they had requested from her as to the benefits the counselling gave her and how this would help her return to the workplace, and as there was no plan to return to work, the Trust was unable to fund any further sessions. He wrote:

“Having reviewed the DAW outcome, I have seen no evidence that your illness or absence has been caused by the trust as you allege, which would affect my decision as to how your ongoing absence should be managed.”

174. We accept that this was Simon Walsh's genuine view, after reading the report.

175. Simon Walsh wrote that he had considered the claimant's request for full pay to be reinstated and backdated, but as he had seen no evidence her absence had been caused by the Trust, he did not agree to this.

176. Simon Walsh set out points he had considered and wrote that, having carefully considered all these points, he had concluded that he would escalate the claimant's absence from work to a stage 4 final health review hearing as the next step in the attendance process. He wrote that she would be contacted in due course regarding this meeting.

177. Simon Walsh had no further involvement with the claimant after this point. He was informed by Mark Cubbon on 3 June 2024 about the claimant's grievance

against him and told that, although Simon Walsh was to retain management of the claimant's absence management, any communication with the claimant should occur through Sue Britland Jones rather than him.

178. On 10 June 2024, Alison Hughes wrote to the claimant (2243). The claimant had indicated that she did not wish to raise the issues directly with Simon Walsh. The next step in the dignity at work process was, therefore, the fact-finding process. Alison Hughes informed the claimant that she had appointed an independent manager, Gill Porter, to undertake the fact-finding process. She set out the information already provided to Gill Porter. She wrote that the policy required a meeting within five calendar days of the concerns being raised to explore the concerns and resolutions but Mark Cubbon's letter to the claimant of 23 May extended this to 20 June to accommodate the claimant's external appointments. She wrote that Gill had been advised of this and would make contact with the claimant directly.

179. On 10 June 2024, the claimant replied to Alison Hughes (2242). She wrote that Mark Cubbon was refusing to address the serious issues she had raised against senior managers. She withdrew the third Dignity and Respect at Work grievance on grounds including that she did not believe she would get a fair or transparent investigation and that the scope of the investigation had been deliberately limited and would not cover the concerns she was raising. She quoted from paragraph 5.12 of the Dignity and Respect at Work policy which stated:

“If it becomes apparent during this process that unacceptable behaviours have been condoned, covered up or that managers have failed to address issues that have been presented to them, this will be escalated separately to an appropriate senior manager for consideration of further action.”

180. The claimant requested a copy of the escalation policy in regard to raising concerns in line with 5.12 of the Dignity and Respect at Work policy and confirmation as to what was in place where the unacceptable behaviour concerned the Chief Executive, Mark Cubbon.

181. Alison Hughes replied to the claimant on 13 June 2024 (2246). She wrote that the claimant had been provided with an opportunity to appeal the decisions made at the formal stage of both of her Dignity and Respect at Work matters. She wrote that a very senior manager had been appointed as an independent manager to meet with the claimant at the fact-finding stage of the Dignity and Respect at Work policy to consider the concerns the claimant raised about Simon Walsh's handling of her absence. She wrote:

“Your letter refers to what you perceive to be unacceptable behaviour by Mark Cubbon but that alleged behaviour is the context of the absence management process and the appeal against Jenny Erhardt's findings which are ongoing. If you have concerns about Mark's behaviour and what he has told you about those processes, then the appropriate forum within which to raise those issues is the absence management process and the appeal themselves. It would not be appropriate for the Trust to commence another process to look at those issues.”

182. Alison Hughes noted the claimant's intention to withdraw her Dignity and Respect at Work concerns about Simon Walsh. She wrote that she did not propose to act on the withdrawal immediately and asked the claimant to consider the position carefully. She strongly urged the claimant to discuss the matters with her trade union, staff organisation or employment adviser before deciding to withdraw her concerns. She wrote that, if the claimant did not have access to an adviser, Mandi Watson would be available to her in her capacity as Chair of Staff Side to offer advice if the claimant wished.

183. Before writing this letter, Alison Hughes had spoken to Mandi Watson, a senior and experienced trade union representative. Mandi had agreed to support the claimant even if the claimant was not a member of the trade union.

184. We accept the evidence of Alison Hughes that there was no "escalation policy". Paragraph 5.12 of the Dignity and Respect at Work policy refers to an escalation route to a senior manager in the event that it becomes apparent during the process that unacceptable behaviours have been condoned, covered up or that managers have failed to address issues that have been presented to them. Alison Hughes considered that they were not in that position, since the Dignity at Work processes had not made such a finding.

185. The claimant did not reply to Alison Hughes' letter.

186. On 18 June 2024, the claimant resigned from the Trust (2250). In her 6 page resignation letter, the claimant asserted that there had been a fundamental breach in her contract of employment by the respondent. She asserted that the conduct of senior managers had created a work environment that was discriminatory, hostile, invalidating and degrading to her as an autistic member of staff. She wrote that she did not feel safe returning to work and had no faith that any concerns she raised would be investigated with any due diligence by senior managers. She wrote that she had repeatedly requested as a reasonable adjustment clear communication and transparency in order for her to engage with processes and this was not happening and the impact on her health was substantial. She wrote:

"I cannot continue to correspond with an organisation that is not only unwilling to support me as an autistic employee that actively contributes to a decline in my mental health.

"I am mentally exhausted and do not feel it is possible to continue in this way. Every email I have received from the trust for the last year has caused me trauma and distress, I dread receiving any correspondence because I know it will invalidate my experience.

"I am not resigning because I want to, I am resigning because as an organisation you have left me no alternative. I have never had any verbal or written warnings. I have never had any criticisms about my work or conduct."

187. In relation to paragraph 5.12 of the Dignity and Respect at Work policy, she wrote that there was no stipulation under this that concerns could only be raised through an appeals process. She asserted that the policy stated it would be escalated separately for consideration and that this had not happened. She

asserted that the advice from Alison Hughes about how to raise concerns about Mark Cubbon's behaviour contradicted section 5.12 of the Dignity and Respect at Work policy.

188. The claimant asserted that the Trust had failed to put in adequate protection for autistic staff raising concerns. She asserted it had failed to investigate her concerns, failed to implement reasonable adjustments, stopped her pay after failing to adequately investigate her concerns and had caused long-term damage to her health. She wrote that she was being forced to leave her job because of the discriminatory conduct of senior managers and the refusal to support her as a disabled member of staff. She concluded: "Manchester University NHS Foundation Trust has fundamentally breached my contract of employment to such an extent I have no option but to leave."

189. The claimant presented her second claim on 19 June 2024 after early conciliation 14-18 June 2024 and her third claim on 24 June 2024 after early conciliation on 18-24 June 2024.

190. The respondent had at relevant times an Attendance policy (2667), a Dignity at Work policy (2779) and an Equality and Diversity in Employment policy (2621).

191. The Attendance Policy refers at paragraph 4.4. to support from EHW, including with adjustments (2667). It refers at paragraph 13 to guidance available through the intranet and from HR.

192. The Equality and Diversity in Employment policy refers, at paragraph 5.4.1 to guidance on reasonable adjustments in the Attendance policy and the EHW service.

193. The Dignity at Work policy refers to reasonable adjustments at paragraph 5.3. Paragraph 3.4 refers to advice from HR to management and staff.

194. The respondent has an intranet which included Guidance for Managers on how to manage disability related absences (2579) and Guidance on Reasonable Adjustments (SB15). These were superseded in November 2023 by guidance for managers on reasonable adjustments (2857).

195. Also on the intranet was a 2014 Disability in Employment Policy, of Central Manchester University Hospitals NHS Foundation Trust, one of the respondent's predecessor organisations, which ceased to exist in 2017. This was superseded in March 2022 by the Equality and Diversity in Employment Policy.

196. The respondent has in house professional HR advisers.

197. The claimant was aware of rights under the Equality Act 2010 and the right to bring complaints to an employment tribunal at all relevant times. She accepted in cross examination that she was well aware of employment tribunal time limits.

## **Submissions**

198. Both parties wanted to put their submissions in writing and then make brief

oral submissions commenting on the other party's submissions. We agreed a timetable for the respondent to provide their submissions to the tribunal, but not the claimant, by 9 am on 21 January 2026. The claimant was to provide her submissions to the tribunal by 11 am on that day, since she said she needed more time to provide these. When she was ready to provide her submissions, she was to contact the respondent's solicitors and the parties would then exchange their submissions. Each party was then to have a maximum of 30 minutes to comment on the other party's submissions.

199. We read the written submissions and the parties had an opportunity to read each other's submissions. Each party then made very brief oral submissions.

200. We do not reproduce or summarise the parties' submissions. However, we deal with the principal submissions in our conclusions.

201. Where the claimant introduced new evidence in her submissions, we cannot take account of this.

202. The claimant reframed some of the PCPs in her closing submissions. We consider that we must, for the purposes of reaching our conclusions, deal with the PCPs as identified in the list of complaints and issues. It would not be fair to the respondent and in the interests of justice to consider a different case to that about which we had heard evidence and on the basis of which the respondent had prepared their closing submissions.

## **Law**

### Reasonable adjustments

203. Section 20 Equality Act 2010 (EQA) and Schedule 8 contain the relevant provisions relating to the duty to make adjustments. Schedule 8 imposes the duty on employers in relation to employees.

204. Section 20(3) imposes a duty comprising "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."

205. Paragraph 20 of Schedule 8 provides that an employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the relevant disadvantage.

206. Paragraph 6.28 of the Equality and Human Rights Commission's Code of Practice on Employment sets out factors which it may be reasonable to take into account when considering the reasonableness of an adjustment. These factors include the extent to which the step will prevent the disadvantage.

