# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Ergul

**Respondent:** Department for Work and Pensions

**Heard at:** Newcastle (hybrid)

**On:** 6-10, 13, 15-17, 20-24, 27-29, and 31 October 2025, 3-4 November 2025 and 7-9, 12-14 and 16 January 2026

**Before:** Employment Judge Aspden

**Appearances**
For the claimant: Mr Hoy
For the respondent: Mr Allen KC, counsel

# JUDGMENT

1. The claims of unfair dismissal are not well founded. Those complaints are dismissed.

2. The tribunal does not have jurisdiction to determine the complaints made under the Equality Act 2010. They are struck out.

# REASONS

**Introductory matters**

1. The claimant makes the following complaints.

    1.1 The respondent constructively dismissed her and the constructive dismissal was unfair, contrary to the Employment Rights Act 1996 (ERA). The claimant's case is that her dismissal was:
        1.1.1 automatically unfair by virtue of section 103A of ERA;
        1.1.2 if not automatically unfair then an ordinary unfair dismissal relying on ERA section 98.

    1.2 During her employment, the respondent contravened the Equality Act 2010 by:
        1.2.1 subjecting her to harassment related to disability; and
        1.2.2 subjecting her to disability discrimination by failing to comply with a duty to make reasonable adjustments.

2. Ahead of this final hearing there had been four preliminary hearings for case management and a ground rules hearing. There should have been a Dispute Resolution Appointment in September 2025 but because the parties had not agreed the contents of the file of documents for this hearing that Appointment was converted to a further preliminary hearing.

3. For reasons documented in records of the case management preliminary hearings, it was not possible to make progress in those hearings towards identifying the issues that the tribunal may need to decide to determine the claimant's claims. Despite Orders being made that were designed to help clarify the issues, by the time this hearing began the parties had not managed to agree:

    3.1 what the respondent was alleged to have done that amounted to a breach of the implied term of trust and confidence;
    3.2 what the respondent was alleged to have done that amounted to disability-related harassment; and
    3.3 how the claimant puts her claim that the respondent failed to make reasonable adjustments.

4. Consequently, before I could begin hearing evidence, I had to spend a considerable time consulting and cross referencing documents prepared by the parties against the claim form and other documents, before then engaging in discussions with the parties to understand the basis of the claims made.

5. It was clear that the case would not be completed within its original allocation of 20 days and I agreed with the parties that further time would be allocated. On 28 October 2025, after hearing submissions from the parties, I allocated an additional seven days to this hearing: 7-14 January and 16 January 2026. The first six of those days (7-14 January) were for questioning the remaining witnesses and any further discussions that may be needed about the conduct of the hearing, including arrangements for the parties to make closing submissions; 15 January was to be a day set aside for the parties to prepare and exchange any written closing submissions they may wish to make and consider each other's written submissions; then the parties would return on 16 January to make any oral closing submissions.

6. On 13 January 2026 the claimant applied to adjourn the hearing for so that she may have more time to prepare closing submissions. I refused that application for reasons I gave at the hearing that day. I also refused a renewed application made by the claimant on 15 January 2026 to adjourn the hearing for 'at least two weeks' so that she may have more time to prepare closing submissions. Those decisions are recorded in a separate Order signed by me on 15 January 2026.

7. On 16 January 2026 we returned for the final day of the hearing. Mr Hoy said they had not prepared written submissions because they had not had time to do so. I offered to adjourn the hearing for two hours to enable the claimant and Mr Hoy to prepare any oral closing submissions they may wish to make and, if they wished, to extend the hearing beyond the scheduled 1pm finish time. However, they made it clear that they had reached a settled decision that they did not wish to make oral submissions. Mr Hoy and Ms Ergul insisted that they would send in written submissions after the hearing, despite my explaining that I had the following week set aside in the calendar to start deliberations and that I would not read any written submissions that were sent in. I assume that, since the hearing, they have reflected on

what I said as they did not, in the end, attempt to reopen the case by sending in further submissions.

## Claims and issues

### Complaint of unfair dismissal

8. In alleging that she was constructively dismissed, the claimant's case is that the respondent did the things referred to in paragraphs 6.1 to 6.58 of the grounds of complaint and that those things, individually or cumulatively, amounted to a breach of the implied term of mutual trust and confidence in her contract of employment and in response to which she resigned. I have set out the things the claimant says the respondent did that breached the implied term of trust and confidence in the table below and labelled them Allegations 1 to 67.

9. In respect of the complaint of automatic unfair dismissal, the Claimant's case is that she made protected disclosures within the meaning of section 43A of the Employment Rights Act 1996 as follows:

    9.1 On or around 23 March 2020 the Claimant said to Andrew Emmerson (her team leader) words to the effect that she did not think people from other offices should come to their office as that increased the risk of COVID as there would be more germs in the air so there was more chance of people catching it and there would be more people using the tea point and touching door handles.

    9.2 On 30 March 2020 the Claimant wrote an email to Cath Robson (then Customer Service Leader, SEO) and Tony Pinter (a trade union health and safety representative) and said words to the effect that people from Eston and East Middlesbrough were coming into the office and that was not safe as there was no cleaning equipment in the office and the employer had a duty of care to keep everyone safe.

10. The claimant's primary case is that:

    10.1 the reason or the principal reason why the respondent treated her as alleged in paragraphs 6.1 to 6.58 of the grounds of complaint was because she had made those protected disclosures; and

    10.2 therefore, if she was constructively dismissed, that dismissal was automatically unfair.

11. At paragraph 6 of her grounds of claim, the claimant puts her case as follows:

    *'As a direct result of raising these concerns, I have been the subject of a targeted, sustained and deliberate campaign of bullying and unfair treatment at the hands of DWP managers. This campaign was calculated and intentional.It was instigated and perpetuated by Cath Robson, who built up a team to help her mistreat me and moved away anyone she felt might be supportive of me or who might challenge her actions. I have been subjected to a large number of unjustified and unfair measures which were exceptionally harmful and were to my considerable detriment.'*

12. The respondent's position is as follows:

12.1 It denies or does not admit that many of the alleged acts occurred, or that they occurred in the manner, or with the motivation, alleged by the claimant.

12.2 Whilst it admits that some of the facts relied on occurred, it does not admit its actions amounted to a breach of the implied term of trust and confidence.

12.3 It denies any of the acts relied on were done because the claimant made a protected disclosure. As to whether the claimant made protected disclosures:

12.3.1 it admits the claimant made a protected disclosure to Ms Robson and Mr Pinter in an email on 30 March 2020.

12.3.2 it does not admit the claimant made a protected disclosure to Mr Emmerson as alleged.

12.4 If there was a breach of the implied term of trust and confidence:

12.4.1 the respondent does not admit the claimant resigned in response to the breach; and

12.4.2 the claimant had affirmed the contract and so had lost the right to treat herself as dismissed.

12.5 If the tribunal finds the claimant was constructively dismissed by reason of the respondent's treatment of her, the dismissal was not unfair because:

12.5.1 the reason (or the principal reason) for that treatment was an irretrievable breakdown in the relationship, which was a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held; and

12.5.2 the respondent acted reasonably in treating the claimant as it did.

**Complaints under the Equality Act 2010**

13. The claimant's case is that she had a disability (as that term is defined in section 6(1) of the Equality Act 2010) 'since at least March 2021' due to the following conditions: depression, anxiety, sensory overload and post-traumatic stress disorder ('PTSD'). The claimant subsequently confirmed that her case is that:

13.1 From March 2021 she was disabled due to anxiety and depression.

13.2 From 27 Jan 2023 she was also disabled due to sensory overload (I had thought the claimant was saying she had this disability from August 2022 but at this hearing the claimant said her case is that she had this disability from 27 January 2023).

13.3 From March 2023 she was also disabled due to PTSD.

14. The respondent's position on disability is:

14.1 It accepts the claimant was a disabled person due to anxiety and depression from December 2021 onwards but not from March 2021.

14.2 It accepts the claimant has the condition of 'sensory overload'. It does not admit that condition amounted to a disability at the material times.

14.3 It does not admit the claimant had the condition known as PTSD at material times or that, if she did, it amounted to a disability.

***Complaints of disability related harassment***

15. The claim made by the claimant is that the respondent harassed her, within the meaning of that term in section 26 of the Equality Act 2010, by doing the things that I have labelled Harassment Complaints 1 to 34 in the table below. There are no complaints 8 and 9. The numbering derives from earlier iterations of the table which I prepared at the start of this hearing. For ease of reference, and to avoid this judgment being any longer than it needs to be, I have included the harassment claims and the breach of contract allegations in a single, combined table.

***Complaints that the respondent failed to comply with a duty to make reasonable adjustments***

16. The complaints that the respondent failed to comply with a duty to make reasonable adjustments are as set out below.

17. <u>Complaint at para 13.2 of the Grounds of Complaint read with paras 6.21, 6.29, 6.32, 6.36, 6.38, 6.39 and 6.41</u>

17.1 The respondent had the following provisions, criteria and/or practices which were applied to the claimant:

17.1.1a requirement for windows be closed from May 2021;

17.1.2a requirement to work from the office;

17.1.3a requirement to start work at 9am;

17.1.4a requirement to work at James Cook Jobcentre Middlesbrough.

17.2 These provisions, criteria and/or practices put the claimant at a substantial disadvantage, in comparison with someone without a disability.

17.3 To avoid that disadvantage the respondent should have:

17.3.1Allowed her to open windows and/or to work near a window she could open.

17.3.2Agreed to her requests to be allowed to work from home

17.3.3Agreed to the request she made on 23 January 2023 to start work at 8am.

17.3.4Not required her to work at James Cook Jobcentre Middlesbrough.

18. <u>Complaint at para 13.2 of the Grounds of Complaint read with para 6.33 and 6.34</u>

18.1 The claimant was required to work under the line management of Cath Robson and Caroline Spensley. This was a provision criterion or practice of the respondent.

18.2 This provision, criterion and/or practice put the claimant at a substantial disadvantage, in comparison with someone without a disability.

18.3 To avoid that disadvantage the respondent should have agreed to the claimant's requests for a change of line management made from September 2022 and 30 December 2022 onwards.

19. Complaint at para 13.2 of the Grounds of Complaint read with para 6.36

19.1 The claimant was required to be managed by the Durham Tees Valley Job Centre Plus's management chain. This was a provision criterion or practice of the respondent.

19.2 This provision, criterion and/or practice put the claimant at a substantial disadvantage, in comparison with someone without a disability.

19.3 To avoid that disadvantage the respondent should have agreed to the claimant's request made on 24 March 2023 to be moved from that management chain. By failing to take that step the respondent failed to comply with a duty to make reasonable adjustments.

20. Complaint at para 13.2 of the Grounds of Complaint read with para 6.46

20.1 The claimant was required to be managed by Margaret Thompson. This was a provision criterion or practice of the respondent.

20.2 This provision, criterion and/or practice put the claimant at a substantial disadvantage, in comparison with someone without a disability.

20.3 To avoid that disadvantage the respondent should have agreed to the claimant's request made on 5 April 2023 to change line manager. By failing to take that step the respondent failed to comply with a duty to make reasonable adjustments.

21. Complaint at para 13.2 of the Grounds of Complaint read with para 6.49

21.1 The claimant was required to attend an investigation meeting (arranged in June 2023) either alone or with a Trade Union representative. This was a provision criterion or practice of the respondent.

21.2 This provision, criterion and/or practice put the claimant at a substantial disadvantage, in comparison with someone without a disability.

21.3 To avoid that disadvantage the respondent should have allowed the claimant to have her father at the meeting to act as support person. By failing to take that step the respondent failed to comply with a duty to make reasonable adjustments.

22. Complaint at para 13.2 of the Grounds of Complaint read with para 6.57

22.1 The respondent had a practice of contacting employees directly when they were off sick. This was a provision criterion or practice of the respondent.

22.2 This provision, criterion and/or practice put the claimant at a substantial disadvantage, in comparison with someone without a disability from November 2023.

22.3 To avoid that disadvantage the respondent should have ceased contacting the claimant directly following her request on 24 November 2023. By failing to take that step the respondent failed to comply with a duty to make reasonable adjustments.

**Table of breach of contract allegations and harassment complaints**

| **Allegation number** | **Disability related harassment complaints** | |
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| Alleg 1. | | Caroline Spensley came to the claimant's desk on 4 April 2020 and sought to provoke and intimidate the claimant by standing over the claimant, invading her personal space and saying forcefully "I can tell by your face there is something wrong" and "senior managers told us to come in". |
| Alleg 2. | | On 4 April 2020 Caroline Spensley verbally abused the claimant in front of staff, saying "you're hypersensitive (to Covid)", and "you shouldn't have come in if you are scared" |
| Alleg 3. | | (a) On 6 April 2020 Caroline Spensley, created a dishonest and malicious complaint against the claimant.<br>(b) Caroline Spensley fabricated evidence in support of that complaint.<br>(c) Caroline Spensley dishonestly told the claimant that a colleague had co-written the complaint. |
| Alleg 4. | | The respondent refused to share Caroline Spensley's complaint with the Claimant until the Claimant threatened to complain to the Information Commissioner |
| Alleg 5. | | The respondent ignored the Claimant's request that Caroline Spensley's complaint be investigated. |
| Alleg 6. | | The respondent:<br>(a) refused a request the claimant made in September 2020, to be allowed to work from home; and<br>(b) did so without following any process and without giving any good reason. |
| Alleg 7. | | The respondent ignored a formal grievance raised by the Claimant on 14 January 2021 about Caroline Spensley's complaint. |
| Alleg 8. | | In October 2020 the respondent moved Steph Ryan to the Claimant's workplace in October 2020. |
| Alleg 9. | | In October 2020 Steph Ryan subjected the Claimant to intimidation by asking her to a meeting (instigated by Cath Robson) at which Steph Ryan unfairly and incorrectly insinuated the Claimant was failing to manage her caseload. |

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| Alleg 10. | | (a) The respondent 'gaslit' the claimant by ignoring the concerns she raised about being intimidated and treated unfairly by managers.<br>(b) Andrew Emmerson dismissively told the claimant that it was 'all in [her] head'; |
| Alleg 11. | | The respondent allowed managers access to the claimant's HR file and personal information where they had no good reason to do so, thereby giving them the ability to remove and manipulate information to cover up what was happening. |
| Alleg 12. | | The respondent deliberately allocated the desk next to the claimant to Caroline Spensley (which caused the claimant to feel further intimidation and to become openly distressed in front of colleagues) |
| Alleg 13. | | (a) On 3 November 2020, during a meeting aimed at resolving issues, Caroline Spensley provided an explanation containing information which she knew to be false.<br>(b) This was done in the presence of Cath Robson, who was complicit in the dishonesty. |
| Alleg 14. | | On 3 November 2020, Caroline Spensley (who was to be the claimant's new line manager) stated publicly in front of Cath Robson and Karina Boland (PCS trade union representative) that she did not feel she could manage the Claimant. |
| Alleg 15. | | On 9 December 2020 the respondent made Caroline Spensley the claimant's line manager, despite the claimant making it clear to the management team that Caroline Spensley was intimidating her and despite the claimant having raised a formal grievance about her which lay unresolved. |
| Alleg 16. | | Following a grievance hearing on 22 December 2020, the respondent (through the actions of individuals whose names are not specified by the claimant in the grounds of complaint) colluded to produce an inaccurate and misleading account of events. |
| Alleg 17. | | The respondent ignored the disclosure the claimant made to the Speak Up Safely line in January 2021 and instead permitted those about whom the claimant was complaining to continue to have involvement in the grievance process and told the claimant the speak up safely line were providing incorrect information. |
| Alleg 18. | | With regard to the claimant's grievance:<br>(a) The respondent failed to investigate the claimant's grievances fully, properly or in good faith.<br>(b) The respondent allowed Caroline Spensley to listen in. |

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| | | (c) Caroline Spensley used information she heard during the grievance to intimidate the Claimant.<br>(d) The respondent colluded over the production of inaccurate minutes.<br>(e) The respondent provided a false narrative of events.<br>(f) The respondent prepared witness statements which contained negative personal comments about the Claimant. |
| Alleg 19. | | The respondent forced the claimant off the 18-24 team in February 2021 through misrepresentations. |
| Alleg 20. | | The respondent encouraged colleagues to ostracise the claimant. |
| Alleg 21. | | On 30 March 2021 Cath Robson and Caroline Spensley intimidated the claimant by measuring a desk opposite her walking past her and shouting “health and safety Peter”; thereby belittling her and provoking her; |
| Alleg 22. | | In early April 2021, Caroline Spensley and Steph Ryan (along with Margaret Thompson) intimidated the claimant by invading her personal space and unnecessarily measuring the space between her desk (at which she was sitting) and the desk next to it, thereby belittling her and provoking her. |
| Alleg 23. | | From May 2021 onwards Margaret Thompson instructed the claimant to sit at desks which were deliberately covered in piles of boxes or without power. |
| Alleg 24. | Harassment Complaint 1 | From May 2021 onwards<br>(a) the respondent routinely instructed the claimant to close the window which she required to be open for her wellbeing and to reduce Covid transmission, or<br>(b) the respondent routinely closed the window. |
| Alleg 25. | | In May 2021 the manager dealing with the claimant’s grievance outcome meeting failed to send the claimant the outcome or documents until after the meeting, so the claimant was denied the opportunity to review the outcome in advance and to ask questions. |
| Alleg 26. | | In May 2021, the respondent included unnecessarily humiliating and derogatory statements about the Claimant in witness statements, specifically "she goes up and down sometimes triggered by unrelated things", "the issue is caused by her perception" and "she is covidphobic" |
| Alleg 27. | | The minute taker at the investigation meeting in May 2021 deliberately and dishonestly prepared incorrect minutes which failed to give an honest account of what had been said. |

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| Alleg 28. | | In March 2021 Cath Robson<br>(a) singled the claimant out to work at times (including on Saturdays) which she was unable to work; and<br>(b) did so without any discussion and in breach of the Employment Deal collective agreement of which the claimant had had the benefit since 2016. |
| Alleg 29. | Harassment Complaint 2 | Between May 2021 and June 2023 the respondent deliberately and excessively sprayed near the claimant a liquid which Suzanne Fascia, Work Coach Team Leader (SEO), knew was harmful to the claimant's health. |
| Alleg 30. | Harassment Complaint 3 | The respondent delayed, without reasonable explanation, the request the claimant made in May 2022 for a Stress Management Plan. |
| Alleg 31. | Harassment Complaint 3 | The respondent then unduly pressured the claimant to work in close proximity with Cath Robson and Caroline Spensley both of whom had mistreated the claimant, to the point that the claimant's health was severely affected. |
| Alleg 32. | Harassment Complaint 4 | The respondent ignored a concern the claimant raised in June 2022 that relocation would substantially affect her health. |
| Alleg 33. | Harassment Complaint 5 | The respondent ignored the claimant's repeated requests that she be allowed a window open near her to help with her health conditions despite the claimant having explained that the requirement for the window to be shut affected her health. |
| Alleg 34. | | In an email on 17 June 2022 Simon Gray, HR Business Partner, incorrectly and dishonestly stated that the DWP had no records of the claimant's health conditions (despite there being clear evidence to the contrary). |
| Alleg 35. | Harassment Complaint 6 | In July 2022:<br>(a) Caroline Spensley instigated an appointment with a customer who then threatened the claimant during the appointment.<br>(b) Steph Ryan (Work Coach Team Leader) left the floor during the incident.<br>(c) Steph Ryan then failed to make a formal record of the incident.<br>(d) Simon Mc Dermott, Work Coach Team Leader (HEO), then used the threat to intimidate the claimant into moving down stairs. |

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| Alleg 36. | Harassment Complaint 7 | The respondent:<br>(a) refused requests the claimant made from September 2022 and 30 December 2022 onwards to be moved from under the line management of Cath Robson and Caroline Spensley, despite the claimant explaining that the requirement for her to be managed by the current management team placed her at disadvantage because of her disability and despite the claimant's requests being supported by an Occupational Health and Safety report and despite making it clear from 30 December 2022 onwards that the request should be treated as a request for a reasonable adjustment; and<br>(b) did so without following any process and without giving any reason. |
| Alleg 37. | | In December 2022 the respondent:<br>(a) declined the requests the claimant had made for mediation with Cath Robson, Marie Gordon (Work Coach and Teresa Cornfield (Work Coach); and<br>(b) did so without giving any good reason. |
| Alleg 38. | | On 30 December 2022 Suzanne Fascia instructed the claimant to return to work at James Cook Jobcentre, Middlesbrough, despite the claimant pointing out that the location placed her at a disadvantage because of her health. |
| Alleg 39. | | The respondent disseminated details of the claimant's health issues to various colleagues who had no reason to know anything about her health issues and when the claimant had specifically requested they were kept private. |
| Alleg 40. | Harassment Complaint 11 | (a) Suzanne Fascia refused the request the claimant made on 20 January 2023 to work from home (despite the claimant having explained that having to work full time in the office placed her at a disadvantage because of her disability and making clear that her request should be treated as a request for a reasonable adjustment ;despite Mark Byers a TU rep stating it was a breach of the Equality Act 2010; despite it being stated DWP policy that work coaches were allowed to work from home; and despite at least one other work coach working from home).<br>(b) Suzanne Fascia refused the request without following and process and without giving any good reason. |
| Alleg 41. | Harassment Complaint 10 | Suzanne Fascia told the claimant she was not fit for work, despite the claimant having made it clear to her since September 2022 that she would be able to work if arrangements could be made to move her from under Cath Robson's management structure and if she could have an open window near her. |

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| Alleg 42. | Harassment Complaint 12 | On 23 January 2023 Suzanne Fascia refused the claimant's request to be allowed to start work at 8:00am, despite the claimant pointing out that this was the start time stated in her Employment Deal contract and the requirement for her to start work at a later time placed her at a disadvantage because of her disability (her distress and emotional volatility was increased by people). |
| Alleg 43. | Harassment Complaint 13 | (a) On 27 January 2023 Suzanne Fascia telephoned the claimant's father without the claimant's knowledge or consent; and<br>(b) during that call Suzanne Fascia provided inaccurate and misleading information about the claimant's health (leading the claimant's father to make a formal complaint to the DWP). |
| Alleg 44. | Harassment Complaint 14 | On 3 February 2023 Suzanne Fascia<br>(a) Instructed the claimant to leave her place of work, stating she was unfit to work and that she required the crisis team; and<br>(b) telephoned the claimant's father a second time. |
| Alleg 45. | Harassment Complaint 15 | Margaret Thompson failed to act on the outcomes of the claimant's Display Screen Equipment assessment of 14 February 2023. |
| Alleg 46. | Harassment Complaint 16 | On 1 March 2023 the respondent unfairly issued the claimant with a formal warning as a result of her being absent from work for documented work-related reasons between 2 August 2022 and 23 January 2023. |
| Alleg 47. | | The respondent failed to implement in a reasonable time scale the written request the claimant made on 24 March 2023 to be moved from the Durham Tees Valley Jobcentre Plus's management chain, and to be able to have a window open near her (despite knowing this arrangement placed the claimant at a disadvantage because of her disability and making it clear that her request should be treated as a request for a reasonable adjustment, and despite existing DWP guidance which advised that the move should be granted). |
| Alleg 48. | Harassment Complaint 17 | The respondent needlessly delayed an appeal against the warning issued on 1 March 2023 so that it was not heard until June 2023. |
| Alleg 49. | Harassment Complaint 18 | The respondent incorrectly designated the claimant as being on sick leave on dates in March 2023 whilst she was attending work whilst waiting for a reasonable adjustment to be made. |

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| Alleg 50. | Harassment Complaint 19 | The respondent:<br>(a) refused a request the claimant made in March 2023 to be allowed to work from home; and<br>(b) did so without following any process and without giving any good reason. |
| Alleg 51. | Harassment Complaint 20 | On 5th April 2023, Jackie McNab refused to consider a change in the claimant's line manager, despite the claimant pointing out that the then requirement for her to be managed by Margaret Thompson placed her at a disadvantage because of her health and despite the claimant's requests being supported by an Occupational Health and Safety report. |
| Alleg 52. | Harassment Complaint 21 | The respondent designated the claimant as being on sick leave (and subsequently on unauthorised leave) between 5 April 2023 and 19 May 2023 when the claimant had nowhere to work because the Dundas job-centre was closed. |
| Alleg 53. | Harassment Complaint 22 | On 31 May 2023 the respondent made a deduction from the claimant's salary and gave the claimant an overpayment to repay the salary paid to the claimant on 30 April 2023, when she had been unable to work in the Dundas job-centre because of the problem with the door. |
| Alleg 54. | Harassment Complaint 23 | On 13 June 2023 Margaret Thompson mistreated the claimant by:<br>(a) refusing to leave the claimant alone when the claimant requested her to<br>(b) being dishonest about things the claimant was saying to her; and<br>(c) telling the claimant that Caroline Spensley was downstairs in the claimant's workplace and there wasn't anything the claimant could to stop Caroline Spensley following her to wherever she was moved to when her Equality Move was actioned, resulting in the claimant being unable to return to Dundas. |
| Alleg 55. | Harassment Complaint 24 | On 19 June 2023 the respondent sent two emails to the claimant inviting her to a meeting to discuss what was incorrectly described as unauthorised absence between 6.4.2023 and 19.5.2023. |
| Alleg 56. | Harassment Complaint 25 | On 29 June 2023 Julia Hume refused the claimant's request for permission to allow her father to act as a support person at a meeting, despite the claimant pointing out that the requirement for her to attend the meeting alone placed her at a disadvantage and making it clear that the request should be treated as a request for a reasonable adjustment. |

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| Alleg 57. | Harassment Complaint 26 | (a) In August 2023 Philip Harwood refused to consider the claimant for a vacant position in which she had expressed interest.<br>(b) Subsequently Mr Harwood did not put in a statement of his call with the claimant that she was interested in the vacancy. |
| Alleg 58. | Harassment Complaint 27 | On 3 October 2023 Julia Hume sent an email asking the claimant to come into Dundas jobcentre to clear her locker, and made an explicit threat that the claimant's locker would be forcefully entered if she was unable to attend. |
| Alleg 59. | Harassment Complaint 27 | (a) The respondent broke into the claimant's locker and removed personal documents (before the date by which she was requested to clear it).<br>(b) The respondent denied the request for the CCTV footage (which request was made as a subject access request). |
| Alleg 60. | Harassment Complaint 28 | On 25 October 2023 Julia Hume:<br>(a) telephoned the claimant's father without the claimant's knowledge or consent and for no good reason; and<br>(b) provided the claimant's father with inaccurate and misleading personal information about the claimant. |
| Alleg 61. | Harassment Complaint 29 | On 1 November 2023 Julia Hume repeatedly made dishonest and untrue comments to the claimant at a sickness review meeting.<br><br>During these proceedings the claimant was directed to say what dishonest and untrue comments were made by Julia Hume on 1 November 2023. The claimant's response was 'She said she had sent me two emails. The invitation to the meeting on 19 October 2023, she stated she emailed it to me. And a second email she stated she sent to me on 15 September 2023. She had not sent either of them to me.' |
| Alleg 62. | Harassment Complaint 30 | Between 25 September 2023 and 9 November 2023 Amanda Turner, an HR Business Partner, sent the claimant emails in which she made dishonest and untrue comments and sought to gaslight the claimant.<br><br>During these proceedings the claimant was directed to say what dishonest and untrue statements were made by Amanda Turner. The claimant's response was that it was the following statements (all of which were made on 9 November 2023):<br>- 'You asked who contacted me about you. I can confirm that you have been registered as an Equality Act mover since April 2023. Part of this process was to ensure you met the criteria of an Equality Act move, so your line manager completed the necessary paperwork to enable myself to add you to the |

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| | | priority movers list (which you signed).'<br>- 'I hold your contact information as I have received a referral to the network application form (which you signed).'<br>- 'Line managers are responsible for retaining all related documentation and should be mindful of data protection requirements.' |
| Alleg 63. | Harassment Complaint 31 | On 23 November 2023 Julia Hume told the claimant that there were no records of any conversation between her and the HR team which related to the claimant, that all discussions about the claimant had been verbal, and that she could not provide the claimant with any details of their discussions. |
| Alleg 64. | Harassment Complaint 32 | After the claimant asked Julia Hume, on 24 November 2023, to cease contacting the claimant directly because of the effect of such contact on the claimant's health, Julia Hume ignored the request and continued to send the claimant emails. |
| Alleg 65. | Harassment Complaint 33 | On 12 December 2023 Jonathon Hatfield sent the claimant an invitation to a disciplinary hearing to discuss an allegation that the claimant had been absent without authorisation between 6 April 2023 and 19 May 2023 (the period during which the Dundas jobcentre was closed). |
| Alleg 66. | Harassment Complaint 33 | Jonathon Hatfield then<br>(a) repeatedly refused the claimant's requests that he provide information which the claimant needed to defend her position; and<br>(b) made repeated incorrect and dishonest assertions that the information had in fact been sent to the claimant. |
| Alleg 67. | Harassment Complaint 34 | On 31 January 2024 Jonathon Hatfield sent the claimant a written warning. |

**List of issues**

23. I identified that the issues I may have to decide to determine whether the claims succeed are those set out in the list of issues in the Schedule at the end of this judgment. I have not had to decide many of the issues in that list because of my conclusions on the question of affirmation (in relation to the unfair dismissal complaints) and time limits (in relation to the Equality Act complaints).