207. An adjustment does not have to be guaranteed to succeed in alleviating the disadvantage to be a reasonable step to take. Likely efficacy is a factor to consider in considering whether the step would be a reasonable adjustment to make. In

**Griffiths v Secretary of State for Work and Pensions** [2017] ICR 160, CA, it was said that the uncertainty is one of the factors to weigh up when assessing the question of reasonableness.

#### Discrimination arising from disability (s.15 EQA)

208. Section 15 EQA provides:

- “(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.”

#### Meaning of unfavourable treatment

209. Unfavourable treatment is analogous to being put at a disadvantage or being subjected to a detriment: **Williams v The Trustees of Swansea University Pension & Assurance Scheme and another** [2018] UKSC 65, paragraph 27.

#### The correct approach to determining s.15 complaints

210. In **Pnaiser v NHS England and anor** [2016] IRLR 170 EAT, Mrs Justice Simler summarised the proper approach to determining s.15 claims at paragraph 31 of that judgment as follows:

- “(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 section 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: see *Nagarajan v London Regional Transport* [1999] IRLR 572. A discriminatory motive is emphatically not

(and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her Skeleton).

(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 section 15 of the Act (described comprehensively by Elisabeth Laing J in *Hall*), the statutory purpose which appears from the wording of section 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) For example, in *Land Registry v Houghton UKEAT/0149/14* a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. 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.

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of *Weerasinghe* as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(g) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct

disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(i) As Langstaff P held in *Weerasinghe*, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of “something arising in consequence of the claimant’s disability”. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to ‘something’ that caused the unfavourable treatment.”

Indirect discrimination

211. Section 19 EA defines indirect discrimination as follows:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

“(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if –

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

212. Subsection (3) sets out the relevant protected characteristics, which include disability.

Harassment

213. Section 26 EQA provides:

“(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) The conduct has the purpose or effect of –

- (i) violating B’s dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

.....

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account

- (a) the perception of B;
- (b) the other circumstances of the case
- (c) whether it is reasonable for the conduct to have that effect.

214. Subsection (5) lists relevant protected characteristics which include disability.

215. Harassment must be related to a relevant protected characteristic but this does not have to be a characteristic of the claimant.

### Victimisation

216. Section 27 EQA defines victimisation as follows:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act –
- (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

217. The detrimental treatment does not have to be solely by reason of the protected act. It is enough that the protected act has an influence which is more than trivial on the treatment: **Villalba v Merrill Lynch and Co Inc and ors** [2007] ICR 469 EAT.

### When discrimination is unlawful

218. Section 39 EQA provides, amongst other things, that an employer must not discriminate against an employee by subjecting them to a detriment or by dismissing them (which includes constructive dismissal). Section 39(4) makes it unlawful for an employer to victimise an employee by, amongst other things, subjecting them to a detriment.

219. Section 40 EQA provides that an employer must not harass an employee.

#### Meaning of detriment

220. "Detriment" is not defined in the EQA. The EHRC Code of Practice paragraph 9.8 states: "Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage." This is a low threshold. However, an unjustified sense of grievance is not enough: **Shamoon v Royal Ulster Constabulary [2003] UKHL 11**.

#### Burden of proof

221. Section 136 EQA provides:

"(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."

#### Time limits

222. Section 123 EQA provides that proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Section 123(3)(a) provides that conduct extending over a period is to be treated as done at the end of the period.

223. A failure to make a reasonable adjustment is generally discrimination by omission. Section 123(3)(b) provides that failure to do something is to be treated as occurring when the person in question decided on it.

224. In **Ms M Fernandes v Department for Work and Pensions: [2023] EAT 114**, HHJ Beard, in paragraph 16, distilled from existing authorities the following propositions relating to time limits and the duty to make reasonable adjustments:

"The duty to make an adjustment, under the statutory scheme, arises as soon as there is a substantial disadvantage to the disabled employee from a PCP (presuming the knowledge requirements are met) and failure to make the adjustment is a breach of the duty once it becomes reasonable for the employer to have to make the adjustment.

Where the employer is under a duty to make an adjustment, however, limitation may not begin to run from the date of breach but at a later notional date. As is the case where the employer is under a duty to make an adjustment and omits to do so there will be a notional date where time begins to run whether the same omission continues or not.

That notional date will accrue if the employer does an act inconsistent with complying with the duty.

If the employer does not act inconsistently with the duty the notional date will accrue at a stage where it would be reasonable for the employee to conclude that the employer will not comply, based on the facts known to the employee.”

#### Constructive unfair dismissal

225. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996 (ERA). Section 94(1) ERA provides that an employee has the right not to be unfairly dismissed by his employer. Section 95(1)(c) provides that an employee is to be regarded as dismissed if “the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

226. An employee will be entitled to terminate a contract of employment without notice if the respondent is in fundamental breach of that contract and the employee has not waived the breach or affirmed the contract by their conduct.

227. An implied term of an employment contract is the term of mutual trust and confidence. This is to the effect that an employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Limited 1981 ICR 666**, said that the tribunal must “look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.”

#### **Conclusions**

228. Where we refer to complaint numbers, these are taken from the list of complaints and issues (367-374). Allegation numbers are the numbers used in that list of complaints and issues, cross-referring to the list which begins at page 150.

#### **Discrimination arising from disability (s.15 EQA)**

229. We deal with each individual complaint. However, we comment that, in relation to all these complaints, the claimant appears to have a fundamental misunderstanding about the need for the unfavourable treatment to be because of, at least to some material degree, the relevant “something arising”. In relation to all the complaints, this causative link is missing so all the complaints would fail on this ground, if the complaint did not also fail on other grounds.

230. Where there is a time limit issue, we have dealt first with the merits of the complaint and then returned to the issue of whether, due to the relevant time limit, the Tribunal had jurisdiction to consider the complaint.

231. The claimant only made submissions in relation to complaint 2.1.1.

*Complaint 2.1.1 – allegation 78*

*Nick Bailey stated in his investigatory meeting that reasonable adjustments could not be undertaken for any element of the role that involved another person. NB stated that all cases were held on a secure database which only the Guardian has access to. However, the Guardian has a member of staff providing administrative support and there is also an additional Guardian based at North Manchester Hospital doing a set number of hours.*

*2.2.1 (Something arising) The claimant needed a reasonable adjustment in the form of another person carrying out certain aspects of the role*

*2.4.1 (Justification) Explaining to the Claimant the nature of the Freedom to Speak Up Guardian role and / or protecting the sensitive information handled by the Freedom to Speak Up Guardian*

232. The complaint in the list of issues appears to be about the comment made by Nick Bailey in the investigatory meeting. However, the claimant's submissions focused on whether the respondent had a PCP of requiring candidates to undertake the full range of Guardian duties without consideration of job carving or support arrangements and the claimant's argument that this was not a proportionate means of achieving a legitimate aim. This was not the complaint the Tribunal had to deal with. Complaint 2.1.1 was a complaint of discrimination arising from disability, not a complaint of failure to make reasonable adjustments.

233. We conclude that there was no unfavourable treatment identified in this allegation. The claimant was not put at a disadvantage by Nick Bailey making this comment in the investigatory meeting.

234. The claimant has not satisfied us that she needed a reasonable adjustment in the form of another person carrying out certain aspects of the role. The claimant did not raise at the time that she would need job carving to be able to do the job.

235. Even if there had been unfavourable treatment and the claimant needed another person to carry out certain aspects of the role as a reasonable adjustment and this was a something arising in consequence of her disability, we would have concluded that the claimant had not proved facts from which we could conclude that the unfavourable treatment was because of the something arising, in the sense of being an effective cause of that treatment. There is no evidence to suggest that Nick Bailey made the comment because the claimant needed such an adjustment. We agree with the respondent's submission that the treatment was because Nick Bailey was asked his opinion about a matter in the investigatory interview and he gave his answer.

236. For these reasons, the complaint as framed in the list of complaints and issues fails.

237. Even if the complaint should be interpreted as being a complaint about failure to offer the claimant the job because, the claimant asserts, she would have required another person to do part of the role, we would have concluded that there was no unfavourable treatment. The claimant was refused the job because the respondent did not consider her appointable. This was also the case for the other

candidate. As noted above, the claimant has not satisfied us that she needed a reasonable adjustment in the form of another person carrying out certain aspects of the role. We are not satisfied that the something relied upon arose in consequence of disability. The claimant did not raise at the time that she would need job carving to be able to do the job. Even if we had been satisfied that the “something” arose in consequence of disability, the complaint if reframed as being about the refusal of the job would have failed on causation. There is no evidence that suggests the job was refused because the claimant needed job carving as an adjustment. The claimant has not proved facts from which we could conclude that the refusal of the job was because of the something arising. The claim, if reframed in this way, would have failed.

### *Complaint 2.1.2*

*Jenny Ehrhardt refused to provide a copy of the IBEX Gale scoping report in December 2023 commissioned by the respondent. [2.1.2]*

*(Something arising) 2.2.2 The claimant needed to have things written down to respond to them effectively*

*Legitimate aim: Managing the process of dealing with the Claimant’s complaints proportionately and effectively, according to information known to the Respondent at the time*

238. We found that the respondent initially refused the claimant’s request because they understood this to relate to a request, not for the scoping report, (another name for the Terms of Reference) but for provision of the investigation report. Provision of the investigation report was not in accordance with the general practice outlined in the relevant Dignity at Work policy. The respondent did, in fact, provide the terms of reference to the claimant on 25 January 2024.

239. We conclude that the claimant’s need to have things written down to respond to them effectively was something arising in consequence of her disability. However, we conclude that the claimant has not proved facts from which we could conclude that the refusal of a copy of the report in December 2023 was because of the something arising. On the facts we have found, the refusal was due to genuine misunderstanding as to what the claimant had requested.

240. We conclude that this complaint fails on its merits because of lack of the necessary causation.

241. There is a time limit issue in relation to this complaint. It was submitted out of time unless the act forms part of a course of conduct. We will return to the issue of whether the Tribunal has jurisdiction to consider this s.15 complaint and others after dealing with the merits of all the discrimination complaints.

### *Complaint 2.1.3*

*An IBEX Gale investigation report of around April 2024 was produced by Anne Linsell without any professional input around autism, or the respondent checking that reasonable adjustments were in place.*

*(Something arising) The claimant needed to have things written down to respond to them effectively*

*Legitimate aim: Managing the process of dealing with the Claimant's complaints proportionately and effectively, according to information known to the Respondent at the time*

242. We conclude that this was not unfavourable treatment. The claimant has not satisfied us she was put at a disadvantage by the lack of professional input around autism, or the respondent checking that reasonable adjustments were in place. The claimant gave no evidence in her witness statement in support of this complaint and made no submissions about it.

243. We conclude that the claimant's need to have things written down to respond to them effectively was something arising in consequence of her disability. However, the claimant has not proved facts from which we could conclude that the alleged failures were because of this "something arising". Even if we had concluded that there was unfavourable treatment, the complaint would have failed for lack of the necessary causative link between the something arising and the unfavourable treatment. On the facts we have found, not having professional input around autism was because Jenny Ehrhardt considered Anne Lindsell had the skills and experience necessary to undertake the investigation fairly without additional input from a neurodiversity specific organisation. She also considered that finding an additional organisation to work with Ibex Gale that would be acceptable to all parties could be difficult and time consuming, causing delay to the process. She also considered that the cost to the tax payer of paying an additional organisation would be disproportionate.

244. We conclude this complaint is not well founded.

245. There is no time limit issue in relation to this complaint.

#### *Complaint 2.1.4*

*The claimant was not allowed to see the appendices of the IBEX Gale investigation report of around April 2024. Jenny Ehrhardt took this decision*

*(Something arising) 2.2.2 The claimant needed to have things written down to respond to them effectively*

*Legitimate aim: Managing the process of dealing with the Claimant's complaints proportionately and effectively, according to information known to the Respondent at the time*

246. When the claimant asked for and was refused copies of the appendices, the claimant had not received the grievance outcome. In her evidence, the claimant said she needed them to appeal the outcome without explaining why. However, she had not received the outcome at that time. The claimant had not satisfied us that she was put at a disadvantage by not being given the appendices. We conclude this was not unfavourable treatment.

247. Even if this was unfavourable treatment, the complaint would fail for lack of the necessary causative link between the treatment and the “something arising”. The claimant has not proved facts from which we could conclude that the alleged failures were because of the claimant’s need to have things written down to respond to them effectively. When asked about this in cross examination, the claimant said “I can’t comment on her motivation”.

248. We conclude that this complaint is not well founded.

249. There is no time limit issue in relation to this complaint.

#### *Complaint 2.1.5*

*The claimant was not allowed to edit or review the scoping report of the IBEX Gale investigation report. Jenny Ehrhardt took this decision. [2.1.5]*

*(Something arising) 2.2.3 The claimant had communication needs, which was to have the time and opportunity to formulate a response*

*Legitimate aim: Managing the process of dealing with the Claimant’s complaints proportionately and effectively, according to information known to the Respondent at the time*

250. The scoping report set out the terms of reference for the grievance investigation to follow. Since the claimant refused to meet with Anne Linsell after one meeting on 7 December 2023, the terms were set on the basis of what the claimant had written in her grievances and various other correspondence.

251. After the scoping report, or terms of reference, were sent to the claimant and once she had realised the misunderstanding about what the claimant had previously asked for, Jenny Ehrhardt encouraged the claimant to meet with Anne Linsell “so we can understand all the detail and if you feel there are aspects of the terms of reference that are not accurate these can be addressed.” The claimant did not agree to meet again with Anne Linsell (see paragraph 149).

252. The claimant made no submissions on this complaint. In her evidence, she did not identify what she would have sought to change in the terms of reference had they been sent to her for comment. We conclude that the claimant has not proved facts from which we could conclude there was unfavourable treatment by not providing her with an opportunity, before the terms were set, to edit or review the scoping report.

253. Even if this was unfavourable treatment, the complaint would fail for lack of the necessary causative link between the treatment and the “something arising”. The claimant has not proved facts from which we could conclude that the alleged failures were because of the claimant’s need to have things written down to respond to them effectively.

254. There is a time limit issue in relation to this complaint. It was submitted out of time unless the act forms part of a course of conduct. We will return to the issue of

whether the Tribunal has jurisdiction to consider this s.15 complaint and others after dealing with the merits of all the discrimination complaints.

#### *Complaint 2.1.6*

*Simon Walsh in May 2024 said the claimant should return to work because the claimant's absence was not attributed to the respondent.*

*(Something arising) [2.2.4] The claimant was absent from work because the claimant's needs as an autistic person were not being met by the respondent*

*(Legitimate aim) Managing the Claimant's absence appropriately, proportionately and effectively.*

255. We have not found, as a matter of fact, that Simon Walsh said the claimant should return to work because the claimant's absence was not attributed to the respondent. The complaint appears to relate to the contents of Simon Walsh's letter of 23 May 2024 in which he wrote that, having reviewed the DAW outcome, he had seen no evidence that the claimant's illness or absence had been caused by the Trust as she had alleged. We accepted that this was his genuine view, after reading the report. He did not write that she should return to work because of this. The claimant has not proved facts from which we could conclude that there was unfavourable treatment as alleged.

256. Even if we took what he did say in letter as unfavourable treatment, and assume that the claimant's absence from work did objectively arise because her needs as an autistic person were not being met by the respondent (the "something arising" relied on), the complaint would fail because of lack of the necessary causative link between the unfavourable treatment and the something arising. The claimant has not proved facts from which we could conclude that the "something arising" (the claimant being absent from work because her needs as an autistic person were not being met by the respondent) was an operative cause of what Simon Walsh said.

257. Even if the claimant had proved such facts, we would have been satisfied from the respondent's explanation that the claimant's absence was not an operative cause of Simon Walsh saying what he did. The claimant's absence from work was the context for what Simon Walsh said, it was not an operative cause of this. Simon Walsh said what he did because this was his genuine view, after reading the report. He formed and expressed this view because the claimant was requesting to be reinstated to full pay.

258. We conclude that the complaint is not well founded.

259. There is no time limit issue in relation to this complaint.

#### *Complaint 2.1.7*

*In a letter dated 1 May 2024 Simon Walsh invited the claimant to an ill health capability meeting on 7 May 2024. Simon Walsh indicated that the Claimant was*

*not able to comment on any other external or internal process, only the absence management process*

*(Something arising) 2.2.5 The claimant was expected to attend a meeting as an autistic individual, without referring to being autistic within the workplace and the impact this had on her*

*(Legitimate aim) Managing the Claimant's absence appropriately, proportionately and effectively.*

260. Simon Walsh's letter of 1 May 2024 does not indicate what the claimant alleges (see paragraph 163). If the claimant intended to refer to the letter of 14 May 2024, this also does not indicate what the claimant alleges (see paragraph 170). Simon Walsh wrote on 14 May that he could not comment on the other processes because he was only dealing with the attendance management process. The claimant has not proved the facts on which she relies and the complaint would fail for that reason. We have, however, gone on to consider what we would have decided in relation to other parts of the test for s.15 discrimination.

261. We are unclear on what basis the assertion that the claimant was expected to attend a meeting as an autistic individual, without referring to being autistic within the workplace and the impact this had on her (the "something arising" relied on) is made. The claimant made no submissions on this complaint. The claimant has not proved facts from which we could conclude that this was a something arising in consequence of disability.

262. Even if we had concluded that the "something" relied upon arose in consequence of disability, the complaint would fail because of lack of the necessary causative link between the alleged unfavourable treatment and the something arising. The claimant has not proved facts from which we could conclude that the "something" was a material factor in causing Simon Walsh to write what he did. If the burden of proof had passed, the respondent would have satisfied us that the unfavourable treatment was not because of this "something arising". Simon Walsh wrote as he did because he had been instructed by Jenny Ehrhardt to deal with the attendance management process only, which was to be kept separate from the claimant's grievances (see paragraph 154).

263. We conclude that this complaint is not well founded.

264. There is no time limit issue in relation to this complaint.

#### *Complaint 2.1.8*

*Simon Walsh did not get professional advice about autism during the absence management process in May 2024*

*(Something arising) [2.2.6] The claimant's autism was a key factor in why she was absent from work, and the lack of support*

*(Legitimate aim) Managing the Claimant's absence appropriately, proportionately and effectively.*

265. We conclude that the claimant has not proved facts from which could conclude that Simon Walsh not getting professional advice about autism during the absence management treatment was unfavourable treatment. The complaint would fail on this basis, but we go on to consider the other parts of the s.15 test.

266. We accept that the claimant's autism was a key factor in why she was absent from work. However, if this is how this is intended to be read, we do not understand how her autism can be a key factor in the lack of support. We are unclear what the "something arising" is meant to be, from how this has been expressed in the list of issues. For the reasons which follow, it is not necessary for us to interpret what the something is (whether it is the claimant's absence from work or something else) and to decide whether that something arose in consequence of disability.

267. Even if there was unfavourable treatment and assuming the "something" arises from disability, the complaint would fail because of lack of the necessary causative link between the alleged unfavourable treatment and the something arising. The claimant has not proved facts from which we could conclude that the "something" was a material factor in Simon Walsh not getting professional advice about autism during the absence management process in May 2024. In cross examination, when the claimant was asked about the link, she agreed it did not make sense. The complaint would have failed because of lack of the causative link if it had not failed on other grounds.