**<u>Legal Framework</u>**

**Unfair dismissal**

***Dismissal***

24. A claim of unfair dismissal cannot succeed unless there has been a dismissal as defined by section 95 of the Employment Rights Act 1996. It is for the claimant to prove, on the balance

of probabilities (ie that it is more likely than not), that she has been dismissed within the meaning of that provision.

25. In this case, the claimant claims she was dismissed within the meaning of section 95(1)(c), which provides that termination of a contract of employment by the employee constitutes a dismissal if she was entitled to so terminate because of the employer's conduct. In colloquial terms, the claimant says she was constructively dismissed.

26. For a claimant to establish that there has been a constructive dismissal, she must prove that:

    26.1 there was a breach of contract by the employer;
    26.2 the breach was 'fundamental' or 'repudiatory' i.e. sufficiently serious to justify the employee resigning;
    26.3 she resigned in response to the breach and not for some other unconnected reason; and
    26.4 she had not already affirmed the contract before electing to leave.

Repudiatory breach of contract

27. Its established law that every contract of employment contains an implied term that the employer shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or serious damage the relationship of confidence and trust between employer and employee: Woods v W M Car Services (Peterborough) Ltd [1981] ICR 666, EAT; Lewis v Motorworld Garages Ltd [1986] ICR 157, CA; Malik v BCCI [1997] ICR 606, HL.

28. Case-law shows that the conduct needs to be repudiatory in nature in order for there to be a breach of the implied term of trust and confidence (see *Morrow v Safeway Stores Ltd* [2002] IRLR 9, EAT). This was emphasised by the Court of Appeal in the case of *Tullett Prebon Plc & ors v BGC Brokers & ors* [2011] EWCA Civ 131; [2011] IRLR 420. There, the Court of Appeal cited the case of *Eminence Property Developments Ltd v Heaney* [2010] EWCA Civ 1168 and stressed that the question is whether, looking at all the circumstances objectively, from the perspective of the reasonable person in the position of the innocent party, the conduct amounts to the employer abandoning and altogether refusing to perform the contract.' The High Court in the *Tullett* case held (in a judgment subsequently upheld by the Court of Appeal) that 'conduct which is mildly or moderately objectionable will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough'; *Tullett Prebon v BGC* [2010] IRLR 648, QB.

29. When assessing whether conduct was likely to destroy or seriously damage the relationship of trust and confidence, it is immaterial that the employer did not in fact intend its conduct to have that effect: *Leeds Dental Team Ltd v Rose* [2014] IRLR 8, EAT. Similarly, there will be no breach of the implied term simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held (*Omilaju v Waltham Forest London Borough Council* [2005] EWCA Civ 1493, [2005] ICR 481, CA). The question is whether, viewed objectively, the conduct is calculated or likely to destroy or seriously damage the relationship of trust and confidence. The employee's subjective response may, however, be of some evidential value in assessing the gravity of the employer's conduct (see the *Tullett Prebon* case above in the High Court).

30. The duty not to undermine trust and confidence is capable of applying to a series of actions by the employer which individually would not constitute a breach of the term. In *Lewis v Motorworld Garages Ltd* [1986] ICR 157, CA, Glidewell LJ said: '… the last action of the

employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?'

31. In *Omilaju v Waltham Forest London Borough Council* [2005] EWCA Civ 1493, [2005] IRLR 35, CA the Court of Appeal held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series, the cumulative effect of which was to amount to the breach. Viewed in isolation, the 'last straw' need not be unreasonable or blameworthy conduct but it cannot be something innocuous or utterly trivial. However, the Court of Appeal noted in Omilaju that will be an unusual case where conduct which has been judged objectively to be reasonable and justifiable satisfies the final straw test. Furthermore, the last straw must be something that contributes, however slightly, to the breach of the implied term of trust and confidence: some behaviour, even if unreasonable, may be so unrelated to the obligation of trust and confidence that it lacks that essential quality.

32. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect: *Omilaju*.

Acceptance of repudiation

33. An employee will be regarded as having accepted the employer's repudiation only if his or her resignation has been caused by the breach of contract in question. Sometimes an employee has more than one reason for leaving a job and in such cases the question is whether the breach of contract played a part in the employee's decision to leave ie was one of the factors relied upon: *Nottingham County Council v Meikle* [2005] ICR 1.

Affirmation

34. Even if an employer has committed a repudiatory breach of contract, the employee will lose the right to accept the breach and treat herself as discharged from the contract if she has elected to affirm the contract. This doctrine of affirmation was considered by the EAT in *W E Cox Toner (International) Ltd v Crook* [1981] IRLR 443, [1981] ICR 823, EAT. In this case Browne-Wilkinson P held that the general principles applicable to a repudiation of contract are as follows:

> *'13. …If one party ('the guilty party') commits a repudiatory breach of the contract, the other party ('the innocent party') can choose one of two courses: he can affirm the contract and insist on its further performance or he can accept the repudiation, in which case the contract is at an end. The innocent party must at some stage elect between these two possible courses: if he once affirms the contract, his right to accept the repudiation is at an end. But he is not bound to elect within a reasonable or any other time. Mere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged it may be evidence of an implied affirmation: Allen v Robles [1969] 1 WLR 1193. Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence of the contract, such acts will normally show affirmation of the contract. However, if the innocent party further performs the contract*

*to a limited extent but at the same time makes it clear that he is reserving his rights to accept the repudiation or is only continuing so as to allow the guilty party to remedy the breach, such further performance does not prejudice his right subsequently to accept the repudiation: Farnworth Finance Facilities Ltd v Attryde [1970] 1 WLR 1053.*

*14. It is against this background that one has to read the short summary of the law given by Lord Denning MR in the Western Excavating [1978] IRLR 27 case. The passage [at p. 226] "moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged" is not, and was not intended to be, a comprehensive statement of the whole law. As it seems to us, Lord Denning was referring to an obvious difference between a contract of employment and most other contracts. An employee faced with a repudiation by his employer is in a very difficult position. If he goes to work the next day, he will himself be doing an act which, in one sense, is only consistent with the continued existence of the contract, he might be said to be affirming the contract. Certainly, when he accepts his next pay packet (ie, further performance of the contract by the guilty party) the risk of being held to affirm the contract is very great: see Saunders v Paladin Coachworks Ltd (1968) 3 ITR 51. Therefore, if the ordinary principles of contract law were to apply to a contract of employment, delay might be very serious, not in its own right but because any delay normally involves further performance of the contract by both parties. It is not the delay which may be fatal but what happens during the period of the delay: see Bashir v Brillo Manufacturing Company [1979] IRLR 295.*

*15. Although we were not referred to the case, we think Lord Denning's remarks in the Western Excavating case are a reflection of the earlier decision of the Court of Appeal in Marriott v Oxford and District Co-operative Society [1970] 1 QB 196. In that case, the employer repudiated the contract by seeking to change the status of the employee and to reduce his wages. The employee protested at this conduct but continued to work and receive payment at the reduced rate of pay for a further month, during which he was looking for other employment. The Court of Appeal (of which Lord Denning was a member) held that he had not thereby lost his right to claim that he was dismissed (in the Western Excavating case at p.30 Lord Denning explains that the case would now be treated as one of constructive dismissal). This decision to our mind establishes that, provided the employee makes clear his objection to what is being done, he is not to be taken to have affirmed the contract by continuing to work and draw pay for a limited period of time, even if his purpose is merely to enable him to find another job.'*

35. In *Chindove v William Morrison Supermarkets Ltd UKEAT/0201/13 (26 June 2014, unreported)*, the EAT restated the point that there is no fixed time within which the employee must make up their mind and the matter is not one of time in isolation. As was said there:

*'25….The principle is whether the employee has demonstrated that he has made the choice. He will do so by conduct; generally by continuing to work in the job from which he need not, if he accepted the employer's repudiation as discharging him from his obligations, have had to do.*

*26. He may affirm a continuation of the contract in other ways: by what he says, by what he does, by communications which show that he intends the contract to continue. But the issue is essentially one of conduct and not of time. The reference to time is because if, in the usual case, the employee is at work, then by continuing to work for*

*a time longer than the time within which he might reasonably be expected to exercise his right, he is demonstrating by his conduct that he does not wish to do so. But there is no automatic time; all depends upon the context. Part of that context is the employee's position. As Jacob LJ observed in the case of Buckland v Bournemouth University Higher Education Corporation [2010] EWCA Civ 121, deciding to resign is for many, if not most, employees a serious matter. It will require them to give up a job which may provide them with their income, their families with support, and be a source of status to him in his community. His mortgage, his regular expenses, may depend upon it and his economic opportunities for work elsewhere may be slim. There may, on the other hand, be employees who are far less constrained, people who can quite easily obtain employment elsewhere, to whom those considerations do not apply with the same force. It would be entirely unsurprising if the first took much longer to decide on such a dramatic life change as leaving employment which had been occupied for some eight or nine or ten years than it would be in the latter case, particularly if the employment were of much shorter duration. In other words, it all depends upon the context and not upon any strict time test.*

*27.An important part of the context is whether the employee was actually at work, so that it could be concluded that he was honouring his contract and continuing to do so in a way which was inconsistent with his deciding to go. Where an employee is sick and not working, that observation has nothing like the same force… '*

36. In *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978; [2019] ICR1 the Court of Appeal held that even if an employee has previously affirmed the employer's repudiatory breach of contract, the right to resign and claim constructive dismissal because of that previous conduct is revived if there is another incident that, together with the earlier conduct, was part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence. Underhill LJ summarised the proper approach to analysing whether there has been a constructive dismissal in the following way:

*'55. … In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*
*(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
*(2) Has he or she affirmed the contract since that act?*
*(3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
*(4) If not, was it nevertheless a part (applying the approach explained in Omilaju [2005] ICR 481) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation….)*
*(5) Did the employee resign in response (or partly in response) to that breach?'*

***Fairness of dismissal***

37. If the Tribunal finds a claimant has been dismissed, the next issue to consider is whether the dismissal was fair. As will be seen from my conclusions below, I have decided that the claimant was not dismissed. Therefore it is unnecessary for me to say any more about how the law in this area applies, nor about the concept of 'protected disclosures'.

**Equality Act**

38. It is unlawful for an employer to discriminate against an employee as to their terms of employment; in the way the employer affords them access, or by not affording them access, to opportunities for transfer or training or for receiving any other benefit, facility or service; by dismissing them or by subjecting them to any other detriment: section 39(2) Equality Act 2010.

39. Under section 39(5) of the Equality Act 2010 a duty to make reasonable adjustments applies to an employer. A failure to comply with that duty constitutes discrimination: Equality Act 2010 s21.

40. It is also unlawful for an employer to harass an employee: Equality Act 2010 section 40.

***Time limit***

41. Section 123 of the Equality Act 2010 provides as follows:

> *Time limits*
>
> *(1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—*
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
> *(b) such other period as the employment tribunal thinks just and equitable.*
> *…*
>
> *(3) For the purposes of this section—*
> *(a) conduct extending over a period is to be treated as done at the end of the period;*
> *(b) failure to do something is to be treated as occurring when the person in question decided on it.*
>
> *(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
> *(a) when P does an act inconsistent with doing it, or*
> *(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

42. The three month primary time limit is calculated taking into account section 140B, which provides for the extension of time limits to facilitate conciliation before institution of proceedings. It says this:

> *140B Extension of time limits to facilitate conciliation before institution of proceedings*
>
> *This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).*
>
> *(2) In this section—*
> *(a)Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*
> *(b)Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

*(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

*(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

*(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.*

43. In deciding whether there was 'conduct extending over a period' in cases involving numerous discriminatory acts or omissions, it is not necessary for the claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he or she has to prove, in order to establish conduct extending over a period, is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs': *Hendricks v Metropolitan Police Comr* [2002] EWCA Civ 1686, [2003] IRLR 96.

44. In *South Western Ambulance Service NHS Foundation Trust v King* [2020] IRLR 168, the EAT considered the authorities on this issue and held that the only acts that can be considered as part of a continuing course of conduct are those that are upheld as acts of discrimination or some other contravention of the Equality Act 2010.

45. Section 123(1) gives the Tribunal a broad discretion to extend time for claiming beyond the three-month time limit. Although in *Robertson v Bexley Community Centre* [2003] IRLR 434, Auld LJ observed that 'the exercise of discretion is the exception rather than the rule', it is not the case that discretion may only be exercised in exceptional circumstances. There is, however, no presumption that the ET should exercise its discretion to extend time. The burden is on the claimant to persuade the tribunal to exercise its discretion in their favour.

46. In *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, Lord Justice Underhill said 'the best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. Factors that are almost always relevant are the length of, and the reasons for, the delay; and whether the delay has prejudiced the respondent (for example by preventing or inhibiting it from investigating the allegations while the matters were still fresh).

47. In principle, time may be extended even in the absence of a good reason, or indeed any explanation, for the delay from the claimant: *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640, [2018] IRLR 1050. The onus is still on the claimant to persuade the tribunal that an extension should nevertheless be granted, however.

48. A relevant factor is the relative prejudice to the parties in granting or refusing an extension of time. In this regard:

    48.1 If a claim is or appears to have merit, the prejudice to the claimant of time not being extended is greater than if the claim is weak. But even if a claim has very good merits (or has even been successful, if it has reached the stage of a determination at a full

hearing) that does not automatically require a tribunal to extend time for it: *Ahmed v Ministry of Justice* UKEAT/0390/14 (7 July 2015, unreported).

48.2 If the respondent may have experienced forensic prejudice in defending a claim that has been brought outside the primary time limit (for example because evidence has degraded or relevant witnesses have left their employment) that will be a factor weighing against granting an extension of time.

48.3 Prejudice relevant to the exercise of the just and equitable extension is not limited to prejudice which flows directly from the length of the delay in lodging the claim: *Adedeji*.

***Disability***

49. In light of my conclusions below, I need not set out the law relating to the definition of 'disability'.

***Burden of proof***

50. The burden of proof in relation to allegations of discrimination and harassment is dealt with in section 136 of the 2010 Act as follows:

> '*136 Burden of proof*
> *…*
> *(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….'*

51. Section 136 provides a two-stage test. At the first stage, the claimant has to prove facts from which the tribunal could infer that discrimination or harassment has taken place. It is only if such facts have been made out (on the balance of probabilities) that the second stage is engaged.

52. At the second stage the burden shifts to the respondent to prove (on the balance of probabilities) that the treatment in question was 'in no sense whatsoever' because of the prohibited reason: *Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] ICR 931 CA.

***Failure to make reasonable adjustments***

53. Section 20 of the Equality Act 2010 provides that the duty to make reasonable adjustments comprises three requirements, set out in s 20(3), (4) and (5). This case is concerned with the first of those requirements, which provides that where a provision, criterion or practice of an employer's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. Section 21(1) provides that a failure to comply with this requirement is a failure to comply with the duty to make reasonable adjustments.

54. In considering whether the duty to make reasonable adjustments arose, a Tribunal must consider the following (Environment Agency v Rowan [2008] IRLR 20):

54.1 whether there was a provision, criterion or practice ('PCP') applied by or on behalf of an employer;
54.2 the identity of the non-disabled comparators (where appropriate); and
54.3 the nature and extent of the substantial disadvantage in relation to a relevant matter suffered by the employee.

55. The concept of a 'provision, criterion or practice' is a broad one, which is not to be construed narrowly or technically. Nevertheless, as the Court of Appeal said in *Ishola v Transport for London* [2020] EWCA Civ 112, [2020] IRLR 368:

> *'[t]o test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. … In context, and having regard to the function and purpose of the PCP in the 2010 Act, all three words carry the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. 'Practice' connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises.'*

56. A duty to make reasonable adjustments does not arise unless the PCP in question places the disabled person concerned not simply at some disadvantage viewed generally, but at a disadvantage which is substantial (ie more than minor or trivial) and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled: *Royal Bank of Scotland v Ashton* [2011] ICR 632, EAT.

57. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1). The EHRC Code of Practice states that ' The fact that both groups [ie disabled and non-disabled persons] are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability.'

58. An employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know that the employee has a disability. Knowledge of disability means more than just knowledge that an individual has an impairment: it also requires knowledge (actual or constructive) that the impairment(s) had adverse effects on the employee's ability to carry out day to day activities and that those effects are long term and more than minor or trivial.

59. Nor is an employer 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 is likely to (ie could well) be placed at a substantial disadvantage by the PCP relied on.

60. The EHRC's Code of Practice says that, in determining whether it is reasonable for an employer to have to take a particular step in order to comply with a duty to make reasonable adjustments, the following factors may be relevant:
60.1 the extent to which taking the step would prevent the substantial disadvantage;

60.2 the practicability of the step;
60.3 the financial and other costs of making the adjustment and the extent of any disruption caused;
60.4 the extent of the employer's financial and other resources;
60.5 the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
60.6 the type and size of the employer.

61. The adjustment contended for need not remove entirely the disadvantage: *Noor v Foreign and Commonwealth Office* [2011] ICR 695, EAT. Nor must the claimant prove definitively that the adjustment will remove the disadvantage: provided there is a prospect of removing the disadvantage, the adjustment may be reasonable: *Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0552/10, [2011] EqLR 1075.

62. In *Royal Bank of Scotland v Ashton* [2011] ICR 632, the EAT emphasised that when addressing the issue of reasonableness of any proposed adjustment the focus has to be on the practical result of the measures that can be taken. The duty to make adjustments is, as a matter of policy, to enable employees to remain in employment, or to have access to employment. It will not extend to matters which would not assist in preserving the employment relationship.

63. In *Project Management Institute v Latif* [2007] IRLR 579, the EAT addressed how the burden of proof operates in failure to make adjustment claims. The EAT made it clear that 'the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. …. There must be evidence of some apparently reasonable adjustment which could be made.'

***Harassment***

64. The definition of harassment is contained in section 26 of the Act. So far as relevant, section 26 provides as follows:

*'(1) A person (A) harasses another (B) if—*
*(a)A engages in unwanted conduct related to a relevant protected characteristic, and*
*(b)the conduct has the purpose or effect of—*
*(i)violating B's dignity, or*
*(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
*....*
*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
*(a)the perception of B;*
*(b)the other circumstances of the case;*
*(c)whether it is reasonable for the conduct to have that effect.'*

65. The protected characteristics include disability.

66. In deciding whether conduct is 'related to' a protected characteristic, the Tribunal must apply an objective test; the intention of the actors concerned might form part of the relevant circumstances but will not be determinative of the question the tribunal has to answer: *UNITE the Union v Nailard* [2018] EWCA Civ 1203, [2018] IRLR 730. As was said in *Tees Esk and Wear Valleys NHS Foundation Trust v Aslam* and another [2020] IRLR 495, a finding about the motivation of the individual concerned is not the necessary or only possible route to the

conclusion that an individual's conduct was related to the characteristic in question. Nevertheless, there must be still, in any given case, be some feature of the factual matrix which can properly lead the tribunal to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claimant.

67. Where a Claimant contends that the employer's conduct has had the effect of creating the proscribed environment for them, they must actually have felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them: *Richmond Pharmacology v Dhaliwal* [2009] ICR 724, EAT.

68. Even if the claimant did, subjectively, feel or perceive that the employer's conduct had that effect, a claim of harassment will not be made out on the basis of that effect if it is not reasonable for the conduct to have the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee: *Ahmed v Cardinal Hume Academies* (29 March 2019, unreported).

## Evidence and facts

69. It will be seen from the 'Conclusions' section of this judgment that I have reached the following conclusions:

    69.1 The claimant affirmed her contract of employment after May 2023.
    69.2 Nothing the respondent is alleged to have done after May 2023 and that may have contributed to the claimant's decision to resign breached the implied term of trust and confidence or was capable of contributing to such a breach.
    69.3 All of the claims under the Equality Act 2010 have been made outside the three month primary time limit in section 123.
    69.4 It is not just and equitable to extend the time for making those claims under the Equality Act 2010.

70. I have set out in this judgment the findings of fact that had the most bearing on those decisions. Those facts cover the period when the claimant alleges she made protected disclosures and events that occurred in the weeks immediately afterwards (ie March and April 2020); and the months leading up to the claimant's resignation in February 2024. Whilst I have taken into into account all of the evidence in the case insofar as I consider it to be probative, it has not been necessary, and nor would it be proportionate, to resolve every factual dispute in the case. Nor is it necessary or proportionate to make or set out findings of fact that may have had a bearing on all of the other issues that were in dispute in the case but that do not need to be decided.

71. I heard evidence from the claimant. For the respondent I heard evidence from the following witnesses:
    71.1 Ms Robson, who, when the events with which this was is concerned began, was a Senior Executive Officer employed in the role of a Jobcentre Operational Leader at James Cook House, Middlesbrough. Ms Robson was later promoted into a Grade 7 role.
    71.2 Mr Emmerson, who, when the events with which this case is concerned began, was a Higher Executive Officer, Work Coach Team Leader, and the claimant's line manager, reporting in to Ms Robson.
    71.3 Mr Pinter, who is the PCS Trade Union Chairman and TU Representative of the Durham and Tees Valley District and a Health and Safety Support.

71.4 Ms Spensley, who, when the events with which this case is concerned began, was a Higher Executive Officer, Work Coach Team Leader who reported to Ms Robson. Ms Spensley was later promoted to a Senior Executive Officer position.
71.5 Ms Ryan, who was based at Middlesbrough East in March 2020, before being permanently promoted to Higher Executive Officer, Work Coach Team Leader in August 2020 and then moving to James Cook House Job Centre later in 2020.
71.6 Mr McDermott, who became a Higher Executive Officer, Work Coach Team Leader in 2022 and, in that capacity, managed the claimant from June 2022 until the claimant began a period of sick leave later in 2022.
71.7 Ms Hume, who, when the events with which this case is concerned began, was in a Grade 7 role with direct line management of 6 or 7 Senior Executive Officers. Between August 2022 and January 2023 Ms Hume worked in a, more senior, temporary Grade 6 role as Service Leader. Ms Hume returned to her Grade 7 role in January 2023.
71.8 Ms Fascia, who was a Higher Executive Officer, Work Coach Team Leader who became involved in managing the claimant during a period of sickness absence in late 2022, and then became the claimant's line manager for a short period when the claimant returned to work at the respondent's Dundas site in early 2023.
71.9 Ms Thompson, who was a Higher Executive Officer based at the Middlesborough James Cook House site, responsible for managing the Front of House team as a Job Centre Service Manager.
71.10 Ms McNab, who from December 2022 was a Service Leader (Grade 6) within the DWP's Durham and Tees Valley district.
71.11 Ms Hewitson, a Senior Executive Officer, who investigated certain grievances made by the claimant in 2023.
71.12 Mr Harwood, a Senior Executive Officer who, in August 2023, spoke to the claimant about a vacancy in the area he oversaw.
71.13 Mr Gray, an HR Business Partner, responsible for providing HR support to managers.
71.14 Ms Turner, whose role of Network HR Business Partner involves supporting DWP employees within the North East region in finding alternative roles at the DWP if they cannot remain in their current role on account of their health.
71.15 Mr Hatfield, who issued the claimant with a written warning under the respondent's disciplinary procedure in January 2024.