268. There is no time limit issue in relation to this complaint.

#### *Summary of conclusions in relation to s.15 complaints*

269. All the complaints of s.15 discrimination would fail on their merits for the reasons given. There is a jurisdictional issue on time limits relating to two of the complaints (2.1.2 and 2.1.5). We will return to the question of whether the Tribunal has jurisdiction to consider these complaints after considering the merits of the other discrimination complaints.

#### **Indirect discrimination (s.19 EQA)**

##### *Complaint 3.1.1 (PCP1)*

*PCP: Individuals had to meet the person specification for the Freedom to Speak Up Guardian Role, to get that role*

*(Disadvantage) There was no description or explanation of the specification act with sensitivity and challenge appropriately, and the Claimant didn't meet this standard.*

*Legitimate aim pleaded in amended response (page 380): Recruiting a person with suitable skills, qualifications and experience to the Freedom to Speak Up Guardian role so that this important role was carried out effectively and in such a way that staff had confidence in the postholder and able to raise concerns to them, and/or complying with and having a person specification consistent with the universal job description published by the National Guardian's office.*

270. We conclude that the respondent was applying the PCP to the extent that someone would have to be assessed as meeting at least the essential requirements of the role. These included, in the section on values, challenging appropriately (as part of courage) and acting with sensitivity (as part of empathy).

271. We were not provided with any evidence of group disadvantage, other than the claimant's evidence of her own experience. However, we apply our judicial knowledge, together with the evidence of the claimant, to conclude there was group disadvantage in relation to application of PCP1 in that autistic people, to varying degrees, are likely to have more difficulty with social communication, including empathy, than neuro typical people.

272. We conclude that the claimant was also put at that disadvantage.

273. The disadvantage we have found is because of the criteria themselves, not because of lack of further explanation of those criteria. The claimant has not satisfied us that there was group and individual disadvantage because of lack of explanation of those criteria.

274. We conclude that application of PCP1 was a proportionate means of achieving a legitimate aim. The pleaded aim is legitimate. This was an important role and the respondent had a need for someone with suitable skills, experience and qualifications to fulfil the duties of the role. The requirements for the job holder to be able to challenge appropriately and to act with sensitivity reflect requirements in the universal job description published by the National Guardian's office and are understandable, given the nature of the role.

275. We conclude that this complaint fails.

276. There is no time limit issue in relation to this complaint.

### *Complaint 3.1.2 (PCP2)*

*PCP: The application of the recruitment policy for the Freedom to Speak Up Guardian role*

*(Disadvantage) The recruitment policy didn't go into detail about how to support disabled persons through that process*

*Legitimate aim pleaded (page 380): Providing guidance to recruiting managers and the recruitment team to ensure efficient, compliant and effective recruitment.*

277. We conclude this PCP was applied.

278. We conclude that the claimant has not satisfied us there was group and/or individual disadvantage because of this PCP.

279. The policy provides for reasonable adjustments to be made. Whilst the policy did not go into detail about adjustments which might be made, there was reference in the policy to guidance and sources of advice for managers. Since what may be

a reasonable adjustment is particular to an individual and their needs, we do not consider it would be practicable to try to set out in the policy all the adjustments which it might be reasonable to make.

280. Reasonable adjustments were made to the recruitment process to assist the claimant. Where the change was made for all candidates e.g. in relation to giving all candidates the questions to be asked by the main interview panel in advance, any disadvantage to the claimant was removed. The claimant expressed herself to be satisfied, at the time, with the arrangements (see paragraphs 99 and 104).

281. Since we have not been satisfied there was group and individual disadvantage as a result of application of PCP2, the complaint of indirect discrimination relying on this PCP fails.

282. If we had found disadvantage, we would have found that application of the PCP was a proportionate means of achieving the pleaded legitimate aim.

283. There is no time limit issue in relation to this complaint.

#### *Complaint 3.1.3 (PCP3)*

*PCP: The application of the attendance policy, disability guidance for managers policy, dignity at work policy and the equality and diversity policy*

*(Disadvantage) There was no explanation or guidance on implementing, evaluating and capturing reasonable adjustments in those policies. As a result, there was no central monitoring in place about whether reasonable adjustments were being implemented*

*(Legitimate aim) providing appropriate guidance to managers on the topics covered by the policies, including the appropriate management of absence, the promotion of equality and diversity at the Respondent, and the resolution of any workplace conflict.*

284. We conclude that this PCP was applied.

285. We conclude that the claimant has not satisfied us there was group and/or individual disadvantage because of this PCP. The policies give as much guidance as they sensibly can, given the individual nature of reasonable adjustments. Where they do not contain detailed guidance as to what might be reasonable adjustments, the policies contain references to guidance and advice. They refer to making reasonable adjustments. The claimant has not satisfied us that lack of central monitoring caused group and individual disadvantage.

286. Since we have not been satisfied there was group and individual disadvantage as a result of application of PCP3, the complaint of indirect discrimination relying on this PCP fails.

287. If we had found disadvantage, we would have found that application of the PCP was a proportionate means of achieving the pleaded legitimate aim.

288. There is no time limit issue in relation to this complaint.

**Reasonable adjustments (ss20 and 21 EQA)**

*Complaint 4.2.1 (PCP 4.2.1)*

*PCP: Conducting a stakeholder panel interview for the Freedom to Speak Up Guardian role*

*(Disadvantage) The Claimant was not given the opportunity to effectively participate in the recruitment process for the role [4.3.1]*

*(Adjustments)*

*The questions the stake holder panel would ask in advance [4.5.1]*

*The format of the Freedom to Speak Up Guardian role interview in advance [4.5.2]*

*A rationale for how the panel would judge the category of credibility for the Freedom to Speak Up Guardian role, including confidence to carry out the role, communication, demonstrates ability to challenge appropriately, demonstrates commitment to freedom to speak up [4.5.3]*

289. The claimant made no submissions on this complaint.

290. At the time, the claimant said she was happy with the arrangements. Nick Bailey had adjusted these following representations from the claimant. Regardless of this, we conclude that the claimant was not put at any disadvantage by the stakeholder panel interview. Both candidates were judged as suitable by the stakeholder panel to be appointed. The decision as to who to appoint, if anyone, lay with the main interview panel.

291. We conclude that the duty to make reasonable adjustments did not arise. The complaint fails.

292. There was no time limit issue in relation to this complaint.

*Complaint 4.2.2 (PCP 4.2.2)*

*PCP: The allocation of workspaces for employees*

*(Disadvantage) The claimant was allocated rooms which were unsuitable, including one room that was effectively a cupboard, had no natural light and had no air conditioning, which meant it got hot (and the door could not be shut). Another room allocated to the Claimant had five people working in it and was noisy. [4.3.2]*

*(Adjustment) A quiet space for the Claimant to work in with natural light, free from distractions [4.5.4]*

293. This complaint relates to the period from 11 July 2022 when the claimant started in the Communications position, reporting to Stella Clayton.

294. In the claimant's submissions she reframes this PCP by adding "without consultation". We consider we must deal with the PCP as identified in the list of

issues. The issues to be determined were arrived at following a number of hearings and correspondence. However, even if we had considered the PCP as reframed, we would not have found that there was no consultation. The claimant suggested, in a message to Stella Clayton on 11 July 2022 (SB258), that she use the small room, rather than the shared office. We found that Stella Clayton and the claimant discussed room allocation, amongst other matters, later that day. Although Stella Clayton did not give the claimant a copy of the updated reasonable adjustments form, we found that Stella Clayton had discussed with the claimant what she put on the updated form.

295. We found that the claimant did not raise the issue of the room again until April 2023 (see paragraph 113). Attempts were made to find an alternative room once she raised it in April 2023.

296. The claimant has not satisfied us she was put at a disadvantage because of her disability in the room allocation. She had a quiet room to herself, which she had selected in preference to a shared office. We accept that offices with natural light are preferable for most people, regardless of whether they are neurodivergent or neurotypical. We do not have any evidence that the claimant was put at a disadvantage in having a room without natural light because of autism. We do not consider this is a matter to which we can make a finding based on judicial knowledge. There was no evidence from the claimant to link any sensory difficulties with the particular room to autism. Additional material in the claimant's submissions is not evidence we can take account of, but in any event, would be insufficient on this point.

297. Since we are not satisfied there was disadvantage linked to autism, this complaint fails.

298. If we had been satisfied there was disadvantage, we would have concluded that, until April 2023, the respondent did not have knowledge of disadvantage because of lack of natural light and the complaint would fail for this reason.

299. If we had found the duty to make reasonable adjustments arose, we would have concluded that the respondent took such steps as it was reasonable to take in the circumstances; they tried to find an alternative office for the claimant once she raised it as an issue in April 2023.

300. On the basis of our factual findings, that the claimant did not raise the issue until April 2023, the duty could not have arisen until then (although we were still not satisfied of disadvantage so the duty did not arise). The claimant could reasonably have expected the respondent to make an adjustment, if it was required, within a reasonable time after she raised it. Whenever that was, after she raised it in April, that would make the complaint presented in time so there is no time limit issue in relation to this complaint.

#### *Complaint 4.2.3 (PCP 4.2.3)*

*PCP: The allocation of work verbally*

*(Disadvantage) The Claimant was not given a clear written plan of what was expected of her each day [4.3.3]*

*(Adjustments) Provide written instructions for tasks required [4.5.5]*

301. The claimant clarified in cross examination that the complaint relates to July 2022 onwards i.e. when Stella Clayton was managing her in the Communications role.

302. We found that the claimant was not given a clear written plan of what was expected of her each day (see paragraph 75). We found that the claimant and Stella Clayton had some 1:1 meetings to discuss work but not weekly as had been anticipated (see paragraph 78). Stella Clayton did not record what was discussed in those meetings in writing for the claimant afterwards because she understood the claimant was comfortable with the notes the claimant had taken.