72. The respondent prepared a file of documents running to more than two and a half thousand pages. Ahead of this hearing the claimant submitted that the respondent had not included in the file of documents all of the documents she wished to rely on. A Dispute Resolution Appointment was converted to a preliminary hearing to consider this issue. At that hearing Employment Judge Martin gave the claimant permission to prepare a supplementary file of documents. EJ Martin stressed that it should only contain documents which the claimant was going to refer to in her witness statement or about which she intended to ask one of the respondent's witnesses, and also directed that it should not include documents that were already included in the bundle prepared by the respondent. The claimant prepared a file of documents containing over five and a half thousand pages, many of which were included in the file of documents prepared by the respondent. I made it clear at the hearing, as had EJ Martin in the preliminary hearing, that I would only consider those pages of the files that were specifically referred to in witness statements or during the hearing.

73. Very many elements of this case were dependent on evidence based on people's recollections of events that happened some considerable time ago. In assessing that evidence I bear in mind the guidance given in the case of *Gestmin SGPS v Credit Suisse (UK) Limited* [2013] EWHC 360. In that case, Mr Justice Leggatt (as he was then) observed that it is well established, through a century of psychological research, that human memories are fallible.

They are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. One of the reasons for that is that people's perceptions and interpretations of events differ. External information can affect how and which memories are created as can an individual's thoughts and beliefs, experiences and world view. What is remembered may also be affected by what appeared most significant to an individual at the time. Unconscious biases might also make us more inclined to embed as a memory something that reflects our pre-existing ideas or what we wanted or expected to see or hear or that portrays us or others we respect in a more favourable light. Also, as Mr Justice Leggatt described in *Gestmin*, memories are fluid and changeable: they are constantly re-written. So memories can change over the passage of time as they are retrieved. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially those who are parties to a claim or those with ties of loyalty to parties. All of this means people can sometimes genuinely recall as a memory something which did not occur, or did not happen in the way it is recalled. In short, even if a witness has confidence in his or her recollection and appears honest, evidence based on that recollection might not provide a reliable guide to the truth.

74. In light of those matters, inferences drawn from the documentary evidence (particularly contemporaneous documents) and known or probable facts can frequently be a more reliable guide to what happened than witnesses' recollections. However, I also bear in mind that even these matters suffer from fallibilities. Even if a document is written immediately after an event, it may record a perception or interpretation of the event that is itself not an accurate reflection of what happened. Furthermore, the purpose for which a document is created may influence, consciously or unconsciously, decisions by the author as to its contents and how it is written.

75. The claimant started work for the DWP in 1999. In March 2020 she was a Work Coach based at the the DWP's James Cook House Job Centre in Middlesborough, reporting to Mr Emmerson. Mr Emmerson was a Higher Executive Officer Work Coach Team Leader. He had managed the claimant for some time and considered the claimant to be a good Work Coach.

76. At this time, Mr Emmerson reported to Ms Robson, who was a Senior Executive Officer ('SEO'), employed in the role of a Jobcentre Operational Leader. Ms Robson was also, at this time, based at the DWP's James Cook House Job Centre. SEO's within the DWP are middle management positions involving team and project management and strategy development. Ms Robson was responsible for the delivery of Jobcentre Services across seven of the sites in the respondent's Durham and Tees Valley region. She had 13 Higher Executive Officers ('HEOs') reporting directly to her and had oversight of approximately 140 employees across the 7 sites. James Cook House was the biggest Job Centre within the district. One of the other HEO Work Coach Team Leaders who reported to Ms Robson at this time was Ms Spensley. She was based at Middlesbrough East, a smaller Job Centre in the same district.

**Alleged protected disclosures**

77. During the Covid-19 pandemic, many of the respondent's employees worked from home. The claimant was one of the employees who continued to work from the office.

78. The Covid-19 pandemic led to a significant increase in the number of people seeking Universal Credit. By March 2020 the respondent had a large backlog of claims to be processed. It sought volunteers to work overtime on Saturdays. The overtime shifts were covered by staff volunteering from different sites. A decision was made that the overtime shifts would be carried out at from James Cook House.

79. The claimant was worried that having more people working at James Cook House would increase the risk of the Covid-19 virus being introduced and transmitted amongst those employees who were still attending the office.

80. The claimant alleges in these proceedings that she made a protected disclosure on or around 23 March 2020 when she said to Mr Emmerson words to the effect that she did not think people from other offices should come to their office as that increased the risk of COVID as there would be more germs in the air so there was more chance of people catching it and there would be more people using the tea point and touching door handles. Mr Emmerson has no recollection of any such conversation but accepts it is possible that the claimant did say something along these lines. I find it more likely than not that she did given that she was concerned enough to send an email to Mr Pinter a few days later (which I refer to below).

81. I accept Mr Emmerson's evidence that his own opinion at the time was that having colleagues from other job centres attend the James Cook House office was not a serious problem and he did not discuss the matter the claimant had raised with anyone or tell anyone that the claimant had raised concerns.

82. On 26 March 2020, the Senior Operations Manager for Durham Tees Valley District, Ms McKee, circulated an email to employees saying that they may see people from other Government Departments or other parts of DWP turning up at their Jobcentres. She asked employees to try to accommodate them. She added 'I am fully aware that we need to make sure we keep social distancing. If anyone has any concerns or problems, or anything to share that they have done to support this please let me know.'

83. Mr Emmerson forwarded that email to members of his team. On 30 March 2023 the Claimant forwarded it to Mr Pinter, copying in Ms Robson, with an email which the claimant says contained her second protected disclosure. In that email the claimant said:

> *'I am concerned about extra people coming into our office (some have been in from East and from Eston).*
> *My colleagues and I are working in our office because we cannot work from home as advised as the preferred position by the Prime Minister.*
> *We have no disinfectant or anything, nothing has been provided to clean our desks, computers, door handles and now we are getting extra staff passing more germs around.*
> *If many come there is not going to be enough desks to keep 2 metres apart.*
> *I don't feel it should be me raising this but I am worried about my immediate family members whom I have to go home to every day possibly taking germs to them.*
> *I understand there is an unplanned crisis occurring across the country and the world.*
> *Which as a staff member of the DWP I am in a position to help with the economic side.*
> *I am happy to come to work and work as hard as I can for as long as it takes.*
> *However I do not want to be put at risk by strangers coming into the office.*
> *And I understand as my employer there is a duty of care to me.'*

84. Mr Pinter did not reply to the claimant's email, although the claimant did receive an out of office reply. I accept his evidence and find that he did not see the email the claimant sent at the time and saw it for the first time during the course of these proceedings. In making that finding I considered the following to be of particular weight:

    84.1 Mr Pinter was working from home on adjusted duties at the time, having been sent home a few days earlier due to treatment he was receiving for a health condition.I

accept his evidence that, in the first couple of weeks of him working from home, he had some IT problems and this may have resulted in him not receiving the email, or not seeing it when it arrived.

84.2 Mr Pinter did contact the claimant in response to other emails she sent to him on 4, 16 and 27 April 2020. I accept the evidence he gave on cross examination that he referred issues raised by the claimant in the 4 April email to another union rep to look into; having spoken to the claimant about her email of 16 April, he referred the matter on to another union rep, Mr Finch; and he contacted a Mr Hare (who was doing risk assessments from a Union perspective) about the email of 27 April. The fact that Mr Pinter did not, similarly, contact the claimant in response to her earlier email of 30 March lends support to his evidence that he did not see that email.

85. Ms Robson did not reply to the 30 March email from the claimant either.

86. I find it more likely than not that Ms Robson and Mr Pinter did not discuss the claimant's email with each other and nor did either of them tell anyone else about the email or its contents. In reaching that conclusion I have considered all the evidence in the round. I considered the following to be of particular significance:

86.1 I was not taken to any direct evidence of any such discussions.

86.2 I have found that Mr Pinter was unaware of the 30 March email. I accept his evidence that Ms Robson did not contact him about it.

86.3 I accept that at this time Ms Robson was extremely busy managing issues that arose in consequence of the Covid-19 pandemic. The situation was unprecedented and fluid, with frequent changes and updates that Ms Robson had to keep colleagues informed of; she was compiling daily reports to track the volume of new claims that were being processed, which took up a lot of time; staff from other Government departments were being redeployed to assist with the influx of claims; and she was trying to manage workloads, resources and wellbeing across all of the other sites in her remit.

86.4 Ms Robson's own opinion at the time, like that of Mr Emmerson, was that appropriate steps had been taken to mitigate the risk of Covid-19 being introduced to and spread amongst the workforce and having colleagues from other job centres attend the James Cook House office did not materially increase that risk.

**4 April 2020**

87. On Saturday 4 April 2020 the claimant worked overtime. Also working at James Cook House that day were some colleagues who usually worked at Middlesbrough East: Ms Spensley, Ms Ryan, a Ms Cornfield and a Ms Gordon. The claimant alleges that on this day Ms Spensley:

87.1 sought to provoke and intimidate the claimant by standing over the claimant, invading her personal space and saying forcefully 'I can tell by your face there is something wrong' and 'senior managers told us to come in'; and

87.2 verbally abused the claimant in front of staff, saying 'you're hypersensitive (to Covid)', and 'you shouldn't have come in if you are scared'.

88. It is not in dispute that, shortly after Ms Spensley arrived, she approached the claimant at her desk and she and the claimant had a conversation in which the claimant expressed her opinion that staff from other offices should not be coming in to James Cook House due to Covid-19, said Ms Cornfield and Ms Gordon were not socially distanced, pointing at them as she did so, and criticised at least one of them for sitting at other colleague's desk and, in response to what the claimant said, Ms Spensley said 'senior managers told us to come in' or something along those lines.

89. In other respects, the accounts of this encounter given by Ms Spensley and the claimant in their witness evidence (and by Ms Ryan, who says she also witnessed it) differ. That they differ does not mean that one or more of them is being dishonest ie not telling the truth as they see it. I have referred above to the fallibility of memory. It is almost inevitable that, this distance from the events, witnesses' recollections of events will be imperfect, however well they feel they remember those events. Furthermore, it is likely that, even at the time of the event itself, Ms Spensley and the claimant perceived their encounter differently and that this affected the memories they embedded and how they recalled it subsequently.

90. It is the claimant who must prove that Ms Spensley behaved in the manner she alleges. The claimant has not persuaded me that it is more likely than not that Ms Spensley did so, particularly in light of the following evidence:

    90.1 Although the claimant emailed Mr Pinter an account of this encounter on 16 April 2020, the claimant did not say in that email that Ms Spensley had stood over her or invaded her personal space or said forcefully 'I can tell by your face there is something wrong' or 'you're hypersensitive' or 'you shouldn't have come in if you are scared'.

    90.2 Ms Spensley's evidence to the tribunal is largely supported by records of interviews undertaken by the respondent in 2021 when investigating a grievance raised by the claimant.

91. Furthermore, I find that the exchange between the claimant and Ms Spensley had nothing to do with the two protected disclosures relied on by the claimant as Ms Spensley was unaware of them.

92. Two days after this incident, Ms Spensley emailed Ms Robson setting out an account of the encounter on 4 April 2020. She said:

> *'On Saturday due to the number of staff located on ground floor and taking the social distance rules into account I asked 3 of my staff (Marie, Teresa and Steph) to sit on first floor as there was only 3 already located there (Aileen, Jason and Graham). However as soon as my staff and myself entered the floor Aileen started to become physically distressed and created an issue by telling us we were not welcome and that we shouldn't be there. I explained it had been agreed by Senior Managers and that we were there to assist with Middlesbrough customers.*
> *Aileen then started to tell us all we were all out of order coming into a different office putting other people at risk and that it was disgusting we were prepared to sit at colleagues desks without them knowing. I explained I would ensure all staff thoroughly cleaned the desk, the keyboard, mouse and chair arms with antibacterial wipes however she still insisted this was not acceptable, I stated I would include a note to put on the desks informing our colleagues we had used the desks but cleaned them again Aileen said this was not acceptable.*

*I explained we were all key workers and we all fully understood the risks however we were also responsible adults and would be expected to treat each other with respect. She then pointed at Marie and Teresa who were stood stunned by her behaviour and didn't know what to do and pointed to them saying you two are not 2 metres apart standing there, this made them feel extremely uncomfortable and left them not wanting to sit on the same floor as her. Aileen then said if she knew other people were coming into the building from another office she would not have offered to work. I did say to her it was her choice to stay however at this point Cath I wasn't prepared to stand and listen her anymore as I found her behaviour completely unacceptable.*

*We all relocated to ground floor but lost time by doing this and I have never felt so humiliated at work, were all in this unusual situation together and I would fully expect colleagues to support each other not to ostracise anyone at all, Aileen made it very obvious she did not want anyone on her floor. Jason came down to apologise on her behalf (he did made us feel very welcome) however I explained to him he had nothing to apologise for and thanked him for not treating us the same way.'*

93. The claimant alleges that this was a 'dishonest and malicious complaint' by Ms Spensley, although she did not identify clearly what she considers to be 'dishonest' or what evidence she is alleging was 'fabricated' by Ms Spensley. As noted above, the fact that the claimant's recollection differs from that of Ms Spensley does not mean Ms Spensley's account was dishonest in the sense of not accurately reflecting Ms Spensley's own subjective perception of the event as it was at the time. The claimant has not persuaded me that there was anything 'dishonest' or 'malicious' about the complaint. I find that it reflected Ms Spensley's subjective perception and recollection of what had occurred and had nothing to do with the two protected disclosures relied on by the claimant, which Ms Spensley was unaware of.

94. Ms Robson referred the email on to Mr Emmerson to deal with. The claimant was on leave by this time. Mr Emmerson spoke to Ms Spensley that day. That week Mr Emmerson also emailed Ms Gordon apologising for the claimant's behaviour and assuring her that the matter was 'being pursued at our end.' He also contacted Ms Cornfield, saying something along the same lines. Ms Gordon and Ms Cornfield responded to him, both saying that from their perspective it was all water under the bridge.

95. On 15 April 2020, following the claimant's return to work from a period of leave, Mr Emmerson met with her and told her about the complaint Ms Spensley had made. He read out what Ms Spensley had said in her email. The claimant was unhappy that Ms Spensley had criticised her behaviour and did not agree with the account of events Ms Spensley had given. She told Mr Emmerson as much. Having made the claimant aware of Ms Spensley's complaint, by the end of this meeting Mr Emmerson considered the matter to be closed.

96. The next day the claimant emailed Mr Pinter about Ms Spensley's complaint and the meeting. In that email the claimant said, amongst other things, 'I am not sure what to do about this and seek union advice. I feel I want to make an official complaint about [Ms Spensley] but am not sure if this is the best course of action.' The claimant also alleged that Ms Spensley had condoned a failure by her staff to socially distance, had failed to maintain social distancing herself and had failed to make sure surfaces were properly disinfected. The claimant had heard that Ms Spensley was now experiencing Covid-19 symptoms. She said she was concerned 'in general that managers are not keeping us safe' and referred in this regard to Ms Spensley's 'actions' and Ms Robson's 'inaction'.

97. The claimant alleges that the respondent 'ignored the claimant's request that Caroline Spensley's complaint be investigated' (Allegation 5). In her witness evidence the claimant said she asked Mr Emmerson to investigate the complaint during the meeting on 15 April. I am not persuaded that the claimant made such a request given that she made no reference to having done so in the email she sent to Mr Pinter about that meeting.

98. The claimant also alleges that the respondent later refused to share Ms Spensley's complaint with the claimant until the claimant threatened to complain to the information commissioner (allegation 4). Having received advice from the Union, the claimant emailed Mr Emmerson on 19 May 2020 asking for a copy of the complaint he had read out. I find that neither Mr Emmerson nor anyone else 'refused' to share that complaint, as alleged. I find that what happened was that Mr Emmerson looked for the complaint, including in his email folders, but was unable to find it. I accept his evidence that he was unable to give the claimant a copy for that reason. Subsequently, the claimant asked Ms Robson for a copy in early November 2020. Ms Robson did not refuse to provide a copy; rather she recalled sending it to the data team on 13 November 2020 and assumed the data team would pass it on to the claimant. Then when the claimant told Ms Robson on 15 December 2020 that she still had not received it Ms Robson sent the claimant a copy directly the next day.

99. As the claimant said in her email to Mr Pinter of 15 April, she believed the respondent's managers were not doing enough to keep staff safe from Covid-19. The claimant's belief was not based solely on her perception of matters that had arisen since the start of Covid-19. Even before then the claimant was of the opinion that the respondent's managers did not do enough to safeguard the health and safety of employees. That belief was influenced in large part by the fact that, the previous year, one of the claimant's colleagues had taken her own life, which the claimant believed was a consequence of working conditions. The claimant's belief that managers were careless of employees' health and safety grew into an intense and persistent distrust of the respondent's managers. Over the years that followed, that distrust affected how the claimant perceived the actions of managers and others, and her own behaviour towards them. I find it also fuelled a belief by the claimant that she was the subject of a targeted, sustained and deliberate campaign of bullying and unfair treatment at the hands of DWP managers. Two particularly extreme examples of how the claimant's lack of trust in the respondent's managers affected her perception of events are as follows.

    99.1 In November 2020, the claimant had to go to a different floor of the building to make a cup of tea because a boiler had been unplugged; when the claimant saw that someone was working on a lift, she wondered if there had been a plan to trap her in the lift.

    99.2 Also in November 2020, when someone was whistling as they held a door open for her, the claimant believed this to be a reference to her being a whistleblower and evidence that managers had involved others in a campaign to bully her out of the organisation.

100. The claimant's case is that there was a sustained and deliberate campaign of bullying against her, that was orchestrated by Ms Robson, went on for more than three and a half years, and involved a large number of managers, including managers who were based in different regions. The claimant has suggested in these proceedings that this campaign of bullying also involved a number of trade union representatives and other staff. The claimant's case is that the reason Ms Robson orchestrated this campaign against her was that the claimant had raised concerns about Covid-19 safety risks in her email of 30 March 2020 and in her conversation with Mr Emmerson on or around 23 March 2020 in which she raised concerns about people from other offices working at James Cook House.

101. Having considered all of the relevant evidence in the round, I find there was no such campaign of bullying against the claimant. My reasons for reaching this conclusion include the following particularly salient matters.

    101.1 I accept Mr Allen's submission that it is inherently unlikely that such a large number of people, including union reps and managers from outside the region, would have colluded in such a 'campaign'.

    101.2 In any event, I find that managers would not have had the time to engage in or coordinate such an elaborate plot against the claimant, involving so many people over such a long time.

    101.3 Whilst I acknowledge that the claimant genuinely believed such a campaign was afoot, that belief is not evidence.

    101.4 I have found that neither Mr Emmerson nor Ms Robson discussed the disclosures the claimant had made.

    101.5 I find that, in March 2020, many of the respondent's employees were raising concerns about Covid. There is no evidence of any ill treatment of others who raised concerns.

**The months leading up to the claimant's resignation**

102. I turn now to the period leading up to the claimant's resignation.

103. At the start of this period Ms Hume worked in a temporary Grade 6 role as a service leader within the Durham Tees Valley district job centres. This was a more senior role than her Grade 7. Ms Hume had approximately 900 colleagues under her line management chain across 21 job centres and a service centre. In or around August 2022 Ms Robson was promoted to a Grade 7 position within the same district. In 2022 Ms Spensley was promoted from her HEO role to an SEO position. As SEO Ms Spensley line managed Mr McDermott and Suzanne Fascia.

***Claimant's absence and line management by Ms Fascia***

104. The claimant began a period of sick leave and on 1 September 2022. Mr McDermott had started line managing the claimant in the Summer of 2022. However, the claimant was unhappy about certain matters relating to his management of her and so Ms Robson asked Ms Fascia to line manage the claimant. Ms Fascia agreed and had a handover discussion with Mr McDermott. At this time Ms Fascia worked at a site within the Dundas shopping centre in Middlesbrough, which was a few minutes' walk from James Cook House. It was known as the Dundas site or just Dundas.

105. Ms Fascia had a keeping in touch discussion with the claimant. The claimant had expressed discomfort with the managers at James Cook House. Therefore Ms Fascia asked the claimant whether she would consider a move to Dundas. The claimant said she did not want to work under Ms Robson's hierarchy at all. Given that Ms Fascia was the HEO on site at Dundas she had authority to agree to the claimant working from Dundas in the team she managed. She did not have authority to agree a move elsewhere. Ms Fascia asked the claimant what alternatives she thought there might be if the claimant did not want to work in any of the job centres in the area, and whether she had spoken with her union rep. The claimant said that she did not want to talk to Mr Finch anymore. Ms Fascia asked the claimant if she would give

permission for a referral to occupational health. The claimant said she would not as it would not be confidential and Ms Robson would see it. Ms Fascia asked the claimant to think about it and explained how an occupational health report would help them support her. Ms Fascia again offered the claimant the option of working from Dundas. She explained, however, that there were no windows at Dundas. She knew from her handover with Mr McDermott that that was a point that had not been resolved in the stress management plan. Ms Ergul asked if the cleaner was using pink spray. Ms Fascia said she would find out. Ms Ergul said the spray got on her chest and that is why she needed a window open. Subsequently Ms Fascia got in touch with the facilities manager who told her the spray was COSHH compliant.

106. The claimant and Ms Fascia had another keeping in touch discussion on 22 September 2022. The claimant said during that discussion that when she is anxious or stressed her 'head closes' and she cannot think.

107. On 26 September the claimant had an appointment with occupational health. The occupational health advisor prepared a report after that consultation. A few days later Ms Fascia and the claimant had a discussion. The claimant was tearful for much of the conversation. She was unhappy with the fact that the OH advisor had referred to 'perceived' bullying/harassment rather than simply 'bullying and harassment.' The claimant said she could not cope and could not think of anything else other than what had happened to her. She was so upset that at one point Ms Fascia felt she had to ask the claimant if she felt suicidal. The claimant said she did not. Ms Fascia reminded the claimant of the PAM service that could be used for support.

108. At this meeting they discussed the OH report. Ms Fascia suggested doing a stress risk assessment but the claimant expressed doubt about whether it would help. The claimant told Ms Fascia that she wanted a totally independent workplace resolution officer to go through the grievance she had previously raised. She also said she wanted mediation with Mr Emmerson 'to get answers from him.'

109. On 7 November 2022 Ms Fascia had another discussion with the claimant in which the claimant repeated that she needed to be away from Ms Robson. She also repeated her claim that she had been bullied and that she had not had any help and that the mediation process had been deliberately delayed and pushed back. She asked for someone 'safe' to talk to. Ms Fascia suggested PAM Assist/EAP, the union and Ms Hume. The claimant said she did not feel comfortable with Ms Hume as Ms Hume had had previous contact with Ms Robson's line manager. The claimant said she had spoken with Mr Pinter about getting a union rep and they would call her the following day.

110. Ms Fascia and the claimant spoke again on 16 November 2022. In that conversation the claimant told Ms Fascia that she had spoken to her union rep but did not feel happy to continue with their support. The claimant said she had previously asked for a move away from Ms Robson, Ms Spensley, Ms Ryan, Ms Thompson, Mr McDermott and two individuals referred to as Deb and Amanda. However the claimant could not suggest anywhere she could move to. The claimant said that she could not work in any job centre in the Durham Tees Valley district because of Ms Robson and that she could not work in the service centre as Ms Robson had previously worked there.

111. On 21 November 2022 Ms Fascia spoke to someone from occupational health who recommended that Ms Fascia speak to somebody in the HR complex case team. The occupational health advisor said there did not appear to be a clinical solution to the situation.

112. During this discussion the claimant asked about her sick pay entitlement and Ms Fascia explained the claimant was entitled to six months' full pay and then six months on half pay. The claimant said that if she would not be moved to another office she might as well come back to work when her sick note ended. She then said words to the effect that if she did come back and something serious happened then it was 'on DWP'.

113. Ms Fascia asked the claimant what alternative roles she might be willing to consider. The claimant referred to the service centre directorate. Ms Fascia said there were two locally: Middlesbrough and Stockton. The claimant said she was not willing to consider the Middlesbrough service centre as Ms Robson had previously worked there and was based in James Cook House. Ms Fascia pointed out that the Stockton service centre was under Ms Robson's domain as she oversaw it in her management role at present. However, she said that Ms Robson was due to move back to her permanent position in a few weeks at which point she would not oversee that service centre but there was a possibility that Ms Robson may act up again in the future to cover leave for example. The claimant then said 'no' to Stockton service centre. Ms Fascia asked the claimant whether she would give Ms Fascia permission to speak with the union to discuss what alternative roles may be appropriate and the claimant agreed.

114. With the claimant's permission Ms Fascia spoke to Mr Pinter. He suggested looking into the possibility of an 'equality move.'

115. The respondent has a policy covering what it describes as 'equality moves' or 'Equality Act moves'. Relevant provisions include the following:

    115.1 The policy says that the process 'applies only to disabled employees who are likely to be covered by the Equality Act 2010 and who are no longer able to continue working in their current role and/or current location even with reasonable adjustments in place.'

    115.2 The policy goes on to say 'a move can only be considered if the employee is unable to remain in their current role due to their disability, or an alternative role within the current line of business, after reasonable adjustments have been considered or implemented and evaluated.' The policy sets out as a 'key principle' that the first option is always to retain an employee in their current role and that managers must ensure that all reasonable adjustments to an employee's current role, equipment and/or workplace are considered before seeking to deploy them outside of their current team.

    115.3 The policy explains how the respondent will give first consideration for any vacancy to employees who have been identified as requiring a move as a reasonable adjustment under the Equality Act.

    115.4 The policy says that the employee should themselves register on Civil Service Jobs (a website) if they have not already done so and set up a job alert to identify potential suitable vacancies in the DWP and other government departments.

    115.5 The policy also makes it clear that the line manager and employee have joint responsibility for ensuring the progression of moves as reasonable adjustment cases and that 'the employee should fully co-operate with their manager to help identify their workplace capability (to find out what they can do as opposed to what they cannot) and appropriate workplace and reasonable adjustments.'

116. During a telephone conversation between the claimant and Ms Fascia on 28 November 2022, Ms Fascia raised with the claimant the possibility of an equality move. The claimant agreed to Ms Fascia making another occupational health referral so that Ms Fascia could specifically ask if the claimant was covered or likely to be covered by the Equality Act. Accordingly Ms Fascia arranged an occupational health appointment.

117. The claimant also asked for mediation with Ms Robson and Ms Fascia told the claimant she would ask Ms Robson if she was willing to engage in mediation. The claimant expressed the opinion that Ms Spensley would try to influence the mediation to cover up things that had happened. Ms Fascia told Ms Robson that the claimant had asked for mediation with her. Ms Robson had responded that she would need to know what the claimant would like to achieve from any mediation and why she believes it is necessary. Ultimately Ms Robson declined to take part in mediation with the claimant. The claimant also asked for mediation with Ms Cornfield. Ms Fascia made enquiries with Ms Cornfield who declined to take part, saying she had not raised a complaint about the claimant so did not feel it would be any help. Mr Emmerson agreed to a request for mediation with the claimant and that mediation took place on 1 December.

118. An occupational health appointment had been arranged to take place on 7 December 2022. However, the occupational health advisor told the claimant on the day that the discussion would be recorded for training purposes. The claimant declined to go ahead on that basis because she was worried other managers would be able to listen to the recording and get information about her from it.

119. On 8 December 2022 Ms Fascia spoke with the claimant. The claimant explained why she had not gone ahead with the OH referral. Ms Fascia asked if she was now willing to consider a move to a job centre in the district. The claimant said that she was not. Ms Fascia explained that in order to consider a move to somewhere else in the DWP they needed advice from occupational health on whether the claimant was likely to be covered by the Equality Act so that she could be referred to the equality team. Ms Fascia told the claimant that there were three ways forward. One option was for the claimant to agree to an OHS referral with a view to a move somewhere else in the DWP. Alternatively, the claimant could return to work in her existing role. A third possibility was that the case could be referred to a 'decision maker' to decide if the DWP could 'continue to support the claimant's absence' if she is unlikely to return to work in a reasonable manner – in other words whether the claimant's employment should be terminated. The claimant said that nothing would get better; she would come back and get abused or sacked, she was not disabled but being harassed, someone covered it all up; and her pay was running out. The claimant asked if the occupational health referral could be re-arranged and reassured Ms Fascia that she would attend the appointment if it was. Ms Fascia made another occupational health referral, with the appointment taking place on 22 December 2022.

120. On 22 December the claimant had a telephone consultation with Ms Casson of occupational health. Ms Casson then prepared a report. In her report Ms Casson said amongst other things:

    120.1 The claimant had told her she still feels very anxious and worried for her future; that she had received counselling support through PAM Assist and that she was to start NHS counselling in the new year.

    120.2 Ms Casson said the mental health assessments completed by the claimant indicated 'the presence of a severe level of anxiety and a moderate level of depression'.

120.3 Ms Casson expressed the opinion that the claimant's clinical care was appropriate. She suggested that the claimant's mental health had slightly improved since she had last been assessed but that the claimant was 'unlikely to be able to return to work in a safe and sustainable manner while the perceived work-related concern remains unresolved.' She said ' I would therefore suggest that it is a managerial model which will resolve the situation ultimately. It is not necessarily within the remit of OH to comment on the validity of her account of events, however with resolution and support, Aileen's symptoms would likely reduce and subside moving forward, following which, the possibility of a safe and sustainable return to work can be assessed.'

120.4 In a section headed 'Management Advice' Ms Casson advised that the respondent complete a workplace stress risk assessment with the claimant. She also said 'it would also be advisable for management to complete a wellness recovery action plan (WRAP) with Aileen. By developing this WRAP, Aileen can actively support her own mental health by reflecting on the causes of stress/poor mental health, and by taking ownership of practical steps to address these triggers.'

120.5 Ms Casson expressed the opinion that it was 'likely Aileen would be considered to have a disability for the purposes of UK disability discrimination legislation as the condition has lasted 12 months/deduced effects are feasible/has a more than trivial impact on day to day activities.'

120.6 One of the questions asked of Ms Casson was 'is there anything we can put in place to enable Aileen to return to work?'. In answer to this question Ms Casson said 'to support this return to work, you may wish to consider a move in departments and suggest a discussion with Aileen around this would prove supportive.'

120.7 Ms Casson was also asked 'following the mediation what is now preventing Aileen from returning to work?' In response Ms Casson said 'I am of the opinion a change in departments will facilitate a return to work. However the occupational health opinion and actions suggested in this report are advisory in nature and it is entirely for the business to establish what is operationally feasible.'

121. On 29 December 2022 Ms Fascia emailed the claimant a letter telling her that her pay was to be reduced to half pay if she remained on sick leave. On that day there was also a discussion between the claimant and Ms Fascia about the occupational health report. During this conversation:

121.1 Ms Fascia asked the claimant if she was willing to do another stress management plan and a WRAP. The claimant replied that she had already done two with Mr McDermott.

121.2 The claimant told Ms Fascia she would be getting another sick note and that she could not come back to work on Monday as 'the abuse won't stop.' The claimant referred to the fact that she had asked for a move away from James Cook House Job Centre and Ms Robson and alleged she had been abused by all the managers at James Cook House.

121.3 Ms Fascia asked the claimant what she thought about being managed by herself. The claimant replied that Ms Fascia was at Dundas, that Dundas Job Centre does not have any windows and that she must have a window at work.

121.4 The claimant asked why she could not just be moved. Ms Fascia reminded the claimant that she had already broached the subject of moving to another job centre/service centre in the district but that the claimant did not want to consider it due to Ms Robson's involvement with them.

121.5 When Ms Fascia asked the claimant if there was a realistic possibility of her returning to work in the near future the claimant said 'it's not the work that I cannot do. It's the abuse I cannot take. If I have to go back then I have to but whatever happens, happens.'

121.6 Ms Fascia asked the claimant if they could look at doing a back to work plan and whether the claimant could consider a date in the future when she could return to work. The claimant said she could not live on half pay but that if she returned to work 'something will happen and I won't be able to deal with it.'

121.7 When Ms Fascia tried to re-focus the claimant on the back to work plan the claimant said she would return to work the following Tuesday. Ms Fascia asked the claimant what team she was happy to go back to. The claimant said she would go back to Mr McDermott's team but that she wanted a stress management plan putting in place but did not want Mr McDermott to do it. She asked Ms Fascia if she could do it, which Ms Fascia agreed to.

121.8 The claimant then said the staff that she did not want to work with again were Mr Emmerson, Ms Robson, Ms Spensley, Ms Ryan, Ms Corrigan, Mr Walker, Mr McDermott, Ms Thompson, Ms Gordon and Ms Cornfield. She said she felt they had all been involved in either abusing her or covering up abuse.

122. The position, then, at the end of that meeting was the claimant was to return to work on Wednesday 4 January 2023 on Mr McDermott's team following a stress management plan which was to be facilitated by Ms Fascia on Tuesday 3 January 2023.

123. After the meeting Ms Fascia emailed the claimant to say she would be asking a Ms Stephenson to take notes for the stress management plan when they discussed it on the Tuesday because the claimant had made complaints about previous attempts to put in place a stress management plan. The claimant replied saying she did not want Ms Stephenson to take notes.

124. On 29 December the claimant subsequently emailed Ms Fascia saying that she did not want Mr McDermott to be her team leader and that it was not right for either of them and he had not done an SMP properly previously. The claimant asked if she could move to Ms Fascia's team.

125. The following day, 30 December, Ms Fascia spoke to the claimant and said that it was not reasonable or logistically possible for her to manage the claimant as she was based in another job centre (Dundas) and that the claimant needed to sit within her own team so that she could get support from colleagues and attend her own team meetings. Ms Fascia explained that the claimant would be returning to Mr McDermott's team and that he would take the notes for the stress management plan as he would need to know what was agreed. The claimant responded that in that case she could not return to work.

126. During this conversation the claimant accused Ms Fascia of lying to her about who can gain access to occupational health reports. Ms Fascia ended the call after the claimant repeated her claim that she was a liar and shouted at Ms Fascia. Later that day the claimant emailed Ms Fascia and apologised saying she had just got too stressed. She asked Ms Fascia to put

in a request for her to be moved under the equality grounds to somewhere outside Ms Robson's management structure and asked for the stress management plan still to be put in place.

127. Before her meeting with the claimant on 3 January 2023 Ms Fascia spoke to HR about the Equality Act move. She also asked Ms Robson whether there were any work coach roles in other areas in the district in case the claimant changed her mind and chose to consider them. Ms Fascia also emailed the claimant some of the guidance on the Equality Act move process. She asked the claimant to take some time to complete an individual stress self-assessment template before the meeting the following week to discuss the stress management plan.

128. In January 2023 Ms Hume returned to her Grade 7 role. From then she and Ms Robson had split responsibility for the 21 sites within the district. Ms Hume took over the Middlesbrough cluster, which included James Cook House. In this role Ms Hume spent more time at the Middlesbrough sites within the district, including James Cook House so she had more oversight over what was happening with the claimant.

129. On 3 January 2023 the claimant and Ms Fascia spoke by phone. This was the meeting to discuss the stress management plan. Mr McDermott was also present as note taker. At the beginning of the meeting the claimant said her brother was present to take notes. Ms Fascia was not comfortable proceeding with the meeting with the claimant's brother accompanying her. It was not in line with the respondent's usual policy. In addition Ms Fascia suspected that the claimant was covertly recording meetings, which was also against DWP policy.

130. Ms Fascia paused the discussion to take advice from HR. Ms Fascia then called the claimant back and said it was not appropriate for her to be accompanied by her brother. Ms Fascia said she would re-arrange the meeting to take place in the office. The claimant then raised her voice, which she subsequently apologised for. During this conversation Ms Fascia explained again to the claimant that she could not explore moving her outside the district without going through the Equality Act move process. A meeting to discuss the stress management plan was re-arranged to take place the following Monday.

131. On 9 January 2023 Ms Fascia had a case conference with an HR business partner and he agreed that an equality move would be appropriate for the claimant but said that they needed occupational health to confirm the claimant's suitability for a move.

132. A case conference was arranged to take place on 20 January between Ms Fascia and an occupational health advisor. Ms Fascia sent an email to the claimant to explain that. She also explained that the HR business partner had said that if the claimant was accepted for an equality move she would be referred to the relevant team who dealt with equality moves, put on a list of movers and that vacancies would be matched against suitable candidates on a weekly basis. Ms Fascia also explained that the HR adviser had said he could not give a timescale for any move and it could be anything from six days to six months or a year. At that point Ms Fascia repeated that in the meantime when the claimant returned to work it would be to James Cook House.

133. On 20 January 2023 there was a meeting between the claimant and Ms Fascia with a union rep, Mr Byers, in attendance. They discussed the claimant's return to work. The claimant agreed to go back to work from Dundas as a work coach within Ms Fascia's team. Ms Fascia agreed the claimant could work half days to ease her back into work.

***Request to work from home***

134. The claimant asked about working from home. Ms Fascia took advice from HR and Ms Robson about this. They agreed that the claimant should not be allowed to work from home for a number of reasons.

    134.1 Firstly the work coach role is a customer facing position and they have multiple face to face meetings set up on an almost daily basis. Gaps between meetings are used to write up case notes and progress any new casework.

    134.2 There was also mandatory training which the claimant had to complete due to being absent for a significant period which was easier to undertake from the office so that the claimant had access to support if she required it.

    134.3 Another concern was being able to account for the claimant's whereabouts. Before the claimant's sick leave the claimant had been poor at keeping logged into MS Teams so that managers could easily contact her or know whether she was available during working hours and she did not show up for some Teams meetings. There were concerns that there would have been a lack of oversight and accountability as to whether the claimant was working or not.

    134.4 Ms Fascia also felt it was important for the claimant to reintegrate with her colleagues on site to help get her back into a positive mindset towards work and not to be isolated at home.

135. Ms Fascia told the claimant that they could reassess the situation when she had settled back in at work.

136. On 20 January Mr Byers emailed Ms Fascia stating again that the claimant would prefer homeworking as a reasonable adjustment. Ms Fascia replied by email on 23 January saying the respondent could not offer working from home for the claimant, setting out a number of reasons.

137. I am satisfied that the decision not to allow the claimant to work from home nothing whatsoever to do with any concerns the claimant raised in connection with covid in March/April 2020.

***Return to work, from Dundas***

138. The claimant returned from sickness absence, reporting for work at Dundas in week commencing 23 January 2023.

***Working hours***

139. During 2022 Ms Thompson had sent the claimant a letter referring to her 'future working pattern'. It showed the claimant's start time as being 8am. This had been sent to the claimant before her agreed move to Dundas house when her normal place of work was still James Cook House. On her first day back, the claimant asked Ms Fascia if she could start work at 8.00am. She told Ms Fascia this was to do with her car parking arrangements. However, the Dundas site did not open that early; it opened at 8.30am. Ms Fascia told the claimant she could not start at Dundas at 8am for that reason. Ms Fascia herself started work at 7.30am but did so from James Cook House and then at 8.30 she would walk the short distance to Dundas to continue to work from there. The claimant was not willing to do that, however, because she wished to avoid working from James Cook House.

140. The next day Ms Fascia sent the claimant an email saying she should not arrive at work before 8.45am because if she did there would need to be a lone worker risk assessment carried out. Later that day, however, Ms Fascia told the claimant she would be able to start work from 8.30am when the site opened, rather than 8.45am because she would not be a lone worker.

141. I have considered the New Deal Agreement to which I was referred and do not accept that it gave the claimant the contractual right to start work at 8am at Dundas notwithstanding that this site did not open until 8.30am.

***Claimant's refusal to work***

142. When the claimant attended to work at Dundas, Ms Fascia tried to encourage her to undertake administrative tasks to begin with as well as doing some refresher training that the respondent required her to do because she had been absent for a significant period. However, the claimant refused to access the Universal Credit system or do any work at all. She said that accessing the system would trigger her because her previous line manager's names would be on the system. The claimant also told Ms Fascia she did not want to work with customers due to her mental health.

***Contacting claimant's father on 27 January 2023***

143. During this first week of attending Dundas the claimant was disturbed by the lighting there and by some noises. She described later how she felt as if her head was being hurt by the bright lights and by noises. The claimant had not experienced this before and found it distressing. She also described in her witness statement how she could not stop talking, which was unusual for her.

144. On Friday 27 January 2023 the claimant arrived at work and not long afterwards sat on the floor and started crying and shaking back and forth. When she spoke, Ms Fascia could not make sense of what she was saying. Ms Fascia was concerned about the claimant's well-being. She tried to sit next to the claimant on the floor to console her but the claimant accused her of bullying and harassing her. Ms Fascia was also concerned for the people around the claimant who witnessed the claimant's unusual behaviour.

145. Ms Fascia encouraged the claimant to call the PAM Assist helpline. The claimant did that. She described to the person she spoke to on the PAM Assist helpline how she felt. The advisor told the claimant that what she was experiencing was 'sensory overload'.

146. In the meantime, Ms Fascia called Ms Robson for advice because Ms Fascia did not think the claimant was fit for work but did not want to send the claimant home by herself given how distressed she was. Ms Fascia was also concerned that the claimant might harm herself. That concern arose in response to the claimant's unusual behaviour, set against the backdrop of previous interactions they had had whilst the claimant was absent from work and, in particular: the claimant's distress and saying she could not cope during a meeting in September 2022; on 25 November 2022 the claimant saying something serious might happen if she were to return to work; and the claimant making similar comments on 29 December 2022. Ms Fascia was concerned that the claimant might have been hinting that she could harm herself or somebody else if she returned to work. Furthermore, during conversations before she returned to work the claimant had implied she was not really well enough to return to work and was only returning because her pay would be reduced if she did not do so.

147. Ms Robson advised Ms Fascia to contact the claimant's next of kin. It was the claimant's father who was listed as the claimant's next of kin in the respondent's records. Ms Fascia contacted the claimant's father by telephone. She told him she was concerned about the claimant's behaviour as the claimant was very upset and sitting on the floor with her hood up shaking and Ms Fascia asked the claimant's father if he wanted to come in and collect the claimant.

148. Ms Fascia went back to speak to the claimant and explained that she had contacted her father. The claimant told Ms Fascia that the advisor from PAM Assist had said she was experiencing sensory overload.

149. The claimant's father did come into work whereupon the claimant got up off the floor and left work.

150. The claimant alleges that when Ms Fascia telephoned the claimant's father she provided 'inaccurate and misleading information about the claimant's health.' In response to case management orders directing the claimant to say what inaccurate and misleading information Ms Fascia provided, the claimant alleged that Ms Fascia had told her father the claimant was 'hearing voices and was not making sense.' The claimant says what she in fact said to Ms Fascia is that 'voices hurt her head' not that she was 'hearing voices'. My findings are as follows:

    150.1 I consider it more likely than not that Ms Fascia said to the claimant's father that the claimant was not making sense.

    150.2 I do not accept that was inaccurate. I have found as a fact that Ms Fascia could not make sense of what the claimant was saying. In other words, the claimant was not making sense to Ms Fascia. Ms Fascia accurately relayed to the claimant's father her perception of the claimant's behaviour.

    150.3 I accept that the claimant's father told the claimant that Ms Fascia had said she was hearing voices. However, Ms Fascia's father did not give evidence and I am not persuaded it is more likely than not that is what Ms Fascia said to the claimant's father as opposed to his own interpretation of what Ms Fascia was saying or meant, or his best effort at recalling what she said after the event when relaying it to Ms Ergul.

151. I find Ms Fascia contacted the claimant's father because of her genuine concern that the claimant was not fit to be at work at that point, needed to go home, was not well enough to get home on her own, and might be in danger of harming herself in some way. I am satisfied that Ms Fascia contacting the claimant's father had nothing whatsoever to do with any concerns the claimant raised in connection with covid in March/April 2020.

152. When Ms Fascia told the claimant she had called her father, the claimant asked why she had called him. Ms Fascia said the claimant was not well enough to work. The claimant replied that she had sensory overload and just needed help to be able to work and that she could not work under the management team and had been asking to move away from them. She said the lights in Dundas and people's voices hurt her head and that she did not need the Crisis Team.

153. After this event Ms Fascia spoke to Mr Brown, a caseworker from HR, who gave advice as to how Ms Fascia should deal with the situation with the claimant. Mr Brown prepared a written record containing their understanding of Ms Fascia's query and the advice he gave to her. A

copy of that record was emailed to Ms Fascia on 1 February. The email said at the top 'Important: the case reference number is confidential and should not be disclosed. The case reference number is only valid for you and should not be passed to other managers who may be progressing the case.' It then went on to set out the case reference number. A few days later on 6 February Ms Fascia forwarded the email to her line manager, Ms Spensley, saying it was 'for the file'. She did not redact the case reference number.

154. On 2 February Ms Fascia received advice from an occupational health advisor to the effect that supporting an Equality Act move would be appropriate.

***Contacting claimant's father on 2 February 2023***

155. On Friday 3 February 2023 the claimant was behaving in a similar manner to the way in which she had behaved on 27 January, sitting on the floor, with her head in her hands, shaking and crying. Ms Fascia was again extremely concerned by the claimant's behaviour. Ms Fascia told the claimant that she did not think the claimant was well enough to be in work that day and she wanted the claimant to leave and go home. The claimant denied she was unwell. Ms Fascia told the claimant she would have to contact the Crisis Team or her father. This was consistent with the advice Ms Fascia had been given by Mr Brown of HR. The claimant raised her voice at Ms Fascia and accused her of being uncaring, unsupportive and of bullying her.

156. Ms Fascia found the situation distressing. She believed that if she contacted the Crisis Team they would tell her to contact the claimant's next of kin. Therefore, she telephoned the claimant's father. The claimant's father said he was unwilling to collect the claimant from work.

***Change of line manager, progression of Equality Move and issue of first warning***

157. After the claimant's father said he would not collect the claimant Ms Fascia walked off the site. She had been finding it extremely challenging dealing with the claimant. She had had many sleepless nights and had been apprehensive about coming into work and having to deal with the claimant. She decided she could not tolerate managing the claimant anymore.

158. Ms Spensley was made aware of the situation. She decided that the claimant should be offered a week of special leave on full pay. Ms Spensley subsequently emailed the claimant to confirm that she was offering the claimant a week of compassionate leave to allow the claimant time away to consider her situation and how she could be supported to carry out full and effective duties.

159. Subsequently a decision was made that Ms Thompson, HEO, should take over as the claimant's line manager. Ms Thompson was based in James Cook House.

160. At around about this time Ms Broderick of HR was assigned to the management team as a single casework contact to support with managing the claimant. On 8 February 2023 Ms Thompson and Ms Hume had a meeting with Ms Broderick to discuss the claimant. They discussed that the Equality Act move was continuing. However, they also discussed that they may need to manage the claimant's expectations as, even if another job were to be found, it may take some time for that to happen.

161. The claimant had agreed to complete a stress self-assessment. On 15 February there was a pre-arranged appointment for a discussion to take place about the claimant's stress management plan. However, the claimant objected to Ms Thompson conducting this.

Consequently, arrangements were made for the meeting to be conducted by Ms Dale, another manager in the management team.

162. On 17 February Ms Dale telephoned the claimant and asked if the claimant would move to either Redcar or Darlington. The claimant said she would not move to Redcar or Darlington because Ms Robson and/or Ms Spensley could still exert influence there.

163. In the stress management form she completed, the claimant listed numerous staff she wanted to move away from. The claimant also identified the following points as changes she felt needed to be made:
    163.1 'Move to an office where there are windows and be able to have an open window near me.'
    163.2 'Stop using the pink spray in the office and source an alternative hypoallergenic cleaning product or use soap and water, where there is no ventilation. '
    163.3 'If I start experiencing panic or sensory overload I need to block out the cause of it so if it is noise I need a quiet place to go.'
    163.4 'The bright lights, the lack of natural light and having no fresh air. '
    163.5 'I need to be given time to adjust to working with my health issues.'
    163.6 'In September and December 2022 OHS reports said a move would be supportive in helping me manage the anxiety and stress and that I would qualify for a move under equality grounds.'

164. By this time, Ms Thompson had started to complete the forms that needed to be filled in under the respondent's equality move procedure.

165. On 17 February the claimant had a meeting over Teams with Ms Thompson to discuss the claimant's levels of sickness absence. The claimant's TU representative, Mr Byers, was also present. This type of meeting was referred to in the respondent's policies as a 'health and improvement management' or 'HAIM' meeting. At the meeting there were discussions covering the following ground.

    165.1 The possibility of an equality move was discussed. Before this meeting Ms Thompson had sent the claimant some guidance about the equality move and some forms to complete for the equality moves. Ms Thompson referred in the meeting to the claimant having to identify three suitable locations where she could work. There was also a form for the claimant to fill in completing some questions about skills.

    165.2 There was a discussion about what, if anything, could be done to get the claimant back working in her current role, whether at Dundas or at some other place in the district. For although the claimant had notionally returned to work during week commencing 23 January 2023, the claimant had not carried out any work since her return. Ms Thompson explained that they could not say what the timescale would be for an equality move and asked what else could be done in the meantime to support the claimant to become a fully operational full time work coach. The claimant replied that she could not work in Dundas, referring to the lights. She also said that Darlington and Redcar, which had been offered to her as alternatives, were not an option. Ms Thompson asked if there was another desk at Dundas the claimant could work from where the light wasn't as bright. The claimant replied that Dundas was not suitable and that she was struggling every day. Ms Thompson said she would be happy for the claimant to return to work at James Cook House and join her team but the claimant said she would not do that 'with all the memories.' Ms Thompson pointed out that the claimant had been back at work for four weeks and they needed to get her some work to do, including observing others.

The claimant replied that she was not sitting with anyone because she gets upset and she needs to be at her own desk. When Ms Thompson said the claimant needed to come up with something, the claimant replied that she did not. When Ms Thompson asked the claimant if she was saying that she could not work at Dundas the claimant simply replied that she could do some work training courses. She did not suggest anything else she could do. When Ms Thompson told the claimant she was not asking her to see customers, just to sit back and observe at that time, the claimant again refused. She said that the previous day a work coach had been talking to a customer about mental health issues and that she had had to get up and walk away. The claimant repeated again that she wanted to move from the Dundas Job Centre and that the Redcar and Darlington alternatives that had been offered were not suitable. Ms Thompson said that they needed to do another occupational health referral now that the claimant was back at work because of what had been talked about regarding assisting the claimant to turn to her full duties.

165.3 There was also a discussion about the claimant's sickness absence between August 2022 and January 2023 and the fact that the claimant had passed the trigger points in the absence management policy. This had been the reason for arranging the health attendance improvement meeting. There was a discussion about what the outcome of the HAIM meeting would be. Ms Thompson explained to the claimant that, in light of her having reached trigger points in the attendance management policy, the options were that she may get a first warning, a final warning or no outcome. The claimant asked if she was given a final written warning and then had one more day's absence would she be fired. Ms Thompson explained that she would not be as there were 'lots of contributing factors.'

166. Subsequently Ms Thompson issued the claimant with a first written warning under the Attendance Management Policy.

167. On 1 March 2023 Ms Thompson sent the claimant a letter explaining her decisions. In that letter she said she would monitor the claimant's attendance and that if she had a further four days' absence during the period from 2 March 2023 to 2 September 2023 the claimant could be issued with a final written warning. The letter went on to explain that if the claimant's attendance was satisfactory during that period, there would be a further 12 month monitoring period and that if attendance became unsatisfactory again during that period the claimant could be issued with a final written warning. The letter went on to explain that the claimant had a right of appeal against the decision. Ms Thompson said that if the claimant chose to appeal she should contact herself and that she would then 'seek an appeal manager'. Ms Thompson went on to say the appeal manager would then arrange a meeting with the claimant within five working days of receipt of the appeal letter.

168. The claimant was also referred for a further assessment by occupational health, asked if there were particular lights she wanted to have switched off, and told (as she had been before) that she could use a separate room to work from.

***Appeal against first written warning: breach of contract Allegation 48 and harassment Complaint 17***

169. The claimant wanted to appeal but did not want to submit an appeal directly to Ms Thompson because she did not trust Ms Thompson. Therefore she asked Ms Thompson why she needed to submit the appeal to her. Ms Thompson made enquiries as to who the appeal officer would be and subsequently told the claimant the appeal officer would be a Ms Sainsbury. Shortly

afterwards a decision was taken by the respondent that the appeal officer would be a Ms Vasey, a customer service leader at SEO level. The claimant was told about this change. The claimant submitted her appeal directly to Ms Vasey on 9 March 2023.