303. By 28 October 2022, the claimant was raising issues about a lack of structure (2405). This was raised on further occasions e.g. 19 April 2023 (2417), 21 April 2023 (1179) and 18 May 2023 (1318). We consider that the need for structure is closely linked to having a clear written plan as to what the claimant was to do, contrasted to verbal instructions.

304. We conclude that verbal instructions and the lack of a clear written plan did put the claimant at a disadvantage compared to people without autism. The claimant needed tasks to be put in writing so she was clear what she had to do and when.

305. The messages show the respondent had knowledge of disadvantage. The risk assessment updated by Stella Clayton in July 2022 also makes this clear.

306. We conclude that the duty to make reasonable adjustments arose.

307. The adjustment sought is to provide written instructions for tasks required.

308. We conclude that the Communications role was not one which could entirely be reduced to written instructions. It required the claimant to engage with and respond to others. The seniority of the role meant it was not possible to write down every step. However, we consider a degree of structure, and instructions in writing to the extent this was possible, would have been a reasonable adjustment to make.

309. We conclude it would have been reasonable for the respondent to do more than they did; to provide the claimant with written instructions in the form of a structured plan as happened when the claimant was managed by Leila Jones. We note, however, that even such a structured plan had not worked ultimately to allow the claimant to stay in the role with Leila Jones. The likely success of the adjustment is a factor in whether it is a reasonable adjustment to make. We cannot find that the adjustment of providing written instructions for tasks required was doomed to fail. There was a prospect of it succeeding. In all the circumstances, we conclude that this would have been a reasonable adjustment to make.

310. We conclude, for these reasons, that the respondent failed to make a reasonable adjustment by not giving her written instructions to the extent this was possible.

311. There is a time limit issue in relation to this complaint.

312. We conclude that time began to run when Stella Clayton did an act inconsistent with complying with duty from July 2022 when she did not record in writing the claimant's work tasks. The complaint was presented in 22 August 2023, after early conciliation 15 June to 27 July 2023. The complaint was, therefore, presented out of time. The Tribunal will only have jurisdiction to consider it if we consider it just and equitable to do so in the circumstances.

313. We conclude it is just and equitable to consider this complaint out of time. The claimant continued to raise issues about her need for structure. With complaints of failure to make reasonable adjustments, it is often difficult even for legal professionals to understand when time starts to run. We conclude that the claimant did not and could not reasonably have been expected to understand that time had started to run. We conclude that the claimant acted promptly to present her claim after she went on sick leave on 18 May 2023. We, therefore, conclude the Tribunal has jurisdiction to consider the complaint.

314. For the reasons we have given, we conclude this complaint succeeds.

*Complaint 4.2.4 (PCP 4.2.4)*

*PCP: The invitation to meetings*

*(Disadvantage) The Claimant was not provided with details of why the Claimant was required to attend the trust wide communication meetings, HR meetings and meetings in connection with equality and diversity [4.3.4]*

*(Adjustments) Advance warnings of meetings, attendees and the purpose of the claimant attending those meetings [4.5.6] [RA]*

315. This complaint relates to the period 11 July 2022 onwards only.

316. The claimant gave no evidence about this complaint in her witness statement. The only meetings we have had any evidence about in relation to which the claimant raised issues were the Comms meetings. The problem for the claimant in relation to those meetings was being asked to talk about 3 things she was working on, rather than lack of information as to why she was required to attend. The claimant has not satisfied us that this PCP put her at a disadvantage. The duty to make reasonable adjustments does not, therefore, arise.

317. Alternatively, if the duty had arisen, we would have concluded that the respondent made reasonable adjustments by not requiring the claimant to attend meetings where she was uncomfortable doing so.

318. We conclude that this complaint fails.

319. There is a time limit issue in relation to this complaint. For the reasons given in relation to PCP 4.2.3, we conclude that it is just and equitable to consider the complaint out of time.

### **Harassment related to disability (s.26 EQA)**

#### ***Complaints in 5.1.1***

##### *Allegation 1 (150)*

*Whilst working in a team temporarily, MK said he wanted to help me with redeployment, he arranged a private meeting with me, even though he was not my manager. He said being autistic meant the NHS was not the right environment for me to work in as the NHS was about firefighting not planning*

320. We found that there was some discussion about the claimant and autism. The claimant told Mark Kelly that she was struggling to find a suitable available role. There was mention of the claimant being a square peg in a round hole, the claimant having administrative skills that could be used elsewhere, such as in a staple factory, working in the NHS involving firefighting (not in a literal sense), Mark Kelly having made reasonable adjustments for someone with a bad back but that person complaining and the claimant being passionate about things, probably being passionate even about making a Christmas cake. There was a conversation to the effect that the NHS may not be the right environment for the claimant.

321. We were not satisfied that Mark Kelly said that being autistic meant the NHS was not the right environment for the claimant.

322. We conclude that the comments Mark Kelly made were made because of the way the claimant conducts herself, which is linked to autism, if not expressly because of autism. We conclude that the comments were related to disability.

323. We conclude that the comments were not made with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, but had that effect. We conclude it was reasonable for the conduct to have that effect, although the claimant acknowledged on 1 May that it was not done maliciously, but uninformed.

324. We conclude that, if the Tribunal has jurisdiction to consider this complaint, it would succeed. However, there is a time limit issue. The complaint was presented out of time unless part of a continuing course of conduct. We will return to the time limit issue after deciding on the merits of all the complaints.

##### *Allegation 2 (150)*

*Mark Kelly said being autistic meant the Claimant was 'a square peg in a round hole'*

325. We have dealt with the relevant facts when dealing with allegation 1. We found that Mark Kelly referred to the claimant as a square peg in a round hole. We

were not satisfied he said that “being autistic” she was a square peg in a round hole but that is what she understood by it.

326. For the same reasoning we gave in relation to Allegation one, we conclude that the complaint succeeds, subject to a time limit issue, to which we will return.

*Allegation 3 (150)*

*MK said with my skills I could work anywhere including a staple factory and that it was OK having principles but what was the point if I ended up losing my job.*

327. We found that Mark Kelly did talk about the claimant having admin skills which could be used elsewhere, giving an example of a staple factory. There was a discussion about principles and the possibility of the claimant losing her job, although we are not satisfied Mark Kelly said exactly what the claimant has alleged.

328. We conclude that what Mark Kelly said was not related to autism. Mark Kelly was talking about her transferrable skills.

329. If we had concluded that the comments were related to disability, we would have concluded that the comment was not made with the requisite purpose to constitute harassment and, if it did have the requisite effect, it was not reasonable for it to do so.

330. This complaint fails on its merits. There is also a time limit issue to which we return.

*Allegation 4 (150)*

*MK told me reasonable adjustments did not work for staff as MK had done it once for a member of staff in his old Trust who had a back issue and she had thrown it back in his face*

331. We found that there was some comment about Mark Kelly having made reasonable adjustments for someone with a bad back but that person complaining. The claimant has not satisfied us that Mark Kelly made the comment exactly as alleged.

332. We conclude that the comment which was made was related to disability, albeit not the claimant’s disability. For harassment complaints, the unwanted conduct has to relate to the protected characteristic but can be a protected characteristic of someone other than the claimant.

333. We conclude that the comment did not have the requisite purpose. If it did have the requisite effect, we conclude it was not reasonable for it to do so.

334. The complaint would fail on its merits. There is also a time limit issue to which we return.

*Allegation 5 (150)*

*I cried during the meeting as I was so overwhelmed. I said I wanted to be a positive role model to my children. I said I was passionate about ensuring young people with dyslexia and autism had a future and they were not discriminated against. MK said I was probably passionate about everything including making a Christmas cake.*

335. We found that Mark Kelly made a comment about the claimant being passionate about things, probably being passionate even about making a Christmas cake.

336. We conclude that the complaint was not related to autism.

337. Even if this was unwanted conduct and related to disability, we conclude that the comment did not have the requisite purpose. If it did have the requisite effect, we conclude it was not reasonable for it to do so.

338. The complaint would fail on its merits. There is also a time limit issue to which we return.

*Allegation 28 (154)*

*Leila Jones asked the Claimant to dedicate the whole of a newsletter to autism on the same day as the Claimant was told she was facing redeployment because she was autistic.*

339. This complaint relates to events on 16 June 2022.

340. We conclude that this was not unwanted conduct. It was a continuation of previous discussions about work the claimant had been keen to do. The complaint would fail for this reason, but we go on to consider what we would have concluded in relation to the other parts of the test for harassment.

341. Although the claimant did not have to be autistic to do this work, in part the claimant and Leila Jones had agreed for the claimant to focus on this topic because of the claimant's personal experience. We would have concluded, for this reason, that the conduct was related to disability.

342. We would have concluded that the conduct did not have the requisite purpose or effect for harassment. If it did have the requisite effect, it was not reasonable for it to do so.

343. The complaint would fail on its merits. There is also a time limit issue to which we return.

*Allegation 29 (154)*

*Leila Jones asked the Claimant to deliver a 'masterclass' on autism which includes 'risks if someone with autism is not supported appropriately' (i.e. common triggers and symptoms) on the same day as a redeployment letter.*

344. This also relates to events on 16 June 2022. For the same reasons as given in relation to allegation 29, the complaint would fail on its merits. There is also a time limit issue to which we return

*Allegation 30 (154)*

*Leila Jones sent a letter (which the Claimant says was written by Louise Royle) stating 'if no further reasonable adjustments could be made for the role, then we would have to explore redeployment'. (the Claimant also says in respect of this allegation that LR told LJ, that SC asked for the letter to be sent. SC advised later she had no idea LR was writing the letter. LJ apologised for sending me the letter and said she was pressurised by LR. SC reassured me I would have no further contact with LR.)*

345. This relates to a letter sent on 16 June 2022. We found the letter was not written by Louise Royle and Stella Clayton did not ask for the letter to be sent. The letter summarised a discussion Leila Jones had had with the claimant and included the statement: "We discussed that if no further reasonable adjustments could be made for the role, then we would have to explore redeployment". Leila Jones was setting out options if the claimant did not consider she could continue in her current job, even with reasonable adjustments which had been made. The claimant did not seek to correct this part of the letter.