170. In her appeal the claimant had referred to her belief that she was being 'targeted by the management team in James Cook Job Centre.' She said this had 'started on 4.4.20.' The claimant referred to her relatively low sickness absence until February 2021 and said she had not had to take any time off work due to stress until February 2021 and had then taken nine days off sick for stress in February and March 2021. She referred to having asked for a stress management plan in May 2022, taking two days off sick with stress in July 2022 which she said was 'due to the behaviour of manager' and then being off from 2 August 2022 having become 'stressed out by his behaviour'. The claimant referred to her OHS report from September 2022 and her wish to move from the management team. The claimant said 'if I had had an SMP put in place when I asked in May 2022, I would have been able to manage my condition in work as I had been doing. The first time I got an SMP completed was on 15 February 2023. …' She referred to her return to work on 23 January 2023 and said that if the management team had been able to 'support a move' she could have been back in work sooner. The claimant referred to the respondent's policy, specifically 'point 35'. The claimant said 'also point 35 says a warning should not be given if any of the following apply: (B) reasonable adjustments have been identified but not yet made.' The claimant said she believed the equality move should be considered to be a reasonable adjustment. The claimant said the move to Dundas Job Centre was not a reasonable adjustment because there were no windows and she was still 'under the same management team that I need to move away from to feel safe.'

171. One of the allegations made by the claimant in these proceedings is that the respondent needlessly delayed the claimant's appeal against the warning so that it was not heard until June 2023 (Allegation 48). Therefore it is necessary to address the appeal process in some detail. The relevant chronology is as follows.

    172. On receipt of the appeal, Ms Vasey contacted the claimant and asked her some questions that were relevant to her appeal. Ms Vasey also spoke to Ms Thompson and asked her some questions that were relevant to the appeal. Ms Vasey subsequently emailed Ms Thompson on 27 March 2023 setting out her questions and request for information in writing. Ms Thompson replied to Ms Vasey's email on 30 March 2023. Then on 6 April 2023 Ms Vasey emailed Ms Thompson with some further questions, which Mrs Thompson replied to by email on 11 April 2023. Ms Vasey also wrote to the claimant on 6 April inviting her to a meeting the following week (14 April) via Teams to discuss her appeal against the first written warning.

    173. The respondent's policy suggests an appeal meeting will take place five working days from receipt of an appeal. This meeting was more than five working days from receipt of the appeal. However, I find that unsurprising given that Ms Vasey was making enquiries in the meantime about matters least within the claimant's appeal. I do not consider the fact that this letter was sent more than five working days after the claimant's appeal was submitted lends any real support to the allegation that the respondent needlessly delayed her appeal.

    174. The claimant did not respond to Ms Vasey's letter. She believes the invitation to the meeting may have been sent to her work email address and that she perhaps did not see it for that reason. However, she said on cross-examination she could not be sure of this.

175. Ms Vasey sent the claimant a letter dated 11 May 2023 re-arranging their meeting to take place on 23 May 2023.

176. On 23 May, the date that meeting was due to take place, Ms Vasey emailed the claimant telling her she needed to cancel their meeting because her father was ill in hospital and she needed to go and be with him. Ms Vasey also explained in her email to the claimant that she was due to retire the following week and that she would therefore be handing the claimant's appeal over to somebody else who would take it over. She named that person as Ms Phillips. Ms Vasey did not give evidence at this hearing. It is not surprising if she has retired. There has been no suggestion that she was not being truthful in that email. I find that that Ms Vasey cancelled the meeting because her father had become ill and she needed to be with him. I also find that she was due to retire the following week and for that reason she did not have time to re-arrange and deal with the claimant's appeal and complete her part in the appeal before her retirement and that is why she handed the matter over to Ms Phillips.

177. Within two days, on 25 May 2023, Ms Phillips wrote to the claimant inviting her to a meeting by Teams to discuss the appeal. That meeting was arranged for 9 June 2023. However, the claimant did not attend the meeting on 9 June 2023. Therefore on that day Ms Phillips emailed the claimant asking her when would be a good date and time to schedule the meeting for. The claimant then contacted Ms Phillips and they agreed to re-arrange the meeting to take place on 16 June. That meeting did take place by Teams and the claimant attended.

178. Following that meeting Ms Phillips decided not to uphold the appeal. She sent a letter to the claimant dated 20 June explaining the decision and the reasons for it.

179. I find as a fact that the respondent did not delay the claimant's appeal as alleged. When Ms Vasey received the appeal she started making enquiries promptly and arranged a meeting with the claimant within a reasonable time. The fact that it took as long as it did to make a final decision in relation to the claimant's appeal was due to the claimant not attending the original meeting so that it had to be re-arranged, then Ms Vasey's father falling ill so that the meeting had to be re-arranged again, then the need for a change of manager dealing with the appeal due to Ms Vasey's imminent retirement, Ms Phillips, who was new to the case, then needing to familiarise herself with the matter, and the claimant not attending the meeting that had been arranged on 9 June 2023. The time it took had nothing at all to do with the protected disclosures made by the claimant some three years earlier and was not, as alleged, part of a 'targeted, sustained and deliberate campaign of bullying and unfair treatment at the hands of DWP managers'.

***March OH report***

180. Returning to March 2023, Ms Thompson continued to try to engage with the claimant about work but the claimant refused to carry out any work that Ms Thompson suggested, including non-customer facing work and shadowing another work coach. The claimant told Ms Thompson to leave her alone on at least one occasion and accused Ms Thompson of not supporting her and of bullying her.

181. On 22 March 2023 the claimant had a consultation with Ms Casson, the occupational health advisor. The claimant told Ms Casson that she felt mentally and physically exhausted and that she was receiving ongoing therapy.

182. In her report that followed Ms Casson said 'in terms of sensory overload, this is an experience shared by people with different trauma. It can feel uncomfortable or even scary, but it's a natural reaction to an overactive brain.' As part of the occupational health assessment the claimant had been asked to complete what was described as a 'validated trauma assessment'. Ms Casson expressed the opinion that this was 'suggestive of difficulties with post traumatic stress' and said that she had advised the claimant to share the results with her GP. She said the claimant's mental health issues were complex and unlikely to be resolved by routine mental health support and that they were having a significant impact on the claimant's daily function. In a section headed 'Management Advice' Ms Casson said 'in my opinion, Aileen is fit for work with supportive adjustments in place. Due to the anecdotal account of Aileen's perceived stressors, you may wish to consider re-deployment into a role that accommodates long term homeworking. Whether this can be accommodated will be at management's discretion.'

***Equality Move***

183. On 24 March 2023 the claimant completed her part of the equality move form as part of the equality move process. On 30 March 2023 Ms Thompson completed a detailed referral form as part of that process. The process also required a more senior manager to complete and approve a reasonable adjustments form for the claimant. Ms Hume did that on 30 March and the claimant signed the form herself the following day.

184. Under the respondent's equality move process, once the Equality Act forms are sent off they need to be approved by the local Equality Act team lead. In this case that was Ms Turner. At the beginning of April 2023 Ms Turner accepted the claimant on to the equality move list.

185. From that point the claimant became a 'priority mover' under the respondent's policy. This meant that she would be offered any suitable vacancies within the district, along with any other priority movers, before the vacancies were advertised internally and externally to colleagues. Because the claimant wanted to move outside of the Durham Tees Valley management chain, it meant that the equality move team would also check vacancies outside the district to see if they were a match against the claimant's skills and the locations where she was able and willing to work.

186. One of the claimant's allegations in these proceedings is that the respondent 'failed to implement in a reasonable time scale the written request the claimant made on 24 March 2023 to be moved from the Durham Tees Valley Jobcentre Plus's management chain, and to be able to have a window open near her' (allegation 47). The only thing that could conceivably be construed as a request for a move made on this date was the claimant's completion of the equality move form. I find there were no other such requests on this date, whether written or oral.

187. I find that the respondent dealt with the request for an equality move in a timely manner. The claimant was accepted on to the equality move list at the start of April 2023. Over the months that followed, and as detailed below, the claimant was told of several vacancies within DWP. The claimant expressed an interest in only one of those vacancies (the one that Mr Harwood spoke with her about in August). As recorded above, the respondent's equality move policy says that the employee should themselves register on the Civil Service Jobs website and set up a job alert to identify potential suitable vacancies in the DWP (and other government departments). At no time did the claimant tell Ms Turner or any of the respondent's other managers that she had seen a suitable vacancy. Nor did she suggest at this hearing that there

were suitable vacancies – whether within or outside the Durham Tees Valley Jobcentre Plus's management chain - that DWP could have but failed to offer her. I infer that there were no such vacancies that the claimant might have considered suitable. I find that, between the start of April 2023 and the date the claimant resigned the respondent did not fail to notify the claimant of any vacancies within the DWP that might have been suitable for the claimant to move into.

***Meeting with Ms McNab: breach of contract allegation 51; Harassment complaint 20***

188. On 20 March 2023 the claimant emailed Ms McNab asking for a confidential meeting. The claimant told Ms McNab that she was struggling with the management team and felt 'trapped under a management team that won't support me to move somewhere safe.' At that time Ms McNab was a Service Leader (Grade 6) within the Durham and Tees Valley district and had operational oversight of the James Cook House and the Middlesbrough East Job centres. She had held that position since December 2022.

189. The claimant and Ms McNab met on 5 April 2023. At the meeting the claimant spoke about the grievances she had raised in 2021 and how she perceived that the issues with management started in April 2020. The claimant also mentioned the colleague who had taken her own life in 2019, saying that had kick-started PTSD for her and that she blamed the DWP for their colleague's death.

190. The claimant asked Ms McNab about moving away from the management chain. They discussed management options within the district but the claimant said none were suitable. The claimant did not want to work at any site managed by Ms Robson. The claimant said that she could do her role but not under the current management chain and said she was being bullied. As the claimant did not agree with any of the suggestions Ms McNab made about who she could be managed by, Ms McNab told the claimant that she could not remove her from Ms Thompson's management until they agreed who she would be moved to. Ms McNab told the claimant that she did not know what the claimant wanted her to do in terms of supporting her because the claimant was refusing Ms McNab's suggestions. Ms McNab asked the claimant to think about who she wanted to be line managed by and then they could meet again. Ms McNab emailed the claimant on 11 April 2023 and asked if she wanted to arrange to talk again after reflecting on their conversation. The claimant did not respond to that email.

***Events leading to claimant being treated as on unauthorised leave: breach of contract Allegations 52-53 and harassment Complaints 21-22***

191. Meanwhile, on 4 April 2023 the shutter on the main door into the Dundas office was broken. The claimant implied in her witness evidence that Ms Thompson, or somebody doing her bidding, had deliberately broken the shutter so that the claimant would not be able to work from the Dundas site. The claimant suggested Ms Thompson had done this because the claimant's union rep had told her the claimant was considering putting in a grievance against her. There is no cogent evidence at all that the shutter was deliberately broken and I find that it was not.

192. On 4 April 2023 Ms Thompson was told that the shutter was broken and that a decision had been made that staff based at the Dundas site should work from James Cook House temporarily. At that time Ms Thompson thought the matter would be resolved quickly. Therefore she told the claimant that although other staff were going to be working from James Cook House, the claimant would be allowed to stay at home the following day.

193. On 5 April Ms Thompson learned that the shutter would not be fixed quickly and that the site would have to remain closed longer. Ms Thompson spoke to the claimant over the phone on 5 April 2023 and explained the situation. Ms Thompson told the claimant that there were other job centres the claimant could work from temporarily. The claimant indicated an unwillingness to work from any other job centre and said she had been bullied since 2020 and Ms Thompson was not supporting her. Ms Thompson told the claimant that if she refused to work from another office she would be classed as being off sick.

194. On 6 April the claimant sent an email to Ms Thompson saying

> *'I can't go to another job centre whilst Dundas is shut. I have anxiety and I am experiencing sensory overload. I can't control my emotions all the time. I do not feel I can go to a different job centre where they don't understand what is wrong with me. I have tried to explain everything to you and you have seen the OHS reports so you know what I am saying is true. You have seen how I am and know I am struggling but I do keep asking for support to make it possible to work. Please could I be allowed special leave whilst Dundas is closed.'*

195. On 11 April the claimant and Ms Thompson spoke again on the phone and the claimant said again she could not work from another job centre. She gave as her reasons anxiety and sensory overload and said she was unable to do the type of work Ms Thompson had said she would need to do.

196. Following that conversation Ms Thompson emailed the claimant saying that in light of what the claimant had said she would be classed as being on sick leave from 6 April 2023. She asked the claimant to complete a self-certification form to cover the first seven days of absence and told her she would then need a doctor's certificate. She also explained to the claimant that she had arranged for a Ms Hodgson to be the claimant's point of contact between 13 and 18 April when Ms Thompson was due to be on leave.

197. On returning from annual leave on 18 April Ms Thompson spoke to HR to ask if there was any form of leave which could be considered for the claimant given her request to be considered for special leave. HR referred Ms Thompson to the DWP's injury leave policy. That policy says 'an injury leave application can be made by a member of staff following an injury at work.' Ms Thompson then emailed the claimant to let her know about the injury leave policy and said she could send the claimant a link or post the guidance out to the claimant if she wanted to look into it. Ms Thompson also told the claimant that Dundas was still closed.

198. The claimant responded in an email saying 'I have not mentioned any injury. So why are you contacting me saying this?' Ms Thompson replied explaining that as the claimant had 'stated work has caused this' she wanted to give the claimant the option on whether she would like to apply for it or not. The claimant's response to that was to say by email 'Work has caused what? What did I say work has caused and when did I say it? Are you talking about something I said to you?' Ms Thompson responded 'You have stated that work has made you feel the way you do (suffered a trauma to your mental health).' The claimant sent an email reply saying 'Who did I state that to?' This email exchange illustrates the intense suspicion with which the claimant viewed the respondent's managers.

199. On 20 April 2023 the claimant's union rep, Mr Byers, emailed Ms Thompson referring to the respondent's 'Special leave with pay policy'. He referred to a section dealing with 'paid disability and health related leave' which said such leave 'will usually apply' in 'situations when the only thing keeping someone off work is delay in installing a workplace reasonable

adjustment without which the employee cannot work. These cases are likely to be the exception.' Ms Thompson responded to Mr Byers the following day stating the claimant would not qualify for special leave.

200. By 21 April the claimant had not submitted a self-certification form or a fit note and Ms Thompson sent the claimant a reminder. By 2 May 2023 the claimant had not yet sent in a fit note. Ms Thompson sent a letter to the claimant of that date asking the claimant to get in touch as soon as possible to let her know whether she would be fit enough to return to her work coach role or if she remained unfit to return to her role to provide a fit note. In that letter Ms Thompson told the claimant that if she had not heard from the claimant by 7 May 2023 she would 'have to treat your absence as unauthorised, take action to stop your pay and the absence could lead to formal disciplinary action being taken against you.' Ms Thompson went on to say:

> *'in addition, notification of a reason for absence is a condition of receiving pay. If sick, therefore, you may not receive sick pay for your absence unless you provide the necessary medical evidence. If you are off sick, would you please arrange to provide medical evidence to cover any period of sick absence. A doctor's statement must be submitted for any sick absence longer than seven continuous calendar days. You have ten working days to produce medical evidence starting from the date the medical evidence was required. As you are aware, this deadline has now passed. I would therefore would be grateful if you can provide a fit note by COP 10 May 2023. If you have any particular problems that are causing your absence and which you would like to discuss, please contact me as soon as possible.'*

201. There followed a number of emails between the claimant and Ms Thompson in which the claimant insisted that she had not failed to return to work and that she was off work because she had been told she could not work at Dundas while the shutters were broken, whereas Ms Thompson stated that as the claimant was saying she was unable to attend another job centre whilst Dundas was closed due to anxiety and sensory and overload and an inability to control her emotions, she was classed as being on sick leave and would need a doctor's certificate. The claimant brought up the question of special leave again and Ms Thompson said that although they were pursuing a possibility of an Equality Act transfer, no suitable vacancy had yet been identified. She said that should a suitable vacancy be found and accepted and should there be a lead-in time prior to the commencement of that role, they may be able to re-visit the suitability of awarding special leave at that stage.

202. I infer from the communications between the claimant and Ms Thompson that Ms Thompson formed the opinion on or before 11 May that the claimant was absent from work without authorisation, and had been since 6 April. She reached that decision after discussions with HR. By 15 May Ms Thompson had recorded on the respondent's systems that the claimant had been absent without authorisation from 6 April 2023.

203. At some point before the end of May, HR instructed the payroll department to recover pay the claimant had already been paid for that period (and presumably to suspend payments unless and until the claimant's status as 'absent without leave' changed). Those instructions were actioned by payroll and reflected in the claimant's pay at the end of May 2023.

***Grievances***

204. Meanwhile, in April 2023 the claimant filed a number of grievances, including against Ms Fascia, Ms Hodgson and Ms Thompson. A further grievance against Ms Thompson followed in May 2023. At some point the claimant also put in a grievance about Mr McDermott.

205. In April 2023 Ms Hewitson was allocated the claimant's grievances to deal with. She was a senior executive officer working in district support, dealing with HR, district performance and improvements and external provision management. She was based in Hull, in a different district of the DWP. She had many years' experience dealing with grievances, sickness absences and standard HR processes such as HR, attendance, investigations and decision maker cases. She did not know or have any knowledge of the claimant, the individuals the claimant had complained about, or the witnesses she interviewed during the grievance process.

206. Ms Hewitson contacted the claimant to let her know that she had been appointed as an independent investigator and decision maker for her grievances. Ms Hewitson invited the claimant to a meeting on 30 May to discuss her grievances.

207. On 30 May Ms Hewitson met with the claimant to discuss her grievances. It was an extremely long meeting. After seven hours the meeting was adjourned because the claimant did not want to continue discussing the remainder of the grievances at that time. The claimant talked about wanting to 'cancel it all' although she did not want to withdraw her grievances.

208. The claimant confirmed on 1 June that she wanted to continue with the grievance meeting although at the time she was on annual leave. A further meeting to discuss the grievances was arranged for 9 June. This was another very long meeting, lasting some five hours. Ms Hewitson told the claimant that although grievance decisions are usually given in writing within five working days, due to the large number of incidents the claimant had raised and the complexities of the case it was likely to take a few weeks.

209. Ms Hewitson investigated the claimant's grievances. She read the respondent's guidance relating to bullying, harassment and discrimination and grievance procedures. She consulted with her HR caseworker to discuss which of the complaints the claimant had made fell within the scope of what she could investigate and also for advice on consistency. Ms Hewitson met with each of the individuals the claimant had made complaints about. She discussed the allegations the claimant had made with the individuals and took comprehensive notes. Ms Hewitson reviewed all of the meeting notes and evidence presented. The claimant had asked to send in emails as further evidence, and Ms Hewitson considered them too.

210. After reviewing all the evidence Ms Hewitson reached a decision. There was one matter that Ms Hewitson decided was 'partially upheld'. This was that Ms Thompson had not followed the correct procedure when notifying the claimant of the appeal manager in March 2023; Ms Hewitson considered that Ms Thompson should have told the claimant the name of the appeal manager, rather than asking the claimant to send any appeal to Ms Thompson herself. Ms Hewitson did not uphold any other parts of the claimant's grievances. Some were not upheld because they were out of time under the respondent's grievance policy, others were not upheld due to a lack of evidence. The claimant was told of the outcome of her grievances by letter of 6 July 2023.

***Claimant informed of vacancies in the district***

211. Meanwhile, on 26 April 2023 Ms Hume sent an email to the claimant (via Ms Thompson) with a list of the vacancies they had in the district at EO grade and asked the claimant to say if she was interested. The vacancies were all office-based work coach roles and were in Billingham, Bishop Auckland, Consett, Crook, Darlington, Durham, Hartlepool, Loftus, Middlesbrough, Middlesbrough East, Redcar, Spennymoor, Stanley, Stockton and Thornaby. On 3 May the

claimant asked for a meeting with Ms Hume to discuss them and a meeting was arranged for 9 May. At that Teams meeting the claimant said she was not willing to accept any of those positions.

***Dundas reopens***

212. On 22 May Ms Thompson emailed the claimant to let her know the Dundas site would be re-opening on 23 May. The claimant confirmed she would return to the office.

213. On 23 May Ms Thompson met with the claimant. Ms Thompson attempted to conduct a back to work meeting. The claimant accused Ms Thompson of being unsupportive and expressed the belief that Ms Thompson was trying to dismiss her.

214. The claimant took a period of annual leave until 12 June 2023.

***13 June: breach of contract Allegation 54 and harassment Complaint 23***

215. As an SEO Ms Spensley had oversight of several sites, including the Dundas site. On 13 June 2023 Ms Spensley visited Dundas. The claimant had previously said she was 'triggered' by Ms Spensley and did not want to be in the same building as her. Therefore, Ms Thompson thought it appropriate to let the claimant know about Ms Spensley's visit. Ms Thompson went to speak to the claimant in private. I infer from an email the claimant sent the following day that when Ms Thompson entered the room the claimant told her she did not want to speak with her. Ms Thompson then told the claimant that Ms Spensley was visiting the site that day. During that conversation Ms Thompson said managers move across sites within the District, whereupon the claimant accused Ms Thompson of lying and of only coming to speak to her about Ms Spensley to see her reaction. In response to a question from the claimant about the Equality Act move Ms Thompson told the claimant she had no control over any changes that could take place in the future and so could not guarantee that the claimant would never cross paths with Ms Spensley again.

216. The claimant alleges that, on 13 June Ms Thompson mistreated her by 'being dishonest about things the claimant was saying to her'. The claimant did not identify in her grounds of claim what Ms Thompson said on 13 June that was 'dishonest' and nor did her case in this regard become any clearer during the hearing. It is for the claimant to prove her case. In so far as this allegation is concerned the claimant has not done so. I do not find that on 13 June 2023 Ms Thompson was dishonest as alleged.

217. On 14 June 2023 the claimant emailed Ms Thompson saying she would not be coming into work that day. She went on in that email to say:

> *'Yesterday I was in the quiet room upstairs and when you came in I told you I didn't want to talk to you.*
> *You stayed in and I didn't have anywhere to go.*
> *You told me Caroline is in Dundas.*
> *You also said even when I have the equality move it doesn't stop Caroline getting a job wherever I get moved to. That might be true Margaret but there was no need for you to say it.'*

218. The following day the claimant emailed Ms Thompson again saying she would not be coming into work. She did not say why. Ms Thompson responded to say that the claimant needed to confirm why she would not be in, whether she was asking Ms Thompson to record this as sick,

annual leave or unauthorised absence, and when the claimant next expected to be in work to undertake her Work Coach work.

219. The claimant replied by email that day saying she was off due to work-based stress. She asked for an occupational health referral and asked when her DSE would be done. She also accused Ms Thompson of making 'false statements about what I have said' but did not say what Ms Thompson had stated that was 'false'. The next day the claimant emailed saying she would not be in again 'for the same reason'.

220. Ms Thompson responded by email that day acknowledging the claimant's email; asking the claimant to let her know if there was anything she could do to support her; reminding the claimant that she could speak to PAM assist or a Mental Health first aider if the claimant did not want to speak with Ms Thompson; confirming she would send of a request for a new OHS report and asking if there was anything the claimant wanted asked on the referral form; offering to carry out a review of the stress management plan with the claimant; asking the claimant to let her know how long she expected to be absent for and to provide a fit note if she expected to be off for more than 7 days; and explaining the need for weekly Keeping in Touch (KIT) meetings for absences of more than 7 days to 'see how I can support you while you are absent and to discuss the if there is anything I can do to aid your return to work, including discussing any reasonable adjustments you feel would support you.'

221. The claimant then replied saying 'Leave me alone. Seriously just leave me alone'.

***Disciplinary investigation begins: breach of contract Allegation 55 and harassment Complaint 24***

222. Before the claimant started her period of sickness absence on 14 June, Ms Thompson had taken advice from Ms Broderick of HR about the claimant's absence from work whilst the Dundas site was closed. In light of that advice Ms Thompson referred the matter for consideration by an independent investigation officer under the respondent's disciplinary policy. Ms Thompson prepared a report setting out her account of the relevant events concerning the claimant's absence from work, which Ms Thompson considered to have been unauthorised between 6 April 2023 and 22 May 2023. Ms Thompson annexed to that report various documents including copies of communications between herself and the claimant. She completed that report on 13 June 2023. Ms Booth was appointed to conduct an investigation under the respondent's disciplinary policy and Ms Thompson provided her with her report plus the documents referred to in it.

223. On 19 June 2023 Ms Booth emailed the claimant attaching two letters.

    223.1 One of the letters explained what was happening ie that she, Ms Booth, was investigating 'a period of unauthorised absence for the period of 6 April 2023 to 19 May 2023 which could constitute gross misconduct.' In that letter she explained that the purpose of her investigation was to 'gather and present evidence' and show 'whether, on the balance of probability, there is a case to answer.' Ms Booth went on in that letter to explain the process. She also said 'if you give notice of resigning from DWP, we will aim to conclude the investigation and take any decision before you leave. If that cannot be done, the investigation will continue and you will be notified of the decision, which will be applied retrospectively. If the decision is that you should have been dismissed (normally applicable to gross misconduct), your reason for leaving DWP will be changed from resignation to dismissal.'

223.2 The second letter was a request that the claimant attend a meeting on 4 July 2023. Ms Booth explained again in that letter that she was investigating a period of unauthorised absence. She went on to expand on the allegation saying 'it has been alleged that you were absent from work for the period 6/4/23 to 19/5/23 without sufficient reason which, if proven, could be gross misconduct …' Ms Booth said she would like to interview the claimant so that she could find out what happened. She explained what the claimant should do if she could not attend the meeting or if her representative could not attend the meeting.

224. The claimant declined to attend the meeting with Ms Booth. Ms Booth subsequently prepared a detailed report in which she set out her conclusion that, on the balance of probabilities, there was a case to answer. In setting out the summary of her findings and conclusion Ms Booth said:

> *'I have considered the evidence passed to me and the emails and conversation I had with Aileen. It is clear from the documentation that Aileen was in receipt of the full facts and that her request for special leave with pay had been refused and that she was required to attend work or provide the usual medical certification if she was unfit to work. Aileen chose not to attend work and not to provide any medical certification. Aileen states in her emails to her line manager that her anxiety was preventing her from attending any other office. However her request for an Equality Act move would be at odds with this statement. There are a few questions still unanswered as Aileen declined to meet with me, the questions I would have preferred answers to are above. My recommendation has been made on the evidence I have currently available to me. My recommendation to a decision maker is that, on the balance of probabilities, there is a case to answer.'*

225. I infer that this was a tacit acknowledgement from Ms Booth that her conclusion might have been different if the claimant had agreed to be interviewed.