346. We conclude that the relevant part of the letter was not unwanted conduct at the time, in that it was summarising a discussion they had had and the claimant did not seek to correct this part. If it was unwanted conduct related to disability, we conclude that the conduct did not have the requisite purpose or effect for harassment. If it did have that effect, it was not reasonable for it to do so.

347. The complaint would fail on the merits for that reason. There is also a time limit issue to which we return.

*Allegation 52 (158)*

*Caron Martin discussed with the stakeholder panel that one of the two people being interviewed was autistic without the Claimant's permission, yet gave no guidance on what being autistic could mean in a recruiting scenario.*

348. This claim fails on its facts. We were not satisfied that Caron Martin acted as alleged.

349. There is no time limit issue in relation to this complaint.

*Allegation 53 (158)*

*Nick Bailey discussed the Claimant's diagnosis of autism with Caron Martin without the Claimant's permission]*

350. We found that Nick Bailey did inform Caron Martin that the claimant was autistic.

351. The claimant has not satisfied us that this conduct was unwanted. The claimant had been open with the main interview panel about her autism in the context of requesting reasonable adjustments. She did not say this information could not be shared with the stakeholders who would be interviewing her. The complaint would fail for this reason. However, we have considered what we would have concluded in relation to the other parts of the test for harassment.

352. We would have concluded that, if there was unwanted conduct which related to disability, it did not have the requisite purpose or effect. If it did have the effect, it was not reasonable for it to do so. It appears additionally that the claimant did not know about this at the time.

353. There is no time limit issue in relation to this complaint.

*Allegation 59 (160)*

*LR blocked my doorway and demanded I report to her in SC's absence despite being reassured by SC I would have no contact with LR in any capacity. LR also told me I had no right to speak to VG. SC messaged me after I raised concerns with her about LR and SC advised that I report to her and she supports me going to VG. No action taken against LR.*

354. This relates to an incident when the claimant had gone to the Chief Executive of MRI about a concern that there was urine in the hand basin in a unisex toilet. The Chief Executive had sent her to speak to Louise Royle. We did not consider the claimant's evidence to be reliable on the exact words said (see paragraph 108).

355. We are not satisfied this conduct related to disability. The claimant's evidence and submissions do not suggest what the link is.

356. If we had concluded that there was unwanted conduct related to disability, we would have concluded that the conduct was not done with the requisite purpose and did not have the requisite effect for harassment. If it did have this effect, this was not reasonable.

357. For these reasons, the complaint fails on its merits.

*Allegation 69 (161)*

*After the Claimant raised concerns regarding reasonable adjustments not being implemented, Stella Clayton sent the Claimant an 'exam question' outside of the Respondent's recruitment policy*

358. We found that this was just a piece of work, not part of any recruitment process. "Exam question" was Stella Clayton's terminology for what she was asking be done. The claimant has not satisfied us this was unwanted conduct at the time. The claimant raised no concerns when she responded.

359. Even if this was unwanted conduct, we conclude it was not related to disability. We also conclude it was not done with the requisite purpose and did not

have the requisite effect for harassment. If it did have that effect, it was not reasonable to have that effect.

360. For these reasons, we conclude the complaint fails.

*Allegation 111 (168)*

*Stella Clayton advised the Claimant in a letter that Leila Jones was her 'regular wellbeing contact'. The Claimant says that I had met with LJ outside of work for a meal on two occasions. I was never made aware by LJ or SC that this was a 'wellbeing contact' and do not feel it is ethical to do this*

361. This was referred to in a letter dated 24 October 2023. Leila Jones was not an official well being contact. Stella Clayton was pleased that Leila Jones was looking out for the claimant.

362. We conclude this misdescription was not related to disability.

363. Even if there was unwanted conduct related to disability, we conclude that the conduct was not done with the purpose of having the requisite effect and did not have the requisite effect. If it did have the requisite effect, it was not reasonable for it to have that effect.

364. We conclude this complaint fails.

*Allegation 117 (169)*

*I was told via email 'any historic concerns (i.e. which pre-date your reply to this letter) not set out in your reply to this letter but raised by you subsequently will not be considered by MFT under its policies'*

365. This refers to an email from Peter Blythin of 27 October 2023. Peter Blythin was trying to identify which complaints the claimant wanted investigated

366. We conclude that this conduct was not related to disability. Even if there was unwanted conduct related to disability, we conclude that the conduct was not done with the purpose of having the requisite effect and did not have the requisite effect. If it did have the requisite effect, it was not reasonable for it to have that effect.

367. We conclude that the complaint fails.

*Allegation 125*

*Anne Linsell (external investigator), during an online meeting with the Claimant, confirmed MFT had commissioned Ibex Gale to do a report to decide if a full investigation is needed, if so Anne Linsell would be commissioned after review of the report. Anne Linsell confirmed by e-mail that the report AL had been asked to produce would be for 'sharing your story from your starting point, and the impact that it's had on you' and 'I can confirm that our report will only be shared with the report commissioners, the Trust'*

368. The claimant made no submissions about this allegation and it is not clear to us what is alleged to be unwanted conduct related to disability.

369. The claimant has not satisfied us that there was any unwanted conduct and that, if there was, it was related to disability. What Anne Linsell said was in accordance with the respondent's policy and their understanding of what the claimant was asking for.

370. Even if there was unwanted conduct related to disability, we conclude that the conduct was not done with the purpose of having the requisite effect and did not have the requisite effect. If it did have the requisite effect, it was not reasonable for it to have that effect.

371. We conclude this complaint fails.

### **Victimisation (s.27 EQA)**

372. The claimant relies on the following protected acts: the 10 April 2023 grievance relating to the Guardian role application process; and the 26 October 2023 grievance relating to Stella Clayton's management of the claimant. The respondent accepts that these were protected acts.

373. Five of the allegations, 7, 30, 34, 40 and 58, pre-date both protected acts and, therefore, causation cannot be established and these complaints fail. These allegations were as follows:

*Allegation 7 - SC gave me a job description for "Equality and Diversity Advisor (disability specialty) (same band) (on condition grievance withdrawn). SC told me this was to ensure what happened to me would not happen to any other member of staff. JD was changed to Workforce Inclusion Advisor disability aspect was eventually watered down. No formal process followed.*

*Allegation 30 – Leila Jones sent a letter (which the Claimant says was written by Louise Royle) stating 'if no further reasonable adjustments could be made for the role, then we would have to explore redeployment'. (the Claimant also says in respect of this allegation that LR told LJ, that SC asked for the letter to be sent. SC advised later she had no idea LR was writing the letter. LJ apologised for sending me the letter and said she was pressurised by LR. SC reassured me I would have no further contact with LR.)*

*Allegation 34 – Stella Clayton transferred the Claimant to "MRI Senior Communications Officer" and told she would have no contact with Louise Royle. The Claimant alleges that no formal process was followed.*

*Allegation 40 – CS emailed me and asked if there was any "barriers" stopping me from attending the comms meeting. CS had advised she wanted me to say what 3 things I was working on each week I had let SC know I was too embarrassed to attend meeting as I had no work to report on. My JD said I was to be managed by CS. SC asked me to look at different JDs so that it could be changed to sever ties with MFT comms as "she paid for me not MFT".*

*Allegation 58 – Nick Bailey readvertised the [Freedom to Speak Up Guardian] job within a day of the interviews stating “anyone who progressed to the second stage (interview) will not be considered”. The Claimant says that I raised this with PB and MC as I believed I had been discriminated against, therefore I was not given the same opportunity as other candidates to apply for the role.*

374. We now deal with the allegations about matters which occurred after one or both of the protected acts.

*Allegation 87*

*Victoria Glouden confirmed that there was no referral in the system by Stella Clayton to Employee Health and Wellbeing for the Claimant, despite the Claimant having requested this on 18 May 2023*

375. Victoria Glouden confirmed this because this was factually correct.

376. We conclude that the claimant was not subjected to a detriment by being told this. If the complaint is meant to be that Stella Clayton failed to make the referral correctly, we have accepted Stella Clayton’s evidence that this was a mistake, due to human error. We conclude that this was not done because the claimant had done the protected act of presenting the grievance on 10 April 2023. It cannot have been done because of the second protected act because this was later than the alleged detrimental treatment.

377. We conclude that this complaint fails.

378. There is no time limit issue in relation to this complaint.

*Allegation 89*

*Stella Clayton advised the Claimant that she was not managing the Claimant’s absence through the Attendance Policy. The Claimant says that this would have flagged up there was an issue with my sickness which could have revealed the lack of reasonable adjustments which had led to my sickness*

379. We conclude that the claimant was not subjected to a detriment by this treatment. We agree with Mr Webster’s submission that, if anything, this was to the claimant’s advantage; the claimant was not started down the formal process which could lead to her dismissal for capability.

380. We conclude that the claimant has not proved facts from which we could conclude that Stella Clayton acting in this way was caused, in any material sense, by the 10 April 2023 grievance relating to the Guardian role application process.