226. Although Ms Booth completed that report on 17 July 2023, for reasons explained below there was a delay in arranging a disciplinary hearing.

***Outcome of appeal against attendance warning***

227. As recorded above, On 20 June 2023 Ms Phillips wrote to the claimant to tell her the appeal against her warning under the attendance procedure had been unsuccessful. In her letter Ms Phillips explained that the claimant had been absent for 172 days and that the trigger point for considering issuing a warning was eight days. With regard to the complaints the claimant had made about there being no stress management plan, Ms Phillips' view was that although there had been a meeting to discuss a stress management plan on 16 June 2022 with Mr McDermott, the plan had not been finalised because the meeting became 'chaotic' and the claimant had become 'obstructive' during the meeting. Ms Phillips referred to correspondence dating from June 2022 in which the claimant was asked to confirm the reasons why a move to the ground floor would affect her mental health and the claimant not having responded and then not consenting to an OHS referral. Ms Phillips formed the view that the respondent had offered the claimant support continuously throughout her sickness and that in light of that and the claimant having declined 'many meetings and appointments' she believed it was correct that the claimant had been given a written warning.

***Sickness absence***

228. The claimant submitted a fit note covering 20 June to 10 July 2023 which gave anxiety as the reason for absence. The respondent recorded the claimant as on sick leave from 14 June 2023.

229. The terms of the claimant's contract entitled her, during sickness absence, to 6 months' full pay and then six months' half pay. The claimant had exhausted her full pay entitlement during her previous absence that ended in January 2023. She still had the benefit of her half pay entitlement, however, for six months less any days' sick leave the claimant had already taken in the period since her January return to work.

230. Ms Thompson considered that, as the claimant's line manager, she had to maintain contact with her. However she tried to keep contact with the claimant to a minimum due to the claimant's request to be left alone. Ms Thompson emailed the claimant on 21 June 2023 about the OH referral and about plans to close the Dundas site permanently.

231. The claimant replied to Ms Thompson's email about the OH appointment saying 'I asked you to leave me alone. Please cancel the OHS.' After taking advice from Ms Broderick of HR Ms Thompson emailed the claimant on 27 June 2023 setting out why she needed to maintain contact with the claimant and why she thought that an OH appointment would be beneficial.

232. Ms Thompson, Ms McNab, Ms Hume and Ms Broderick discussed what to do about the claimant's request to be left alone. They agreed that Ms Thompson would stop the 'Keeping in Touch' conversations which were usually required under the respondent's absence management policy, leaving it open to the claimant to contact Ms Thompson if she wanted to discuss anything. They agreed that they should maintain the bi-monthly absence meetings.

***Arrangements for 30 June meeting: breach of contract Allegation 56 and harassment Complaint 25***

233. On 29 June 2023 Ms McNab emailed Ms Ergul in response to emails Ms Ergul had sent to her recently. As recorded above, the claimant had asked that Ms Thompson stop contacting her. Ms McNab said that the '14 day meeting' that had been arranged by Ms Thompson for 30 June at 10.30am to discuss the claimant's absence was to remain. However, Ms McNab agreed that as an adjustment they would suspend the future 'keeping in touch' conversations that the respondent's policy said managers must have with staff who are absent and leave it for the claimant herself to contact either Ms McNab or Ms Thompson if there was anything she wanted to discuss. She said the door was open for the claimant to resume communication when she was ready. She also pointed out that sometimes they had to contact staff who are absent from work to let them know of changes that may impact upon them.

234. The claimant replied later that afternoon requesting as a reasonable adjustment for the 30 June meeting that Ms Thompson speak with the claimant's father on the 'phone rather than the claimant herself, with the claimant's father repeating Ms Thompson's questions to the claimant.

235. In Ms McNab's absence, Ms Hume spoke to Ms Broderick of HR for advice about this. Ms Broderick said that her initial thoughts were that they should not agree to the request on that occasion for a number of reasons which included:
    235.1 There not being enough time to make arrangements so there would need to be a postponement.
    235.2 There being a possible alternative which would be to offer the claimant the option of engaging via email.

235.3 The fact that previous interactions with the claimant's father had not gone well.
235.4 Concerns about how they would know it was the claimant's father they were speaking to and not someone else.
235.5 Concerns that the claimant seemed to want her father to speak for her and also a concern about whether the claimant's father would accurately relay the claimant's views.

236. Ms Broderick noted that it was not clear why the claimant was unable to speak to Ms Thompson directly and how that related to a disability. She said posing questions by email for the claimant to answer by email would be an appropriate compromise for that meeting given that they did not understand why the claimant was seeking the adjustment at that stage. Ms Broderick drafted a suggested email response to the claimant for Ms Hume to send.

237. Ms Hume emailed the claimant on 30 June as suggested. She said in her email:

> *'Unfortunately due to the short notice this is not something we are able to facilitate at this time, but we may be able to consider for future meetings.*
> *In order to be able to consider a reasonable adjustment we need to understand why it is that adjustment is required. Please could you therefore let me know why it is you feel you are unable to speak to Margaret for today's 14 day keeping in touch meeting and why you want your father to relay the questions to you. Once you have provided this to me we can then look at the options available and consider reasonable adjustments based on the issue at hand.'*

238. Ms Hume went on to say in her email that if the claimant preferred not to speak to Ms Thompson directly for that day's meeting, she would be happy for Ms Thompson to send the claimant the questions via email that she would have asked at the meeting and that the claimant could then respond in writing.

239. The claimant replied by email 10 minutes later. However, she did not address the reason why the adjustment was required and nor did she say whether or not she was happy to receive and respond to questions by email. She simply asked what they needed to do to be able to facilitate it as a reasonable adjustment. Ms Hume replied by email explaining again that they needed to understand why it was that the adjustment was required. She said once the claimant had provided that information they could look at the options available and consider reasonable adjustments. She repeated that due to the short notice it was not something they were able to facilitate at that time but that they may be able to consider it for future meetings. She said that for that day's meeting Ms Thompson would send the claimant the questions via email that she would have asked at the meeting and the claimant could then review them and respond.

240. The claimant sent an email reply saying 'I have health conditions. Margaret is linked to them. I did put it on my SMP in Feb time. I have talked to Margaret about it and them.' The claimant asked Ms Hume to email her with questions and she said she would reply to Ms Hume who could then pass her reply on to Ms Thompson.

241. Shortly afterwards Ms Hume sent the claimant a list of questions and asked her to respond by 5pm on 3 July. The claimant sent a relatively short reply on 3 July in which she said, amongst other things, that she had already discussed what she needed, that she would not be back before 10 July unless the situation changes, and that she had asked to be moved 'to a workplace where I feel safe, where there is honesty, that doesn't have anybody that reminds me of the previous bullying and harassment and with a manager that is supportive and takes my health conditions into account.'

242. The claimant alleges that Ms Hume's refusal of the claimant's request for permission to allow her father to act as a 'support person' at the meeting on 30 June 2023 was part of a 'targeted, sustained and deliberate campaign of bullying and unfair treatment' and was 'as a direct result' of the claimant raising concerns about Covid risks more than three years earlier, in March 2020. The claimant has not come anywhere close to showing that was the case. The fact that the respondent indicated it may be able to consider the arrangement suggested by the claimant for future meetings and invited her to explain why the claimant felt the adjustment was needed clearly undermines the claimant's case, as does the fact that, far from insisting that the meeting go ahead, the claimant was given the option of receiving and answering questions in writing. The adjustments suggested by the claimant was an unusual one and I find that the respondent had cogent and reasonable reasons for declining it in relation to the 30 June meeting, as set out by Ms Broderick, and offered the claimant a perfectly reasonable alternative. The claimant's allegation that the respondent's actions were 'to the claimant's considerable detriment' and 'exceptionally harmful' is not substantiated; I find that the alternative arrangements put in place by the respondent were not detrimental or harmful to the claimant at all.

***Further emails about absence and Ms Hume becomes point of contact***

243. The following week the claimant emailed Ms McNab repeating her request that Ms Thompson not contact her directly by phone or email whilst she was not in work. Ms McNab replied by email on 12 July saying they could consider putting a temporary adjustment in place or considering the claimant being temporarily moved under a different line manager if the claimant felt that would support her return to work but that it was something that would require further discussion. Ms McNab asked the claimant if there was anyone she had in mind or that she would feel more comfortable being managed by temporarily. The claimant replied by email 'I don't know who the managers are and when the ones you know and trusted let you down it's difficult to trust someone you don't know.' Ms McNab replied that she understood the claimant's comment regarding a manager but that the claimant's manager would need to remain as MsThompson until they could identify a suitable alternative.

244. The claimant had not identified anyone she was willing to be managed by. The next person in the management chain above Ms Thompson was Ms Spensley, with whom the claimant refused to deal. Ms McNab spoke to Ms Hume about her (Ms Hume) temporarily acting as the claimant's line manager. In her Grade 7 role, Ms Hume would not ordinarily become involved in the direct line management of work coaches. However, due to the situation that had developed, Ms Hume and Ms McNab agreed that Ms Hume would be a point of contact for the claimant during her absence from work.

245. On 20 July Ms Hume sent the claimant a letter about her absence and a list of questions. The claimant emailed with her answers a few days later. In that email the claimant said 'I am able to manage normal work stress. I am unable to stop the bullying and harassment.' In answer to a question about any underlying problems or conditions the claimant felt may be contributing to her absence the claimant wrote 'bullying and harassment'. The claimant's most recent fit note was due to end on 1 August 2023. The claimant said it was not likely she would return before then 'unless the situation changes'.

246. Ms Hume sent a follow up email on 4 August. The claimant had said in her response 'I am off work because I have health conditions that I asked for reasonable adjustments and support for me to be able to work with them.' In her reply to the claimant Ms Hume set out the steps that had been taken to address the changes identified by the claimant in her stress

management plan. Ms Hume also made the point in her reply that the claimant had been offered a further referral to occupational health which had been booked for June 2023 but which the claimant had cancelled. She reminded the claimant that she was on the Equality Act move register to consider alternative roles and that the claimant had not completed a back to work plan. Ms Hume asked the claimant to advise if there was anything else the claimant felt had not been addressed or anything else she felt the respondent should be doing to support her. In that email Ms Hume also asked the claimant if she would be happy, as a temporary measure, for her to be the claimant's point of contact and said they could review who would be best placed to be the claimant's line manager at the point when they were discussing her returning to work.

247. The claimant responded not by answering the specific questions that had been asked but by asking a number of questions over a series of emails over the next few days, including about who was involved in the decisions to make Mr McDermott and Ms Thompson her line managers.

***Equality Move – Mr Harwood's vacancies: breach of contract Allegation 57(a) and harassment Complaint 26(a)***

248. In August 2023 a new team of UCWCA (Universal Credit Work Capability Assessment) decision makers was being established, to be managed by Mr Harwood. Mr Harwood was a senior executive officer based in Middlesbrough who managed the north east area of the work and health decision making department. He did not know the claimant.

249. Under the respondent's policies, all priority movers were to be considered for the new vacancies before the vacancies could be advertised more widely. The respondent's normal process is that the manager with the vacancy (the vacancy holder) is sent a list of priority movers and that manager will then liaise with the line managers of the people on the list, in order to determine their broad suitability for the role. Accordingly, on 9 August a Ms White (a recruitment lead) sent an email to Mr Harwood (as the vacancy holder) with a list of priority movers for consideration. There were 10 employees on the list, including the claimant. In this instance a deadline for having the conversations with managers and confirming whether they were suitable colleagues for the vacant roles was set as 16 August 2023. Mr Harwood emailed all the priority movers' line managers on 10 August. However, Ms Thompson was on leave; so Mr Harwood arranged to speak with her upon her return on the morning of 16 August 2023. That conversation took place on Ms Thompson's return. Mr Harwood explained what the vacant role involved. Ms Thompson told Mr Harwood the claimant was currently signed off work with work related stress and, before that, had not been doing face to face meetings. Ms Thompson said she would contact the claimant to tell her more about the role and try to discuss it with her in advance of Mr Harwood calling her.

250. Ms Thompson tried several times that day to speak to the claimant but without success. On 16 August Ms Hume also contacted the claimant about the role by email. She sent the claimant an email with some information about the role and asking the claimant to let her know by 4pm that day if she would be interested in the role so that Ms Hume could put her forward for consideration. The claimant did reply by email at two minutes to four. However, she did not say whether or not she would be interested in the role. Instead she asked Ms Hume 'Why are you sending this to me? It's supposed to be the equality team that contact me isn't it?' The claimant's evidence was that she asked those questions because she suspected that the vacancy may not exist at all and that Ms Hume may be making things up.

251. Ms Hume subsequently managed to speak with the claimant by telephone. She had a long conversation with the claimant in which she tried to persuade the claimant to speak with Mr Harwood about the role to see if she thought it would be a good fit for her. Ms Hume asked the claimant to let Ms McNab know the following day if she wanted to have a conversation with Mr Harwood.

252. Meanwhile, the date by which Mr Harwood was expected to have had discussions with priority movers had passed. Mr Harwood had been permitted to extend the deadline until the morning of 17 August. Because Mr Harwood had not by then been able to establish that any of the vacancies would be suitable for the claimant, he removed her from the group of possible movers at that stage. However, the claimant did subsequently confirm that she would have a conversation with Mr Harwood. When Mr Harwood was made aware of this he agreed to call the claimant to discuss the role and consider her suitability for it.

253. Mr Harwood did not know of the claimant's medical history or the reason for the claimant's absence from work, other than it was stress related. Nor did Mr Harwood know anything of the health and safety concerns the claimant had raised in 2020 about covid.

254. After a couple of attempts to speak with the claimant on 24 August 2023, Mr Harwood managed to speak with the claimant by telephone on 25 August 2023. Mr Harwood introduced himself and explained that he was calling to ask a few questions about her suitability for the Universal Credit decision maker role at Middlesbrough.

255. During the conversation Mr Harwood explained what the role entailed and the requirements of the role. The requirements of the role included the fact that decision making is highly complex work, that it included telephony and talking to customers, that it was high pressured, that it would involve performance standards for quality and output and that it was either hybrid or full-time office work, with no option for permanent remote working. Mr Harwood made those same points to all of the priority movers with whom he had spoken. Mr Harwood tried to ascertain whether the claimant thought she would be able to manage the role and be capable of doing the job. However, rather than directly answering the claimant instead quizzed Mr Harwood about what he had been told about her. He told the claimant that he had not been told anything other than that she was a work coach who does not do 'the FTF' (which I take to be face to face) at the moment and that she was currently off sick with work related stress and was on the Equality Act move list. The claimant also questioned Mr Harwood about who he had spoken to about her and he said he had spoken to her line manager. Mr Harwood tried to get the claimant back on to the discussion about the suitability of the role and any potential barriers there may be to her performing the role. However, Ms Ergul insisted that Mr Harwood tell her the exact date he had spoken to Ms Thompson. She then asked him why he had spoken to Ms Thompson and he explained that was part of the process to speak with line managers in the first instance. Ms Ergul continued to press Mr Harwood about who he had spoken to and what they had said about her. Mr Harwood tried to get the claimant back on to the point of discussing her suitability for the role but the claimant continued to ask him questions about the process he had followed, who he had spoken to and what they had said about her. Mr Harwood made further efforts to try to engage the claimant in a discussion about what she would be able to do. He asked whether she would be able to phone customers and diarise customers to phone them. The claimant said she did not know because she has sensory overload. Mr Harwood asked if there were any adjustments that occupational health had recommended (the claimant having mentioned to Mr Harwood that she had had involvement with occupational health). When he asked the question he was at pains to reassure the claimant that he was not 'prying.' The claimant replied that she was not going to answer because if she did 'you're just going to say it's not suitable. I get that then I'm still

trapped under that management team.' Towards the end of the call the claimant was becoming distressed and upset and talked about needing to move away from her managers. Mr Harwood signposted the claimant to the PAM service. At the end of the call the claimant said she was interested in the job.

256. Mr Harwood decided that he was unable to properly assess whether the claimant may be suitable for the role given what the claimant had said. He therefore decided not to offer her a role.

257. One of the allegations in this case is that Mr Harwood refused to consider the claimant for the vacant position (breach of contract Allegation 57(a) and harassment Complaint 26(a)). I find that is not what happened. Mr Harwood did consider the claimant, having been asked to extend the deadline for considering priority movers. He had a long conversation with the claimant. He then decided not to put the claimant forward for one of the vacancies following that conversation. That cannot be accurately characterised as Mr Harwood refusing to consider the claimant for the vacant position. To the extent that Mr Harwood declined to offer the claimant one of the vacancies following his conversation with her, I find that the reason for that was that he had been unable to ascertain that she may be suitable for the role given her unwillingness to properly engage with the questions he was trying to ask her in order to assess her suitability. It was not, as alleged by the claimant, part of a 'targeted, sustained and deliberate campaign of bullying and unfair treatment at the hands of DWP managers', and nor did it have anything to do with anything the claimant had said in her email to Mr Pinter and Ms Robson on 30 March 2020 about her Covid concerns or the conversation the claimant had had with Mr Emmerson along the same lines a week prior to that email.

***Mr Harwood's later account of conversation: breach of contract Allegation 57(b) and harassment Complaint 26(b)***

258. At a later date Mr Harwood was asked for an account of the conversation he had had with the claimant. Mr Harwood put his account in writing.

259. The claimant complains that Mr Harwood did not mention in that document that the claimant had said she was interested in the vacancy. It is correct to say that the account Mr Harwood wrote down did not refer to that. However, there was no suggestion by Mr Harwood at the time and is no suggestion now that that document was intended as a verbatim record of everything that was said. It was clearly a summary of what was said prepared some time later. There is no suggestion by Mr Harwood in that summary that the claimant told him she was not interested in the role. I find there was nothing significant about Mr Harwood omitting to mention that the claimant had said at the end of the call that she was interested in the vacancy. Whether or not the claimant said that, the fact remained that Mr Harwood had been unable to ascertain from the claimant that she might be suitable for the role. The fact that he did not include a reference to the claimant saying she was interested in the role was not, as alleged by the claimant, part of a 'targeted, sustained and deliberate campaign of bullying and unfair treatment at the hands of DWP managers', and nor did it have anything to do with anything the claimant had said in her email to Mr Pinter and Ms Robson on 30 March 2020 about her Covid concerns or the conversation the claimant had had with Mr Emmerson along the same lines a week prior to that email.

260. In response to Orders requiring the claimant to say how Mr Harwood's alleged actions were related to disability the claimant said 'I hoped he would give me a chance but he had been talking to Margaret before me. He probably wasn't really ringing about a vacancy, just pretending so the respondent could say they had offered me a post which I had refused. I

didn't refuse it. He just said I did.' Mr Harwood had not said the claimant had refused the post, either in his record of the conversation or in his evidence to the Tribunal. Again, that was an inaccurate characterisation of what Mr Harwood said. Furthermore, there is no cogent evidence at all that the vacancy Mr Harwood spoke to the claimant about had been fabricated. I find it had not been.

***Further vacancies – equality move***

261. On 25 August 2023 Ms Hume emailed the claimant about some vacancies within the DTV district. She told the claimant there were vacancies at EO grade for DEA's at Guisborough/Eston, Middlesbrough James Cook House, Stockton/Thornaby and Crook/Newton Aycliffe/Bishop Auckland. She sent the claimant a job description and told the claimant the vacancies were fully office based and would involve regular face to face customer contact.

262. The claimant did not reply to Ms Hume's email. She did, however, send an email on 25 August in response to another email Ms Hume had sent seeking information as part of a monthly formal review of the claimant's absence. In this email the claimant said:

> *'I am off work because of my health conditions. I do not need any help dealing with stress. A stress management plan should have been done in May 2022 when I requested it. The stress management plan in Feb 2023 said Margaret is one of the stressors. That was ignored. I know how to deal with my own stressors and I am clear and honest about what I needed and need. …'*

263. The claimant said she did not know whether she would be back before her fit note ran out on 28 August and did not know whether she would get another fit note.

264. On 29 August 2023 Ms Hume sent the claimant another email about vacancies in the DTV district for employer advisors in Durham and Crook. As with her previous email, she asked the claimant to let her know if she was interested in any of the positions.

265. On 31 August the claimant emailed Ms Hume again about Ms Thompson being her line manager. She said that Ms Hume had told her she had to have Ms Thompson as her manager because the grievance was not upheld. She asked Ms Hume to send her the guidance where it said that was the case.

266. Ms Hume replied on 1 September 2023 saying she was a little confused as to what the claimant was asking. She reminded the claimant that Ms McNab had emailed the claimant in July 2023 saying that they could consider a temporary move to a different line manager if the claimant felt that would support her return to work and had asked the claimant if there was anyone she had in mind or that she would feel more comfortable being managed by. She reminded the claimant that the claimant had replied by saying she did not know who the managers are and 'when the ones you know and trust had let you down it's difficult to trust someone you don't know.' Ms Hume asked the claimant what the issue was that she was looking to resolve.

***Attendance management***

267. The respondent's attendance management policy says that once an absence reaches three months the manager must arrange a case conference with occupational health to consider what more can be done to help the employee return to work within a reasonable timescale and, where a return is unforeseeable, decide how to bring the case to a conclusion.

268. On 15 September 2023 Ms Hume emailed the claimant about her three-month review under the respondent's attendance policy. However, Ms Hume inadvertently sent the email to the claimant's work address rather than her personal email address.

269. In her email Ms Hume asked the claimant a number of questions. Ms Hume said:

> *'I have attached the back to work plan. This is something we would usually talk through together, however you have requested I don't call you. Please have a look through this document and complete it as best you are able and return it to me. If you need any help or support in completing the document, please let me know and I am happy to arrange a meeting. As always, if there is anything I can do to help, please feel free to contact me.'*

270. Ms Hume also referred in her email to an occupational health conference. That was to be a conference between occupational health and the manager. Ms Hume asked the claimant if she would like an occupational health report to be conducted before that took place given that her previous occupational health report was now several months' old. Ms Hume said that if she did not hear from the claimant by 5pm on 21 September she would presume that the claimant did not consent to another occupational health report and would go ahead with the three month case conference without it. Attached to the email dated 15 September 2023 was a letter. It explained that Ms Hume would be sending out the questions that would be discussed at a three month continuous absence meeting.

***Contact from Ms Turner regarding equality move***

271. On 25 September 2023 Ms Turner sent an email to the claimant because she had matched the claimant to a vacancy. In her email Ms Turner introduced herself as the Network HRBP for the northeast. She explained a little about the vacancy and asked the claimant if the role seemed suitable for her and if she would like to continue with the matching process and speak to the vacancy holder.

272. The claimant replied to Ms Turner by email the following day. She did not say whether or not she would be interested in the role. Instead she said 'please could you tell me who contacted you about me?'

273. Ms Turner responded by email the next day saying she had received an Equality Act referral for the claimant in April that year, that the claimant was listed as an Equality Act mover and that it was her responsibility to look at vacancies in the northeast network to try and match priority movers based on grade and suitable locations listed. She asked the claimant again by lunchtime that day.

274. The claimant responded by email that morning. Again, the claimant did not say whether she would or might be interested in the vacancy. Instead she said:

> *'This is the first time you have ever contacted me. I want to know why you have contacted me now. Who contacted you about me? I put a RAR in to the governance team and on the back of that you have contacted me for the first time ever. I know you have been contacted and I know you have spoken to other staff about me. I want to know who contacted you before I make any decision about talking to anyone else.'*

275. Ms Turner forwarded the claimant's email to Ms Thompson saying they had quite a short deadline for the vacancy because it may be a business critical role and she was hoping that the claimant would have a suitability conversation with the vacancy holder.

***Events concerning the claimant's locker: breach of contract Allegations 58-59 and harassment Complaint 27.***

276. The Dundas site was due to close permanently on 6 October 2023. The respondent was required to give vacant possession, which meant all lockers had to be emptied. Ms Fascia did not have a master key that would have enabled the respondent to access the lockers. The respondent had ordered a master key some weeks previously but the correct one had not arrived.

277. On 3 October 2023 Ms Hume sent an email to the claimant. The email read as follows:

> *'Dundas is closing on Friday and you have some items in Dundas including a locker. Do you want to go into Dundas to pick anything up or do you want Suzanne to move all of your belongings to James Cook House – she would need to break into your locker to do this.*
> *The site has to be cleared by Friday – can you please let me know as soon as possible.'*

278. The claimant responded by email that same afternoon. She did not answer the question she had been asked about whether she wanted to go into Dundas herself to collect her belongings. Rather, the claimant asked why Ms Fascia would need to break into the locker. Ms Hume replied by email, saying that Ms Fascia did not have a key and that the lockers need to be empty. The claimant sent a further email that afternoon saying 'Did she tell you she hasn't got a key and would need to break in or is that your suggestion?' Again, the claimant did not answer the question she had been asked. The following morning Ms Hume responded by email 'She told me – is there a problem?' The claimant replied by email shortly afterwards simply saying 'Yes there are a number of problems. You aren't the one to help me with them though.'

279. As the claimant had still not said what she wanted to do about her belongings Ms Hume sent a further email to her asking the claimant to let her know what she wished to do about her locker and belongings. Ms Hume heard nothing further from the claimant until some three and a half hours later when she received two emails from the claimant. In the first one the claimant said 'I'll go and pick it up'. In the second one, which Ms Hume received a couple of minutes later, the claimant said 'I have been into work and it is evident that my locker had already been broken into. I want to know who has accessed my locker. It is a security breach and it is serious.'

280. There followed, over the next three weeks or so, a number of emails between the claimant and Ms Hume, and the claimant and Ms McNab in which the claimant asked questions about the lockers and sought a copy of any CCTV footage. Ms Hume and Ms McNab explained that any request for CCTV footage would have to be directed to G4S - the company that provided site security services - as it was that company, rather than the respondent, that controlled that data. They also explained that in any event there were no CCTV cameras in the locker room.