381. We conclude that this complaint fails.

382. There is no time limit issue in relation to this complaint.

*Allegation 91*

*A referral for autism specific support closed after Stella Clayton did not respond to Employee Health and Wellbeing's e-mail requesting further information. The Claimant says that by this point I had been left off sick for 3 months with no support.*

383. We accept that this treatment was to the claimant's detriment. However, we conclude that the claimant has not proved facts from which we could conclude that this treatment was caused, in any material sense, by the 10 April 2023 grievance. We accepted that the closure of the referral was due to human error; Stella Clayton mistakenly failed to press submit on the referral.

384. We conclude that this complaint fails.

385. There is no time limit issue in relation to this complaint.

*Allegation 92*

*An Employee Health and Wellbeing referral from Stella Clayton did not mention the Claimant's e-mail from 18 May 2023 and the lack of reasonable adjustments being implemented*

386. The referral did not mention the email of 18 May 2023. However, the claimant has not satisfied us that this was to her detriment. The referral contained the necessary information.

387. We conclude that the claimant has not proved facts from which we could conclude that Stella Clayton not mentioning the email was, in any material sense, caused by the 10 April 2023 grievance.

388. We conclude that this complaint fails.

389. There is no time limit issue in relation to this complaint.

*Allegation 124*

*Jenny Ehrhardt confirmed by letter that 'Simon is unable to discuss the barriers that you believe prevent you from returning to the MRI as these are subject to the investigation'. The Claimant says that however the MFT Absence Policy states 'the purpose of the meeting is to review your current and historic sickness absence'*

390. We understand the claimant to be complaining here about the decision to separate the matters subject to the grievance process from the sickness management process rather than about the statement of Jenny Ehrhardt reflecting the decision made. We consider it arguable that this decision was to the claimant's detriment, since it was difficult to separate these matters because things raised in her grievances were in her view barriers to returning to work.

391. However, we conclude that the claimant has not proved facts from which we could conclude that the decision was taken, in any material sense, because the claimant had brought the two grievances which are relied on as protected acts. If the burden of proof passed to the respondent, we would have been satisfied that

the decision was not taken in any material sense because the claimant had done protected acts. Jenny Ehrhardt made the decision because she wanted Simon Walsh to have as constructive and supportive relationship as possible with the claimant, to try and get her back to work, and thought that this would be more difficult if Simon Walsh was involved with the issues about which the claimant was in dispute with the respondent. The grievances provided part of the context for the decision but we are satisfied that they were not a material part of the reason for it.

392. We conclude that this complaint fails.

393. There is no time limit issue in relation to this complaint.

#### *Allegation 137*

*Jenny Ehrhardt advised the Claimant there was a 'cross wires' communication and when Anne Linsell said 'report' she meant 'terms of reference'. The Claimant says that This is not true and the recording from the meeting with AL is very clear the meeting was a scoping exercise for MFT which did not go ahead once I requested a copy of the report. MFT instructed AL to set the terms of reference without any input from me.*

394. We conclude that the claimant has not proved facts from which we could conclude that this treatment was due, in any material sense, to the protected acts. If the burden of proof had passed to the respondent, we would have been satisfied that the decision was not taken in any material sense because the claimant had done protected acts. We found that there was a genuine misunderstanding as to what the claimant was asking for; the respondent understood she was asking for a commitment to provide a copy of the investigation report, rather than the terms of reference.

395. We conclude that this complaint fails.

396. There is no time limit issue in relation to this complaint.

#### **Time limit issues for discrimination complaints (other than complaint of failure to make reasonable adjustments)**

397. The following complaints were potentially brought out of time: the s.15 complaints 2.1.2 and 2.1.5; and the harassment complaints allegation 1, 2, 3, 4, 5, 28, 29, and 30 in 5.1.1

398. The s.15 complaints would have failed on their merits for the reasons we gave. The following harassment complaints would have failed on their merits: allegations 3, 4, 5, 28, 29 and 30. We conclude that they could not form part of a continuing act of discrimination for this reason. The Tribunal has no jurisdiction to consider the complaints unless we consider it just and equitable to do so in all the circumstances. We consider there is no basis on which to conclude that it would be just and equitable to consider these complaints out of time. The claimant had the knowledge to be able to present a claim within time and chose not to do so.

399. The harassment complaints allegations 1 and 2 would succeed on their merits if the Tribunal had jurisdiction to consider them. We conclude that they do not form part of a course of conduct extending over a period. They are complaints about things said by Mark Kelly in April 2020. There is no obvious link with other complaints of discrimination, except the other complaints about Mark Kelly relating to the same occasion which we have not upheld. We do not, therefore, have jurisdiction to consider them unless we consider it just and equitable in all the circumstances to extend time.

400. The claimant had the knowledge to be able to present a claim within time and chose not to do so. The complaints are very considerably out of time. In these circumstances, we consider it would not be just and equitable to extend time.

401. We do not agree with the claimant's submission that the finding about the comment in the Ibx Gale report in some way means the complaint about the comment is not out of time or that it would be just and equitable to extend time. The claimant had all the facts she needed, from her own knowledge, to bring a Tribunal complaint about Mark Kelly's comments within time, if she had wished to do so.

### **Unfair dismissal and discriminatory dismissal**

402. During deliberations, the Tribunal noticed for the first time that the list of complaints and issues appears to conflate two potentially different complaints: whether there was a constructive dismissal under the Equality Act 2010 and whether there was a constructive unfair dismissal under the Employment Rights Act 1996 (ERA). The heading of the section includes in brackets "section 39(2)(c) Equality Act 2010" without reference to the ERA. However, most of the issues which follow clearly relate to issues relevant to an ERA claim but not a s.39 EQA claim.

403. We have, in these conclusions, separated out the two complaints since the relevant issues are not all the same.

### **Discriminatory constructive dismissal (s.39 EQA)**

404. The relevant issues for this complaint are whether the claimant was constructively dismissed by reason of acts of unlawful discrimination only i.e.

- 404.1. Did the respondent commit acts of disability discrimination?
- 404.2. If so, was this a repudiatory breach of contract e.g. a breach of the implied duty of mutual trust and confidence?
- 404.3. Was the breach of contract a reason for the claimant's resignation?
- 404.4. Did the claimant affirm the contract before resigning, by delay or otherwise? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

405. The matters which we have found to have been acts of unlawful discrimination, or would have upheld on the merits, if the Tribunal had had jurisdiction to consider them, are as follows:

405.1. Comments made by Mark Kelly at a meeting on 29 April 2020.

405.2. The failure to make reasonable adjustments in respect of the PCP of the allocation of work verbally in the period 11 July 2022 to 18 May 2023 (when the claimant went on sick leave).

406. We conclude that these matters together are capable of constituting a breach of the implied duty of mutual trust and confidence.

407. However, the claimant withdrew the grievance about Mark Kelly and took no action about his comments at the time.

408. We conclude that the acts of discrimination which we found to have occurred were not a reason why the claimant resigned in June 2024. The claimant relied on all the alleged acts of discrimination (the majority of which we concluded were not unlawful discrimination) and other later acts, set out in 8.1.1.2 and 8.1.1.3 in the list of issues, which have not been pleaded as discrimination. We do not consider that the acts of discrimination which we upheld constitute a material reason for the claimant's resignation.

409. If we had decided that the acts of discrimination which we upheld or would have upheld on the merits were a material reason for the claimant's resignation, we would have found that the claimant had affirmed the contract by not acting on these sooner.

410. We conclude that the complaint of s.39(2)(c) EQA constructive dismissal is not well founded.

#### **Constructive unfair dismissal (s.98 ERA)**

411. The claimant relies on the alleged unlawful discrimination and two other matters as together constituting a breach of the implied duty of mutual trust and confidence.

412. We have dealt with the allegations of unlawful discrimination previously. The only complaints we upheld were those of comments made by Mark Kelly at a meeting on 29 April 2020 and the failure to make reasonable adjustments in respect of the PCP of the allocation of work verbally in the period 11 July 2022 to 18 May 2023 (when the claimant went on sick leave).

413. The claimant also relies on the following additional matters:

*8.1.1.2 On 23 May 2024, email from Simon Walsh claiming no evidence that the claimant's absence caused by Trust. Claimant said working in an unfair environment and claimant said she was working in a **psychologically unsafe work environment**.*

*8.1.1.3 On 10 June 2024 the claimant sent an email Alison Hughes requesting the policy associated with section 51.2 of the dignity and respect at work policy escalation. On 13 June 2024 the claimant was not provided with an escalation policy, and she was told her concern raised on 10 June 2024 would not be **escalated**. There was a refusal to escalate the claimant's concerns.*

414. In relation to the complaint at 8.1.1.2, we found that it was Simon Walsh's view, having read the report, that this did not provide any evidence that the claimant's absence was caused by the Trust. We conclude that Simon Walsh had reasonable and proper cause for writing what he did. We conclude that this cannot contribute to a breach of the implied duty of mutual trust and confidence.

415. In relation to the complaint at 8.1.1.3, we accepted the respondent's evidence about the escalation issue. There was no escalation policy. Alison Hughes did not provide such a policy because there was no such policy. Alison Hughes wrote as she did because her understanding was that the reference in paragraph 5.12 of the policy was to an escalation route to a senior manager in the event that it became apparent during the process that unacceptable behaviours had been condoned, covered up, or that managers had failed to address issues that had been presented to them. Alison Hughes did not consider that had occurred here because no such finding had been made in the Dignity at Work processes. We conclude she had reasonable and proper cause for writing as she did.

416. Even if earlier acts of discrimination amounted to a breach of the implied duty of mutual trust and confidence, the later acts the claimant relies on did not revive the right to resign and claim constructive dismissal. We have conclude that the later acts could not contribute to a breach of the implied duty of mutual trust and confidence. The letter from Alison Hughes could not constitute a "last straw" entitling the claimant to resign and claim to have been constructively dismissed.

417. For the same reasons as given in relation to the s.39(2)(c) EQA constructive dismissal complaint, we conclude that the claimant was not constructively dismissed because of the complaints of unlawful discrimination which we upheld.

418. We conclude that the claimant was not constructively dismissed so her complaint of constructive unfair dismissal fails.

Approved by:

**Employment Judge Slater**

Date: 19 February 2026

JUDGMENT SENT TO THE PARTIES ON  
Date: 15 April 2026

FOR THE TRIBUNAL OFFICE

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)

## **ANNEX**

### **List of complaints and issues**

#### **The Complaints**

419. The claimant is making the following complaints:

- a. Disability Discrimination:
  - i. Harassment.
  - ii. Failure to make reasonable adjustments.
  - iii. Discrimination arising from disability.
  - iv. Victimisation.
- b. Unfair dismissal.

420. Where there is a reference to an allegation number in the list of issues below, this is a reference to an allegation set out in the table attached to this case management order.

#### **1. Time limits**

- 1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 16 March 2023 may not have been brought in time.
- 1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
  - 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
  - 1.2.2 If not, was there conduct extending over a period?

- 1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
  - 1.2.4.1 Why were the complaints not made to the Tribunal in time?
  - 1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

## 2. **Discrimination arising from disability (Equality Act 2010 section 15)**

- 2.1 Did the respondent treat the claimant unfavourably by:
  - 2.1.1 Allegation 78.
  - 2.1.2 *Jenny Erardt refused to provide a copy of the IBEX Gale scoping report in December 2023 commissioned by the respondent.*
  - 2.1.3 *An IBEX Gale investigation report of around April 2024 was produced by Anne Linsell without any professional input around autism, or the respondent checking that reasonable adjustments were in place.*
  - 2.1.4 *The claimant was not allowed to see the appendices of the IBEX Gale investigation report of around April 2024. Jenny Erardt took this decision.*
  - 2.1.5 *The claimant was not allowed to edit or review the scoping report of the IBEX Gale investigation report. Jenny Erardt took this decision.*
  - 2.1.6 *Simon Walsh in May 2024 said the claimant should return to work because the claimant's absence was not attributed to the respondent.*
  - 2.1.7 *In a letter dated 1 May 2024 Simon Walsh invited the claimant to an ill health capability meeting on 7 May 2024. Simon Walsh indicated that the claimant was not able to comment on any other external or internal process, only the absence management process.*
  - 2.1.8 *Simon Walsh did not get professional advice about autism during the absence management process in May 2024.*
- 2.2 Did the following things arise in consequence of the claimant's disability:
  - 2.2.1 The claimant needed a reasonable adjustment in the form of another person carrying out certain aspects of that role.

- 2.2.2 *The claimant needed to have things written down (refers to 2.1.2, 2.1.3, and 2.1.4) to respond to them effectively.*
- 2.2.3 *The claimant had communication needs, which was to have the time and opportunity to formulate a response (refers to 2.1.5).*
- 2.2.4 *The claimant was absent from work because the claimant's needs as an autistic person were not being met by the respondent (refers to 2.1.6).*
- 2.2.5 *The claimant was expected to attend a meeting as an autistic individual, without referring to being autistic within the workplace and the impact this had had on her (refers to 2.1.7).*
- 2.2.6 *The claimant's autism was a key factor in why she was absent from work, and the lack of support (refers to 2.1.8).*

***Please note that allegations in italics relate to claims brought under case number 6004192/2024.***

2.3 Was the unfavourable treatment because of any of those things?

2.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

**2.4.1 [respondent to supply aims contended for]**

2.5 The Tribunal will decide in particular:

2.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

2.5.2 could something less discriminatory have been done instead;

2.5.3 how should the needs of the claimant and the respondent be balanced?

2.6 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?

### 3. **Indirect discrimination (Equality Act 2010 section 19)**

3.1 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP(s):

3.1.1 Individuals had to meet the personal specification for the Freedom to Speak Up Guardian role, to get that role.

3.1.2 The application of the recruitment policy for the Freedom to Speak Up Guardian role.

- 3.1.3 The application of the attendance policy, disability guidance for managers policy, dignity at work policy and the equality and diversity policy.
- 3.2 Did the respondent apply the PCP to the claimant?
- 3.3 Did the respondent apply the PCP to persons who do not have the claimant's disability, or would it have done so?
- 3.4 Did the PCP put persons with the claimant's disability at a particular disadvantage when compared to persons who do not have the claimant's disability, in that
  - 3.4.1 In connection with PCP 3.1.1, there was no description or explanation of the specification *act with sensitivity and challenge appropriately*, and the claimant didn't meet this standard.
  - 3.4.2 In connection with PCP 3.1.2, the recruitment policy didn't go into detail about how to support disabled persons through that process.
  - 3.4.3 In connection with PCP 3.1.3, there was no explanation or guidance on implementing, evaluating and capturing reasonable adjustments in those policies. As a result, there was no central monitoring in place about whether reasonable adjustments were being implemented.
- 3.5 Did the PCP put the claimant at that disadvantage?
- 3.6 Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aims were:
  - 3.6.1 ***[respondent to supply aims contended for]***
- 3.7 The Tribunal will decide in particular:
  - 3.7.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;
  - 3.7.2 could something less discriminatory have been done instead;
  - 3.7.3 how should the needs of the claimant and the respondent be balanced?
- 4. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**
  - 4.1 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?

- 4.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
- 4.2.1 Conducting a stakeholder panel interview for the Freedom to Speak Up Guardian role.
  - 4.2.2 The allocation of workspaces for employees.
  - 4.2.3 The allocation of work verbally.
  - 4.2.4 The invitation to meetings.
- 4.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:
- 4.3.1 In connection with PCP 4.2.1, the claimant was not given the opportunity to effectively participate in the recruitment process for the role.
  - 4.3.2 In connection with PCP 4.2.2, the claimant was allocated rooms which were unsuitable, including one room that was effectively a cupboard, had no natural light and had no air conditioning, which meant it got hot (and the door could not be shut). Another room allocated to the claimant had five people working in it and was noisy.
  - 4.3.3 In connection with PCP 4.2.3, the claimant was not given a clear written plan of what was expected of her each day.
  - 4.3.4 In connection with PCP 4.2.4, the claimant was not provided with details of why the claimant was required to attend the trust wide communication meetings, HR meetings and meetings in connection with equality and diversity.
- 4.4 Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 4.5 What steps could have been taken to avoid the disadvantage? The claimant suggests She should have been provided with:
- 4.5.1 The questions the stake holder panel would ask in advance.
  - 4.5.2 The format of the Freedom to Speak Up Guardian role interview in advance.
  - 4.5.3 A rationale for how the panel would judge the category of credibility for the Freedom to Speak Up Guardian role, including confidence to carry out the role, communication, demonstrates ability to challenge appropriately, demonstrates commitment to freedom to speak up.
  - 4.5.4 A quiet space for the claimant to work in with natural light, free from distractions.
  - 4.5.5 Provide written instructions for tasks required.
  - 4.5.6 Advance warnings of meetings, attendees and the purpose of the claimant attending those meetings.
- 4.6 Was it reasonable for the respondent to have to take those steps and when?

4.7 Did the respondent fail to take those steps?

**5. Harassment related to disability (Equality Act 2010 section 26)**

5.1 Did the respondent do the following things:

5.1.1 Allegations 1, 2, 3, 4, 5, 28, 29, 30, 52, 53, 59, 69, 111, 117, 125.

5.2 If so, was that unwanted conduct?

5.3 Did it relate to disability?

5.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.5 If not, did it have that effect?

5.6 The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

**6. Victimisation (Equality Act 2010 section 27)**

6.1 Did the claimant do a protected act as follows:

6.1.1 On 10 April 2023, presented a Dignity at Work grievance?

6.1.2 On 26 October 2023, presented a second Dignity at Work grievance?

6.2 Did the respondent do the following things:

6.2.1 Allegations 7, 30, 34 40, 58, 87, 89, 91, 92, 124, 137.

6.3 By doing so, did it subject the claimant to detriment?

6.4 If so, was it because the claimant did a protected act?

6.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

**7. Remedy for discrimination or victimisation**

- 7.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
  - 7.2 What financial losses has the discrimination caused the claimant?
  - 7.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
  - 7.4 If not, for what period of loss should the claimant be compensated?
  - 7.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
  - 7.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
  - 7.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
  - 7.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - 7.9 Did the respondent or the claimant unreasonably fail to comply with it?
  - 7.10 If so, is it just and equitable to increase or decrease any award payable to the claimant?
  - 7.11 By what proportion, up to 25%?
  - 7.12 Should interest be awarded? How much?
8. **Unfair dismissal and discriminatory dismissal (section 39 (2) (c) Equality Act 2010)**
- 8.1 Was the claimant dismissed?
    - 8.1.1 Did the respondent do the following things:
      - 8.1.1.1 The allegations of unlawful discrimination as set out in this Case Summary.
      - 8.1.1.2 On 23 May 2024, email from Simon Walsh claiming no evidence that the claimant's absence caused by Trust. Claimant said working in an unfair environment and claimant said she was working in a safe environment.
      - 8.1.1.3 On 10 June 2024 the claimant sent an email Alison Hughes requesting the policy associated with

section 5.12 of the dignity and respect at work policy escalation. On 13 June 2024 the claimant was not provided with an escalation policy, and she was told her concern raised on 10 June 2024 would not be escalating there was a refusal to escalate the claimant's concerns.

- 8.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
  - 8.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
  - 8.1.2.2 whether it had reasonable and proper cause for doing so.
- 8.2 If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?\*
- 8.3 Was it a potentially fair reason?
- 8.4 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?
- 8.5 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
- 8.6 ***Please note that allegations in italics relate to claims brought under case number 6004483/2024.***