281. The claimant alleges that on or before 4 October 2023 the respondent broke into her locker and removed personal documents. The evidence in her witness statement is that she went to clear out her locker that day but when she arrived on site she found that her locker had been broken into and that the respondent had removed emails that were 'evidence of [Ms

Spensley's] abuse against [her].' The respondent's case is that it did not break into the claimant's locker but that, unbeknownst to Ms Hume, someone from G4S (a separate company that provided security services at Dundas) had unsuccessfully tried to force entry to the claimant's locker; G4S attempted to gain entry because Ms Fascia wanted them to see if they could access the lockers given that the correct master key had not yet arrived; she had not asked them to open the claimant's locker specifically- they simply chose one that did not have a name on it and, having not managed to open it, moved on to a different locker which G4S did manage to open.

282. I did not find the claimant's evidence that the respondent had taken documents from her locker to be reliable. Notwithstanding that she exchanged a number of emails with the respondent's managers at the time of this incident, the claimant did not claim then that any documents were missing. She did not identify in her grounds of claim what documents were missing and, even now, the evidence in her witness statement as to what exactly was missing is imprecise (the claimant refers to an 'email that was sent from Joanne Gartland via Caroline Spensley' as being 'one of the emails they removed.') The burden of proof is on the claimant and she has not persuaded me that any documents were taken from her locker as alleged.

283. The fact that I found the claimant's evidence as to the alleged missing documents to be unreliable causes me also to doubt the claimant's evidence as to the locker. Having considered the evidence in the round I find it more likely than not that the claimant, having seen that her locker was damaged and being deeply untrusting of the respondent, assumed that managers had broken into her locker and had done so for some underhand purpose, reasoning that the respondent must have wanted to gain access to her belongings.

284. Supported as it is by evidence that a master key had been ordered, I find the evidence of the respondent's witnesses to be more reliable than that of the claimant. I find that what happened was as follows.

    284.1 The respondent needed to ensure lockers at Dundas were cleared before 6 October 2023 because it was obliged by that date to give vacant possession of the Dundas site.

    284.2 Ms Fascia had tried but failed to obtain a master key that would have given her access to the lockers that staff had not already emptied. She was not aware of any master pin code that may have enabled access to all the lockers. As the 6 October deadline was approaching, Ms Fascia asked G4S to see if they would be able to force entry to the lockers. G4S obliged. Ms Fascia did not direct them to open the claimant's locker specifically; however, that was the one G4S tried to access initially. G4S did not manage to open the claimant's locker but they did gain access to a different locker that, like the claimant's, did not have a name on it. Neither G4S's attempt to force the claimant's locker nor Ms Fascia's request that they see if they could force access to lockers were part of a targeted, sustained and deliberate campaign of bullying and unfair treatment towards the claimant as alleged and those actions had nothing to do with anything the claimant had said in her email to Mr Pinter and Ms Robson on 30 March 2020 about her Covid concerns or the conversation the claimant had had with Mr Emmerson along the same lines a week prior to that email.

285. Nor was Ms Hume's email to the claimant on 3 October part of a targeted, sustained and deliberate campaign of bullying and unfair treatment towards the claimant, as alleged or anything to do with the disclosures the claimant made about Covid in March 2020, more than three and a half years earlier. Ms Hume sent the email because she wished to give the

claimant the option to come in and clear her locker and make her aware that if she did not do that the locker would have to be broken into.

286. The respondent could not provide the claimant with any CCTV footage because it was not the respondent's to give to the claimant and nor was it in the respondent's possession or control.

***25 October HAIM meeting: breach of contract Allegation 60 and harassment Complaint 28***

287. On 19 October 2023 Ms Hume sent the claimant an email to a HAIM meeting which was to take place on Wednesday 25 October 2023 at Redcar Job Centre. As with the email in September she sent the email to the claimant's work address rather than her home email address. Having considered the evidence before me I am more than satisfied that, contrary to the claimant's suggestion, Ms Hume did not deliberately send the meeting invitation to the claimant's work address knowing the claimant would not see it. It was inadvertent.

288. Ms Hume travelled to Redcar for the meeting on 25 October. However, the claimant did not attend the meeting at the scheduled time. Because the claimant had not attended Ms Hume sent her an email (this time to her personal address) referring to the meeting that the claimant had not attended and saying 'I do have a duty of care to ensure that you are okay – can you please let me know that you are okay by 2pm today? If you do not respond then I will need to either contact your next of kin or undertake a home visit'.

289. That email was sent at 1.28pm. By 2pm the claimant had not replied. Ms Hume tried to telephone the claimant and left her a voicemail asking her to call back. She then called the claimant's father, who was still the next of kin contact provided by the claimant. He answered the 'phone and Ms Hume said that the claimant had been due to attend a meeting with her, that she had not heard from the claimant and that she wanted to make sure the claimant was okay. He replied that he believed the claimant was okay but would ring her and confirm. I accept that, when Ms Hume spoke with the claimant's father, her concern for the claimant's well-being was genuine; she did not realise she had sent the appointment to the claimant's work email address and genuinely believed that the claimant had failed to attend a meeting of which (Ms Hume believed) she had been aware.

290. At 2.40pm that day the claimant sent an email to Ms Hume saying Ms Hume had not sent her any letter. Ms Hume replied saying to the claimant 'not sure what has happened – please see below. I will re-arrange the meeting and send you a further email.' She copied and pasted the original email she had sent inviting the claimant to the meeting into that email of 25 October. Ms Hume sent the claimant another email to the claimant's personal email address that afternoon attaching a letter inviting her to what was described as a re-arranged HAIM meeting on 1 November 2023.

291. It was only after the claimant had told Ms Hume she had not received a letter that Ms Hume realised she had sent her original email to the claimant's work email address rather than her personal email address.

292. In breach of contract Allegation 60 and harassment Complaint 28 the claimant alleges that Ms Hume:
    292.1 telephoned the claimant's father without the claimant's knowledge or consent and for no good reason; and
    292.2 provided the claimant's father with inaccurate and misleading personal information about the claimant.

293. The claimant alleges that Ms Hume's actions were part of a targeted, sustained and deliberate campaign of bullying and unfair treatment which was a direct result of the claimant raising concerns about Covid risks in March 2020.

294. It is correct to say that Ms Hume telephoned the claimant's father without her knowledge. However, the allegation that Ms Hume did not have good reason for making this 'phone call is not well founded. When Ms Hume contacted the claimant's father, she believed the claimant had failed to attend a meeting she was aware of and was expected to attend. Ms Hume emailed the claimant and tried to reach her by telephone but without response. The claimant had previously said things and behaved in a way that had caused managers to be concerned for her wellbeing. I accept Ms Hume was genuinely concerned for the claimant's wellbeing on this occasion too and that is why she contacted the respondent's father. In the circumstances it was reasonable for Ms Hume to contact the claimant's father, whom the claimant had identified as her emergency contact. When Ms Hume told the claimant's father that the claimant had been due to attend a meeting with her, she genuinely believed that to be the case. When Ms Hume told the claimant's father that she had not heard from the claimant and that she wanted to make sure the claimant was okay, that was true. The claimant's allegation that Ms Hume's actions were part of a targeted, sustained and deliberate campaign of bullying and unfair treatment is not well founded and I reject it. I also find that Ms Hume's actions had nothing to do with anything the claimant had said in her email to Mr Pinter and Ms Robson on 30 March 2020 about her Covid concerns or the conversation the claimant had had with Mr Emmerson along the same lines a week prior to that email.

295. At the end of October Ms Hume contacted the claimant by email because her most recent fit note had expired some days earlier. She asked the claimant to forward a further fit note as soon as possible or to let her know if she was not going to obtain a further fit note. The claimant replied on 28 October asking whether she needed to provide one given that she was waiting for an equality move. Ms Hume responded on 31 October confirming that the claimant would need a fit note to cover her as she did not have an Equality Act move to go to as yet. The claimant did submit a fit note covering the period up to 20 November 2023. I infer that in the meantime the respondent continued to pay the claimant contractual sick pay at half pay rate.

***HAIM meeting on 1 November 2023: breach of contract Allegation 61 and harassment Complaint 29***

296. On 1 November Ms Hume had a meeting with the claimant via Teams under the attendance management process. At that meeting Ms Hume tried to engage the claimant in a discussion about an occupational health referral. However, the claimant insisted on raising the fact that she had not received the appointment to the earlier HAIM meeting. The claimant took issue with Ms Hume referring to the 1 November meeting as a 're-arranged' meeting. Ms Hume explained in the meeting that the original email had been sent to the claimant's work email address not her personal email address and apologised. When Ms Hume tried again to engage the claimant in a discussion about occupational health referral the claimant said she did not need an occupational health referral and that what she needed was a new management team. She told Ms Hume that she did not trust her actions. She was also critical of her previous managers. Eventually the claimant agreed to a further occupational health assessment. However, the claimant then accused Ms Hume and Ms Robson of 'trapping' her and having control of the Equality Act move and failing to support her. Ms Hume tried to explain to the claimant that they had no control over which vacancies came up and how an Equality Act move worked but the claimant did not believe her.

297. The claimant alleges that during the meeting on 1 November Ms Hume 'repeatedly made dishonest and untrue comments to the claimant' (breach of contract Allegation 62 and harassment Complaint 30). The claimant was directed to say what dishonest and untrue comments were made by Ms Hume during that meeting. The claimant's response was 'She said she had sent me two emails. The invitation to the meeting on 19 October 2023, she stated she emailed it to me. And a second email she stated she sent to me on 15 September 2023. She had not sent either of them to me.'

298. This allegation is not made out on the facts. Ms Hume had emailed those emails to the claimant's work address. At the time she sent the emails she did not realise she was sending them to an address that may not reach the claimant. Any error was inadvertent. In the meeting on 1 November Ms Hume explained that she had sent them to the claimant's work address. There was nothing dishonest or untrue about what Ms Hume said.

**Further communications about Equality Move vacancy: breach of contract Allegation 62 and harassment Complaint 30**

299. On 7 November Ms Turner emailed the claimant about another vacancy. This one was based in Eston. She asked the claimant if the role seemed suitable and if she would like to continue with the matching process and speak to the vacancy holder.

300. The claimant sent an email reply to Ms Turner shortly afterwards. She did not say whether or not she would be interested in the vacancy. Instead she said 'I asked you a question on 26.9.2023. please can you answer it.'

301. On 9 November 2023 Ms Turner replied saying:

> *'You asked who contacted me about you. I can confirm that you have been registered as an Equality Act mover since April 2023. Part of this process was to ensure you met the criteria of an Equality Act move, so your line manager completed the necessary paperwork to enable myself to add you to the priority mover's list (which you signed).'*

302. She went on to explain how the priority mover system worked and asked the claimant again if the claimant was interested in the vacancy.

303. The claimant responded by email that day saying that that did not answer her question. She said:

> *'On 26 September I asked you who contacted you about me. You had never contacted me before. I put in a RAR in about the equality move then you contacted me. I am asking you who contacted you about me following that? Or who you contacted about me? Can you also please send me the guidance on equality moves that you follow when you receive an application please.'*

304. Again the claimant did not say if she was interested in the vacancy.

305. Ms Turner replied saying that she would only need to contact the claimant or her line manager if they had matched the claimant to a vacancy and before this they had not managed to match her. She explained that there could be a number of reasons for that as they match to the individual's grade and their suitable locations. She attached a link to the respondent's Equality Act guidance which explained the process. She asked the claimant again if she wished to consider the vacancy.

306. The claimant again did not reply to say whether she was interested in the vacancy. Instead she said:

*'You still have not answered my question. Please could you send me the guidance you follow when you receive an application. I cannot access the intranet so please could you send it so I am able to read it.'*

307. Ms Turner replied by email with an extract from the relevant policy document copied into the email. She said to the claimant in her email that if the claimant did not let her know by the end of the day if she wanted to have a discussion with the vacancy holder for the role she would release the vacancy back for them to start the recruitment exercise.

308. The claimant responded by email that morning saying:'You have not answered my question. Also I asked for the guidance you follow when you receive an equality move. Can you send me it please.'

309. Ms Turner responded by email saying she followed the process that she had previously referred to. The claimant replied again by email. Once again the claimant did not say she was interested in the vacancy. She claimed Ms Turner had not answered her question. Ms Turner replied by saying she had answered the questions and said:

> *''I have explained when you were added to the Equality Act list, why and the process I follow (referral to the network) in the below emails. I hold your contact information as I have received a referral to the network application form (which you signed). I have also explained my role and the reason why I am contacting you, is to try and secure an alternative role.*
> *If you require any further information please contact your line manager.'*

310. The claimant sent further emails to Ms Turner on 9 November suggesting, again, Ms Turner had not answered her questions and, in one of the emails asking Ms Turner to 'send me the referral to the network application form that you received that I signed that you say has my contact details on.' Ms Turner replied that day saying:

> *'The line manager and employee have joint responsibility for ensuring the progression of moves as reasonable adjustment cases. The employee should fully co-operate with their manager to help identify their workplace capability (to find out what they can do as opposed to what they cannot) and appropriate workplace and reasonable adjustments. Line managers are responsible for retaining all related documentation and should be mindful of data protection requirements.*
> *Could you please contact your line manager and request a copy of your equality act application.'*

311. Ms Turner forwarded the email chain to Ms Hume copying in Mr Gray saying she felt like she was going around in circles with the claimant and not achieving anything and telling them that if she did not hear back from the claimant she would release the vacancy back to the vacancy holder to recruit via the recruitment process. The claimant did not say at any point that she was interested in that vacancy.

312. The claimant alleges in these proceedings that 'between 25 September 2023 and 9 November 2023 Amanda Turner … sent the claimant emails in which she made dishonest and untrue comments and sought to gaslight the claimant': breach of contract Allegation 62 and harassment Complaint 30. The claimant was directed during these proceedings to say what the dishonest and untrue statements were. The claimant said it was the following statements:

312.1 'You asked who contacted me about you. I can confirm that you have been registered as an Equality Act mover since April 2023. Part of this process was to ensure you met the criteria of an Equality Act move, so your line manager completed the necessary paperwork to enable myself to add you to the priority movers list (which you signed).'

312.2 'I hold your contact information as I have received a referral to the network application form (which you signed).'

312.3 'Line managers are responsible for retaining all related documentation and should be mindful of data protection requirements.'

313. These are all references to things Ms Turner said in emails on 9 November 2023. I find that none of the statements by Ms Turner that are the subject of this complaint were either untrue or dishonest.

313.1 With regard to the first comment, this was simply a true statement of fact. Ms Turner had been contacted as part of the equality mover process because the claimant's line manager had completed the paperwork.

313.2 At this hearing the claimant suggested the second comment was untrue because Ms Turner had contacted the claimant on her personal email address rather than her work email address and her personal email address had not been included on the Equality Act application form. However, the claimant did not ask Ms Turner in these emails specifically who gave Ms Turner her personal email address and there is no reason to think that Ms Turner understood the claimant to have been asking where she had obtained the claimant's personal email address from. If the claimant had wanted to know that she could have asked the direct question. She did not do so. The fact that she did not do so strongly suggests to me that the claimant is now simply looking for grounds on which to criticise Ms Turner.

313.3 The claimant has not said what was dishonest or untrue about the third comment. She has not established it was untrue, still less dishonest.

314. On 10 November Ms Hume emailed the claimant about a vacancy that had arisen within the Durham Tees Valley district. She asked the claimant to let her know by 15 November 2023 if she was interested. The claimant replied by email 'I am not interested in it as this management team has involvement in it.'

315. Later that day the claimant sent another email to Ms Hume in which she referred to her occupational health appointment that was due to take place on 14 November and said 'I would appreciate it if neither you or Amanda Turner contact me until after it.'

316. Ms Hume replied by email saying 'Can you please explain why you are requesting no contact from Amanda and I please – as this is part of the Equality Act move process and you may miss a job opportunity?' The claimant said 'I asked Amanda to send me the Equality Act procedures so I could see what they were. She won't send them. So for now Julia, I would prefer you and Amanda to stop contacting me as I feel uncomfortable with it.'

***Occupational health 14 November 2023***

317. The claimant had an occupational health appointment on 14 November 2023 with Ms Casson. Ms Casson referred to the claimant having been absent from work since 14 June 2023 due to

perceived stress at work. She said the claimant had told her she had been feeling positive and felt that in the last two weeks she had made some improvement. Nevertheless Ms Casson said the claimant was not fit for work in any capacity, and there were no adjustments or modifications that could be put in place to facilitate a return to work. Ms Casson expressed the opinion that the claimant would struggle to return to work under any circumstances. She said 'Therefore, on the information made available to me today, it seems unlikely that a return will be feasible in the reasonably foreseeable future.' In the report Ms Casson said 'The previous OH opinion provided in the report dated 22 March remains relevant in this case.' She also provided an NHS web-page information about post traumatic stress disorder.

318. It was clear from this report that the occupational health adviser was no longer suggesting that a change of management might assist the claimant to get back to work.

***Communications about occupational health report: breach of contract Allegation 63 and harassment Complaint 31.***

319. After receiving the Occupational Health report, Ms Hume took advice from Ms Broderick of HR over the phone. The conversation was not documented.

320. On 20 November Ms Hume sent the claimant an invitation to a HAIM meeting to go through her recent occupational health report. Attached to that email was a letter inviting her to the meeting. It said that as the claimant had been absent for six months Ms Hume would like to meet with her to discuss her progress and what could be done to help her return to work as soon as she was able.

321. On 20 November the claimant's fit note had expired. The claimant did not send in another fit note to cover her ongoing absence.

322. Ms Hume asked the claimant if she would prefer to go through the occupational health report via email and the claimant said she would. Therefore Ms Hume sent the claimant a list of questions by email of 23 November 2023. Ms Hume asked the claimant if she agreed with Ms Casson's opinion that the claimant would struggle to return to work under any circumstances. She also asked the claimant if she agreed with Ms Casson's statement that there were no adjustments or modifications that could be put in place to facilitate a return to work for the claimant. Ms Hume also asked the claimant that if she did not agree with those statements to confirm 'what we (as a business) can do to support you returning to work' and what adjustments or modifications the claimant felt 'we as a business need to consider to facilitate a return to work.'

323. The claimant did not answer Ms Hume's questions about whether she agreed with Ms Casson. Instead, the claimant replied on 23 November asking who Ms Hume meant by 'we as a business'. Ms Hume replied that she meant either the Durham Tees Valley district or DWP as a whole. The claimant then asked Ms Hume whether she had spoken to the complex case team following the occupational health report and whether she had looked at the linked information about PTSD. Ms Hume replied that she was not sure what the claimant meant by the first question and that she had looked at the information about PTSD. The claimant clarified the question about the complex case team and Ms Hume responded that, yes, she had spoken to them and they had said that the next step in progressing the case was to speak to the claimant.

324. The claimant then sent a further email saying 'Can you send me what they said?' Ms Hume replied 'As per previous conversations this is all by conversation'. The claimant then asked

Ms Hume who she had spoken to. Ms Hume replied that it had been Sam Broderick. The claimant then emailed asking 'Are you saying there is no record of that conversation?' Ms Hume replied 'No, as per previous conversation.'

325. The claimant alleges that in her emails of 23 November 2023 Julia Hume 'told the claimant that there were no records of any conversation between her and the HR team which related to the claimant, that all discussions about the claimant had been verbal, and that she could not provide the claimant with any details of their discussions.' If the claimant is alleging that Ms Hume told her in this email exchange that there were no records of any of the conversations Ms Hume and Ms Broderick had had at any time during the claimant's employment up to that date then that allegation is unfounded: that is not a reasonable or fair interpretation of what Ms Hume said; she was addressing the claimant's question about the specific conversation Ms Hume had referred to in response to the claimant's question about whether she had spoken to the complex case team after receiving the occupational health report. With regard to that conversation, Ms Hume's statement that there was no 'record' of that conversation that she could send to the claimant was simply a statement of fact.

***Further communications from Ms Hume: breach of contract Allegation 64 and harassment Complaint 32.***

326. Following the exchange of emails referred to above, the claimant then sent a further email to Ms Hume on 24 November 2023 saying:

> *'Under this management team my colleague took her own life. Under this management team I have developed PTSD. I will not return to work under this management team or in any position this management team have input in. I asked to be moved away in August 2022. Please do not contact me anymore.'*

327. On 27 November Ms Hume sent an email to the claimant in which she said she was sorry to read her email and that if the claimant was willing she would be looking to discuss the issue she had raised to see what they could do to help and support the claimant. Ms Hume went on to explain that as employer they had a duty of care to the claimant and they also wished to help and support her. She asked the claimant who she would be happy to be contacted by to facilitate ongoing support from the business, given that she had stated she did not wish to be contacted by Ms Spensley, Ms Thompson and now by Ms Hume herself. Ms Hume reminded the claimant that she was on the Equality Act move list and had been offered a number of roles both within and outside the Durham Tees Valley district. She said they were trying to work with the claimant to aid her request of moving from the DTV area and asked the claimant to advise what she felt they or the business can or should be doing further to enable that.

328. The claimant did not reply. By this time the claimant had still not submitted a fit note.

329. On 29 November Ms Hume told the claimant about two more potential Equality Act moves and asked if the claimant was okay if they gave the two vacancy holders the claimant's contact details. Ms Hume also emailed the claimant on 4 December asking her to forward her fit note because her last one had run out on 20 November 2023.

330. By 6 December the claimant had not responded to either of those emails or to any of the other recent emails. On that date Ms Hume sent the claimant a letter under cover of an email explaining the outcome of the recent health and improvement 'meeting', which had essentially been conducted by exchange of emails. Ms Hume explained that as nothing had been identified that could help get the claimant to return to work within a reasonable period, Ms Hume would be referring the claimant's case to a 'decision maker', Ms Baird, to decide

whether the claimant's absence levels 'could be supported' or if dismissal or demotion was appropriate.

331. The claimant did not reply.

332. The claimant alleges that Ms Hume 'ignored' the claimant's request that Ms Hume not contact her. That allegation is not made out on the facts. For although Ms Hume did not comply with the claimant's request, she did not simply ignore it. On the contrary, Ms Hume acknowledged the claimant's request in her response of 27 November, explained why it was not appropriate for the business to simply cease contact with the claimant and asked the claimant who she would be happy to be contacted by.

333. The claimant also alleges that Ms Hume's actions in continuing to send the claimant emails were part of a targeted, sustained and deliberate campaign of bullying and unfair treatment which was a direct result of the claimant raising concerns about Covid risks in March 2020. I find that was clearly not the case. Ms Hume was emailing the claimant because she was still an employee, still expected to comply with the respondent's policies about providing fit notes if she did not attend work, and was still on the respondent's priority mover list. It was entirely reasonable and proper for Ms Hume to maintain contact with the claimant.

***Claimant reaches a settled and firm decision to resign***

334. On 11 December 2023 Ms McNab emailed the claimant asking her to send in her fit note covering her absence from 21 November onwards. The claimant replied by email on the afternoon of 12 December saying:

> *'I have made a decision not to ask the department to support my sickness absence. I also made a decision that I am not coming back to work for the department. I gave Julia my reasons.'*

335. Looking at all the evidence in the round, including events that occurred after the claimant sent this email, I find that by the time the claimant sent this email the claimant had reached a settled and firm decision to resign from the respondent's employment. The email itself was not sufficiently unambiguous to amount to a resignation. It did, however, clearly indicate that that was the claimant's intention. That this was the claimant's settled intention by this time is also evident in the fact that the claimant had failed to submit any fit notes since her last one expired on 20 November 2023, her failure to engage with Ms Hume, both before and after this email, including her failure to answer Ms Hume's questions about the recent occupational health report, her insistence that no one should contact her, the fact that she was no longer engaging positively with the equality move process, and emails the claimant sent to Ms Hume and Mr Hatfield on 15 January 2024 described below.

336. Although the claimant did not resign until February 2024, and in the meantime engaged to some extent with the disciplinary process I refer to below, I do not consider those factors to be compelling evidence that the claimant had not yet made up her mind about resigning or had second thoughts after her email of 12 December. Rather, what happened was that the claimant became aware that the allegation that had been the subject of Ms Booth's investigation was to be considered at a disciplinary hearing and, as Ms Ergul later explained to Ms McNab an email of 15 January 2024, she was concerned that if she resigned and the disciplinary allegation was subsequently upheld, the respondent may 'reclassify' her resignation as a dismissal.

337. In respect of the allegation of constructive dismissal, I find that as the claimant had reached a settled and firm decision to resign by this time, nothing that happened subsequently (or that the claimant became aware of subsequently) influenced her decision to resign. That decision had already been made. Nevertheless, the events that followed are relevant to the complaints under the Equality Act 2010. Therefore, I have set out some further findings of fact below.

**Events that occurred after the claimant had decided to resign**

***Disciplinary proceedings: breach of contract Allegations 65-67 and harassment Complaints 33-34***

338. On the evening of 12 December 2023, the claimant received an email sent by Mr Hatfield to which was attached a letter asking the claimant to attend a disciplinary meeting. The letter was also sent by post. The meeting was scheduled to take place on 20 December. It was to consider the allegation that had been the subject of Ms Booth's investigation earlier in the year.

339. It was not Mr Hatfield who took the decision that the allegation investigated by Ms Booth should proceed to a disciplinary hearing. That decision was taken by others and was a natural and predictable consequence of Ms Booth's conclusion that there was a case for the claimant to answer. The delay in arranging a disciplinary hearing resulted from a number of factors. When Ms Booth prepared her report in July 2023 it was expected that a Ms Stokle would be the designated decision maker. However, because of Ms Stokle's other work responsibilities at the time, someone in HR subsequently decided the case should be allocated to a different manager as decision maker. Mr Hatfield was identified as a suitable person and was asked to conduct the disciplinary hearing and decide whether any disciplinary sanction was appropriate. Mr Hatfield had no previous knowledge of the case, nor who Ms Ergul was. He agreed to act as decision-maker but his other work commitments and annual leave meant there was a further delay progressing the matter.

340. The decision having been taken that there was a case to answer, inviting the claimant to attend a disciplinary hearing was a necessary part of a fair process, as is set out in the ACAS Code of Practice on discipline and grievances.

341. In the letter requiring the claimant to attend a disciplinary meeting the allegation was described as an allegation that the claimant had taken a period of unauthorised absence for the period 6/4/23 to 19/5/23. Whereas Ms Booth had suggested this might have been gross misconduct, in this letter Mr Hatfield said this 'could constitute as more serious minor misconduct due to the length of the alleged unauthorised absence.' Mr Hatfield said in the letter 'I must make you aware that the allegations concerning the identified period of unauthorised absence may result in a decision of misconduct.' I infer that, before sending this letter, Mr Hatfield had already decided that the allegations, if proven, would not amount to gross misconduct and would not lead to the claimant's dismissal.

342. Ahead of the disciplinary hearing that had been arranged for December, Mr Hatfield sent the claimant a copy of Ms Booth's report and a number of other documents. Subsequently, the claimant and Mr Hatfield exchanged a number of emails about the documents Ms Booth had relied on in compiling her report. The claimant believed she had not been sent all of the documents Ms Booth had relied on in her investigation. Specifically, she believed she had not been sent some documents Ms Thompson had annexed to her own report that she (Ms Thompson) had completed on 13 June 2023 and handed over to Ms Booth. Ms Booth had referred to those documents in her report as 'hard copies of the evidence Margaret Thompson

provided.' Mr Hatfield postponed the disciplinary hearing twice whilst these exchanges were ongoing. He also contacted Ms Thompson to ascertain whether she had sent all relevant documents to Ms Booth. Ultimately, he maintained that he had sent the claimant the documents she was asking for.

343. In an email of 15 January 2024 the claimant said to Mr Hatfield 'I am not an employee of the department and I want this final tie to the department ending.'

344. The claimant did not attend the rescheduled disciplinary meeting, which eventually took place on 25 January 2024. Mr Hatfield concluded that the claimant had taken a period of unauthorised absence and that this amounted to misconduct. Mr Hatfield decided to issue the claimant with a first written warning.

345. On 31 January Mr Hatfield wrote to the claimant to notify her of the outcome of the disciplinary proceedings. Mr Hatfield set out his decision and the reasons for it in a letter to the claimant.

***Ms McNab's attempts to engage with the claimant***

346. Throughout this period Ms McNab had been trying to engage with the claimant. She replied to the claimant's email of 12 December 2023 by email on 14 December asking the claimant what she meant by 'I've made a decision not to ask the department to support my sickness absence'. Ms McNab followed this up with another email on 20 December because the claimant had not responded. She told the claimant that as she presently did not have a fit note to cover her absence she was currently on unauthorised absence. She asked again for a fit note to cover her absence and said that if the claimant did not provide a fit note by 4pm on 3 January 2024 they may need to consider taking 'unauthorised absence actions.'

347. The claimant did not respond.

348. On 8 January Ms McNab sent a further email to the claimant. She said that they would need to commence 'unauthorised absence actions' given that the claimant had not been in touch. She explained that the first action to be taken would be to attempt to contact the claimant's next of kin. She told the claimant that if she did not hear from her by midday the following day she would need to attempt to contact the claimant's father who was her nominated next of kin. She said the claimant should contact her if she had any concerns about that.

349. The claimant did email Ms McNab on the morning of the following day. She said in her email that the best care that Ms McNab or anyone from work can do for her is not to contact her.

350. Ms McNab replied on 15 January 2024 acknowledging the claimant's request for no contact from the respondent but explaining that as the claimant remained an employee of the DWP they were required to maintain a minimum level of contact with her, particularly while she is absent. She said that Ms Hume would therefore continue to send out the keeping in touch email each month to her and remained as the claimant's initial point of contact for now but that she would only contact the claimant when absolutely necessary. Ms McNab explained that the process of referring the claimant to a decision maker (ie for a decision on her continued employment) had been paused while they were awaiting a fit note from her. However, that process would now resume.

351. On 15 January 2024 the claimant replied to Ms McNab by email saying Ms McNab's email had been too long for her to read. The claimant said:

> *'I am not an employee of the department anymore. I do not want any contact from any of you. I have engaged with the disciplinary investigation as I was told by Alison that even if I resign it has to go ahead as my resignation can be changed to dismissal. I am serious about none of you contacting me. You are not helping me by contacting me so do not do it or I will go to the police/courts and ask them to make you stop'.*

352. Ms McNab replied by email on 17 January that she understood the claimant wanted no contact from her but that they had no record of receiving the claimant's letter of resignation and had not ended her contract. She said that although the claimant had mentioned not being employed by DWP she was still an employee and as previously explained there had to be a minimum level of contact with her as part of the employer/employee relationship. She explained they needed to continue to manage the current absence from work and would continue to make the referral to a decision maker who would be in touch with the claimant. She explained that if the claimant believed she had or wished to resign then she would need to submit an email confirming when she wished her resignation to take effect from.

353. On 18 January the claimant replied saying simply 'I will contact a solicitor'. Subsequently Ms McNab said they would pause the 'keeping in touch' procedures until further notice or until a decision had been made by the Decision Maker regarding her attendance.

***Claimant's resignation***

354. On 31 January 2024 Ms Baird contacted the claimant asking her to attend a meeting to discuss her sickness absence on 14 February at 11.30am.

355. Meanwhile the claimant had visited a solicitor on 30 January 2024. On 12 February the claimant's solicitor sent a letter by email to Ms McNab notifying her that the claimant was resigning her employment with immediate effect. The claimant said in that letter:

> *'I have realised that I am unable to return to work at the DWP and so I am writing to inform you of my resignation with effect from today. I am unable to work my notice period. Due to the current state of my health, I do not wish to receive any further correspondence or contact from anyone at the DWP'.*

356. She asked for any further correspondence to be directed to her solicitor.

357. Ms McNab took advice from Ms Broderick in HR and then wrote to the claimant's solicitor on 20 February. She said in that correspondence 'Prior to processing Ms Hoy as a leaver, if there is anything further that I or the department can do support Ms Hoy back into the workplace, please could you let me know …' The claimant did not respond suggesting she may be willing to return to work and therefore she was processed as a leaver.

## Conclusions

**Whether the claimant was constructively dismissed**.

358. The claimant's claims of unfair dismissal can only succeed if I conclude the claimant was constructively dismissed.

359. The alleged conduct of the respondent that the claimant says breached the implied term of mutual trust and confidence is as set out in the section above headed 'Claims and Issues'.

360. In line with the approach recommended in the case of *Kaur v Leeds Teaching Hospitals NHS Trust* it is appropriate to start by looking at the most recent acts (or omissions) on the part of

the respondent which the claimant says caused, or triggered, the claimant's resignation and consider whether the claimant affirmed the contract since those acts.

361. In this regard, the very latest of the acts or alleged acts relied on by the claimant do not require consideration at all ie the acts contained within allegations 65, 66 and 67. That is because I have found as fact that, by the time the claimant sent Ms McNab her email of 12 December 2023, the claimant had reached a settled and firm decision to resign and that nothing that happened subsequently influenced her decision to resign. In the context of the allegation of constructive dismissal, this includes the following acts or alleged acts:

    361.1 On the evening of 12 December 2023 (after the claimant sent her email to Ms McNab) Mr Hatfield sending the claimant an invitation to a disciplinary hearing (Allegation 65).

    361.2 In December 2023 and January 2024, Mr Hatfield allegedly repeatedly refusing the claimant's requests that he provide information which the claimant needed to defend her position in the disciplinary proceedings and allegedly making repeated incorrect and dishonest assertions that the information had in fact been sent to the claimant (Allegation 66).

    361.3 Mr Hatfield issuing the claimant with a written warning on 31 January 2024. (Allegation 67).

362. Therefore, I do not need to analyse these allegations further as part of the unfair dismissal complaint.

363. With regard to the earlier timeline, there is evidence that the claimant elected to affirm the contract after the end of May 2023 and before she decided to leave the respondent's employment. In particular, after the end of May 2023:

    363.1 The claimant returned to work on 13 June 2023 after a period of annual leave.

    363.2 The claimant subsequently called on the respondent for further performance of the contract by asking the respondent for an occupational health referral (albeit that the claimant subsequently chose to cancel that appointment) and for her DSE to be done.

    363.3 The claimant accepted contractual sick pay from the respondent from June 2023 until at least November 2023, at half of her normal rate of pay, which was significantly above statutory entitlement.

    363.4 Related to the above, from the start of her sickness absence up until November 2023 the claimant submitted to the respondent's requirements to provide fit notes; had she not done so that would have jeopardised the claimant's ability to receive sick pay.

    363.5 On 29 June 2023, the claimant asked the respondent to allow her father to attend a meeting the following day. I infer from the tenor of the claimant's correspondence at the time and the fact that the claimant now expressly asserts that the respondent's alleged 'refusal' of this request amounted to a breach of the implied term of trust and confidence, that the claimant believed at the time that this was something the respondent should agree to in accordance with its implied duty of trust and confidence. Therefore, the claimant was again calling on the respondent for further performance of the contract in making this request.

363.6 The claimant chose to speak to Mr Harwood on 25 August 2023 about the vacancy the respondent told the claimant about and told him she was interested in the vacancy. The claimant now expressly asserts that Mr Harwood's alleged 'refusal' to consider her for the role breached the implied term of trust and confidence.

364. In deciding whether the claimant had elected to stay I take into account the possibility that the claimant simply took some time to decide whether to stay or go. In this regard I acknowledge that the claimant was not proactively carrying out her duties at this time because she was on sick leave. Based on the evidence before me I do not consider that the state of the claimant's mental health affected her ability to make a decision at this time. However, there are some other factors that might suggest that during this period the claimant was or might have been making up her mind about whether or not to leave. In this regard I acknowledge that the claimant had invoked the respondent's grievance procedure in respect of some of the matters she was unhappy about; however I also note that the claimant knew the outcome of that process from the first week in July 2023. It is also evident that the claimant's general attitude towards the respondent's managers at this time was far from cooperative and she took some persuading to speak to Mr Harwood about the equality move vacancy. However, with regard to that latter point, the claimant's own evidence was that her reluctance was because she did not trust that it was a genuine vacancy, rather than that she had changed her mind about wanting a move to a position within the respondent organisation but under different managers. The facts show that from September 2023 the claimant was doing little that could constitute positive engagement with the equality move process. However, when giving evidence about why she did not bring a claim sooner, the claimant said that she had wanted to stay in the respondent's employment.

365. Considering the facts in the round, I conclude that, the claimant impliedly affirmed the contract and insisted on its further performance by her conduct after May 2023 and before she later decided to leave. The claimant's conduct in that period showed that she intended the contract of employment to continue. It is difficult to pinpoint an exact date by which the claimant had elected to affirm the contract and for reasons explained below I do not consider it necessary to be more specific than to say the affirmation occurred at some point before November 2023, when the claimant was still submitting fit notes and receiving sick pay.

366. The claimant subsequently changed her mind about staying with the respondent and decided to leave. That change of mind happened after the November occupational health report, from which it would have been clear to the claimant that the OH adviser was no longer suggesting that a move to a different management line might assist the claimant to return to work. I infer that whatever hope the claimant might have had at an earlier point in time of a move to a position that was outside the Durham and Tees Valley management reporting line, that hope was extinguished by this occupational health report.

367. The fact that the claimant had affirmed the contract after May 2023 means that, even if the respondent had breached the implied term of trust and confidence before June 2023, the claimant would not have had the right to resign and treat herself as constructively dismissed unless there was a subsequent act or omission that was either:

367.1 by itself a breach of the implied term of trust and confidence; or

367.2 something that was a part of a course of conduct comprising several acts or omissions that, viewed cumulatively, amounted to a breach of that term, in the sense envisaged in the case of Omilaju.

368. In conducting that analysis I must consider all of the acts or omissions relied on by the claimant that I have found occurred after she affirmed the contract. Because I have not identified a precise date of affirmation I have considered all of the relevant acts or omissions that occurred in the relevant period ie between June 2023 and 11 December 2023. I have asked myself two preliminary questions:

    368.1 Firstly, was the act or omission by itself a breach of the implied term of trust and confidence?

    368.2 Secondly, if the answer to the first question is 'no', was the act something that was capable of contributing, even if only slightly, to a breach of the implied term of trust and confidence if taken with other acts?

***Allegation 47***

369. One of the claimant's allegations in these proceedings is that the respondent 'failed to implement in a reasonable time scale the written request the claimant made on 24 March 2023 to be moved from the Durham Tees Valley Jobcentre Plus's management chain, and to be able to have a window open near her'. I have found that the only thing that could conceivably be construed as a request for a move made on this date was the claimant's completion of the equality move form.

370. I have found that the respondent dealt with the request for an equality move in a timely manner, the claimant having been accepted on to the equality move list at the start of April 2023.

371. It is not clear what the claimant means by 'implementing' her request.

372. If and insofar as the claimant is suggesting that the respondent failed to consider moving her to a suitable vacancy then I reject the claim. I have found that, between the start of April 2023 and the date the claimant resigned the respondent did not fail to notify the claimant of any vacancies within the DWP that might have been suitable for the claimant to move into. In fact the respondent told the claimant of several vacancies within DWP. The respondent considered the claimant for the one vacancy in which she expressed an interest; as explained below when dealing with Allegation 57, the fact that the claimant was not offered the vacancy did not breach the implied term of trust and confidence in any way. Had the claimant expressed an interest in any other vacancies I am satisfied she would have been considered for them under the equality move policy; but she did not do so.

373. The claimant has not suggested in these proceedings that the respondent should have created a position for her even if there was no vacancy. If that is what she intends to imply when she refers to a failure to 'implement' her request for a move that was not a case that was put to any of the respondent's witnesses. In any event, I accept the respondent's submission that, even if I were to assume the respondent was under a duty to make adjustments under the Equality Act, that duty would not, in these circumstances, have required the respondent to create a new job for the claimant. The claimant herself has not suggested what kind of work she could have done, where and for whom, at this time. I accept Mr Allen's submission that by this time it would have been impossible to create a new role for the claimant in which she could have performed effectively, so pronounced was her distrust of anyone in any managerial capacity.

374. I conclude that the respondent did not breach of the implied term of trust and confidence by failing to move the claimant away from the Durham Tees Valley Jobcentre Plus's management

chain after she submitted her equality move forms on 24 March 2023. Nor was the fact that the respondent did not move the claimant away from that management chain capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

***Allegation 48***

375. The claimant alleges that the respondent breached the implied term of trust and confidence by needlessly delaying an appeal against the attendance warning she was given on 1 March 2023 so that the appeal was not heard until June 2023. As recorded above, this allegation is not made out on the facts. The respondent did not 'needlessly delay' the claimant's appeal as alleged.

***Allegation 54***

376. The claimant alleges that the respondent breached the implied term of trust and confidence by, on 13 June 2023, Ms Thompson mistreating the claimant by:

376.1 refusing to leave the claimant alone when the claimant requested her to

376.2 being dishonest about things the claimant was saying to her; and

376.3 telling the claimant that Caroline Spensley was downstairs in the claimant's workplace and there wasn't anything the claimant could to stop Caroline Spensley following her to wherever she was moved to when her Equality Move was actioned, resulting in the claimant being unable to return to Dundas.

377. The allegation that Ms Thompson was 'dishonest' about things the claimant was saying to her has not been proved.

378. I have found that when Ms Thompson went to speak with the claimant, the claimant told Ms Thompson she did not want to speak with her. Ms Thompson was the claimant's line manager and it was unrealistic and unreasonable for the claimant to expect to be able to dictate when Ms Thompson should speak with her. In any event Ms Thompson had good reason to want to speak with the claimant at this particular time in order to make her aware that Ms Spensley was visiting Dundas, so that the claimant would not be taken by surprise if she saw Ms Spensley on site. Ms Thompson had reasonable and proper cause to speak to the claimant and to tell her this and her doing so is not something that, viewed objectively, was calculated or likely to cause any damage to the relationship of trust and confidence.

379. As for Ms Thompson telling the claimant that she had no control over any changes that could take place in the future and that she could not guarantee that the claimant would never cross paths with Ms Spensley again, this was a statement of fact said in the context of a discussion about the equality move the claimant was seeking. There was nothing untoward in Ms Thompson saying this. The claimant has failed to establish that Ms Thompson did not have reasonable and proper cause to say it and nor has she established that saying this was calculated or likely to cause any damage to the relationship of trust and confidence, still less any serious damage.

380. The claimant alleges in these proceedings that Ms Thompson's actions amounted to disability-related harassment contrary to the Equality Act. For reasons explained below I do not have jurisdiction to consider the allegations as a stand-alone complaint. For the purpose of the

constructive dismissal claim it suffices to say that, for the reasons outlined in the above paragraphs, Ms Thompson's conduct did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her and nor, in all the circumstances, was it reasonable for the conduct to have that effect, even if the claimant perceived that it did. Therefore, even if I were to find that Ms Thompson's conduct was in some way related to disability, it could not amount to harassment within section 26 of the Equality Act.

381. I conclude that nothing in Ms Thompson's actions in this regard amounted to a breach of the implied term of trust and confidence or was capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

***Allegation 55***

382. The claimant alleges that the respondent breached the implied term of trust and confidence by, on 19 June 2023, inviting her to a meeting to discuss what was incorrectly described as unauthorised absence between 6.4.2023 and 19.5.2023. The claimant complains that it was also a breach of the implied term to send to her two letters by email about this matter.

383. The reasons Ms Booth sent the claimant the letters of 19 June 2023 were to make the claimant aware that she was conducting an investigation under the respondent's disciplinary procedure into whether the claimant had taken unauthorised absence on particular dates, to inform the claimant of what the investigation would entail and the possible consequences, and to ask the claimant to attend a meeting as part of the investigation. It is clear from those letters that in referring to 'unauthorised absence' Ms Booth was simply describing the allegation she was investigating. The fact that the information was contained in two letters rather than a single letter is not at all unreasonable. It is clear that the primary purpose of the first letter was to inform the claimant of the fact of the investigation, what it would entail and what the consequences could be, whereas the primary purpose of the second letter was to tell the claimant about arrangements for an investigation meeting.

384. Having been charged with conducting a disciplinary investigation, Ms Booth's actions in sending those letters was entirely consistent with the ACAS Code of Discipline and Grievances; indeed it was in the claimant's interests that she be told of the investigation and given the opportunity to be involved in it to state her case.

385. The claimant alleges in these proceedings that Ms Booth's actions amounted to disability-related harassment. For reasons explained below I do not have jurisdiction to consider those allegations as stand-alone complaints under the Equality Act. For the purpose of the constructive dismissal claim it suffices to say the following. For the reasons outlined in the above paragraphs, Ms Booth's actions in sending those letters did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Nor was it reasonable for those actions to have the effect of creating such an environment or violating the claimant's dignity, even if the claimant subjectively perceived that they did. Therefore, even if I were to find that this was conduct related to disability, it could not amount to harassment within section 26 of the Equality Act.

386. I conclude that Ms Booth had reasonable and proper cause to send those letters and her doing so was neither calculated nor likely to cause any damage to the relationship of trust and confidence when viewed objectively. There is nothing in the sending of or the content of those letters that amounted to a breach of the implied term of trust and confidence or that was

capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

387. If the claimant's complaint is that the respondent breached the implied term of trust and confidence by even investigating this as a disciplinary matter, I reject that submission. It had not been possible for the claimant to work at Dundas for a period whilst the shutter was broken. In the circumstances it was reasonable for the respondent to ask those normally based at Dundas to work from another local site. On the one hand the claimant had told Ms Thompson that she was unable to do so for reasons that were to do with her mental health. On the other hand, however, the claimant had declined to provide a fit note to evidence that she was unable to work for those reasons. Whether this amounted to the claimant taking unauthorised absence from work was something that the respondent had reasonable and proper cause to investigate under its disciplinary policy. Furthermore, The respondent doing so was not something that breached the implied term of trust and confidence or that was capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju.* In reaching that conclusion I am satisfied that if and in so far as the claimant alleges in these proceedings that investigating this matter amounted to harassment under the Equality Act, that contention is not well founded. I say that because, even if I were to assume the investigation was in some way related to disability, carrying out an investigation was not done with the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her and nor was it reasonable for it to have the effect of creating such an environment or violating the claimant's dignity.

***Allegation 56***

388. The claimant alleges that the respondent breached the implied term of trust and confidence on 29 June 2023 by Ms Hume refusing the claimant's request for permission to allow her father to act as a support person at a meeting, despite the claimant pointing out that the requirement for her to attend the meeting alone placed her at a disadvantage and making it clear that the request should be treated as a request for a reasonable adjustment.

389. The meeting in question was a meeting under the respondent's sickness absence management policy to discuss the claimant's absence. On the afternoon before the meeting the claimant asked that, at that meeting, Ms Thompson speak with the claimant's father on the 'phone rather than the claimant herself, with the claimant's father repeating Ms Thompson's questions to the claimant. The claimant described this as a 'reasonable adjustment.'

390. It is correct to say that Ms Hume did not agree to that arrangement for that particular meeting. However, as recorded above, I have found as follows.

    390.1 The respondent had cogent and reasonable reasons for declining the request in relation to the 30 June meeting. Those were that it was not clear to the respondent why the claimant was unable to speak to Ms Thompson directly and how that related to a disability and there was a reasonable alternative approach available that could be adopted as a compromise in place of holding a meeting, in that the respondent could pose questions by email for the claimant to answer by email. Furthermore, previous interactions with the claimant's father had not gone well and there were concerns about whether the claimant's father would accurately relay the claimant's views and that the claimant seemed to want her father to speak for her; there were also concerns about

how they would know it was the claimant's father they were speaking to and about the practicalities of making the arrangements in time for the next day's meeting.

390.2 The respondent did not insist that the meeting go ahead. Rather, the respondent gave the claimant the option of receiving and answering questions in writing. This was a reasonable alternative.

390.3 The respondent indicated it may be able to consider the arrangement suggested by the claimant for future meetings and invited her to explain why the claimant felt the adjustment was needed.

391. As recorded above, I have rejected the claimant's allegations that Ms Hume's refusal of the claimant's request was part of a 'targeted, sustained and deliberate campaign of bullying and unfair treatment' and was 'as a direct result' of the claimant raising concerns about Covid risks more than three years earlier, in March 2020. I have also rejected the allegation that Ms Hume's actions were 'to the claimant's considerable detriment' and 'exceptionally harmful'; the alternative arrangements put in place by the respondent were not detrimental or harmful to the claimant at all.

392. The claimant alleges in these proceedings that the decision not to agree to her request amounted to a breach of a duty to make reasonable adjustments and disability-related harassment contrary to the Equality Act. For reasons explained below I do not have jurisdiction to consider those allegations as stand-alone complaints. For the purpose of the constructive dismissal claim it suffices to say the following.

392.1 For the reasons outlined in the above paragraphs I consider it was not reasonable to expect the respondent to have to make the adjustment sought by the claimant, even if I were to assume that the claimant was disadvantaged by the respondent's usual practice of requiring employees to attend this kind of meeting either alone or with a Trade Union representative. Therefore there was no discrimination in this regard.

392.2 For the reasons outlined in the above paragraphs, declining the claimant's request did not have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Therefore, even if I were to find that this was conduct related to disability, it did not amount to harassment within section 26 of the Equality Act.

393. Nothing in Ms Hume's actions that are the subject of this allegation amounted to a breach of the implied term of trust and confidence. She had reasonable and proper cause to decline the claimant's request and her doing so was neither calculated nor likely to do any damage (let alone serious damage) to the relationship of trust and confidence. For those reasons I also find that her actions were not capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

***Allegation 57***

394. The claimant alleges that in August 2023 Mr Harwood refused to consider the claimant for a vacant position in which she had expressed an interest.

395. As recorded above, I have found that is not what happened. What happened is that the claimant was invited to express and interest but initially did not respond. Subsequently, the claimant said she would discuss the position with Mr Harwood. Consequently, Mr Harwood

did consider the claimant for the vacancy in question, having been asked to extend the deadline for considering priority movers. He had a long conversation with the claimant. He then decided not to put the claimant forward for one of the vacancies following that conversation. That cannot be accurately characterised as Mr Harwood refusing to consider the claimant for the vacant position.

396. To the extent that Mr Harwood declined to offer the claimant one of the vacancies following his conversation with her, I consider that Mr Harwood had reasonable and proper cause for declining to offer the position to the claimant. He had been unable to ascertain that the claimant may be suitable for the role given her unwillingness to properly engage with the questions he was trying to ask her in order to assess her suitability. His decision was not, as alleged by the claimant, part of a 'targeted, sustained and deliberate campaign of bullying and unfair treatment at the hands of DWP managers'. Rather it was a reasonable and proportionate decision. Furthermore, Mr Harwood's decision not to offer the claimant one of the vacancies was not calculated to damage the relationship of trust and confidence and, when viewed objectively, nor was it at all likely to do so.

397. The claimant also alleges Mr Harwood breached the implied term of trust and confidence when, at a later date, having been asked for an account of the conversation he had had with the claimant, Mr Harwood omitted to mention that the claimant had said she was interested in the vacancy.

398. It is correct to say that the account Mr Harwood wrote down did not refer to that fact. However, as I record above:

    398.1 There was no suggestion by Mr Harwood at the time and is no suggestion now that that document was intended as a verbatim record of everything that was said. It was clearly a summary of what was said prepared some time later.

    398.2 There was no suggestion by Mr Harwood in that summary that the claimant told him she was not interested in the role.

399. I have found there was nothing significant about Mr Harwood omitting to mention that the claimant had said at the end of the call that she was interested in the vacancy. Whether or not the claimant said that, the fact remained that Mr Harwood had been unable to ascertain from the claimant that she might be suitable for the role.

400. Nothing in Mr Harwood's actions amounted to actions that, viewed objectively, were calculated or likely to damage the relationship of trust and confidence.

401. Nor, I find, were Mr Harwood's actions in not offering the claimant one of the vacancies and not recording in his summary that the claimant was interested in the role, capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

402. In reaching that conclusion I have taken into account that the claimant alleges in these proceedings that Mr Harwood's actions amounted to disability-related harassment. As with the other allegations of harassment, I do not have jurisdiction to consider this as a stand-alone complaint under the Equality Act. For the purpose of the constructive dismissal claim it suffices to say the following. For the reasons outlined in the above paragraphs, Mr Harwood's actions did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Nor, in the circumstances

outlined above, was it reasonable for those actions to have the effect of creating such an environment or violating the claimant's dignity, even if the claimant subjectively perceived that they did. Therefore, even if I were to find that this was conduct related to disability, it could not amount to harassment within section 26 of the Equality Act.

***Allegations 58-59***

403. The claimant alleges that the respondent breached the implied term of trust and confidence by doing the following things:

403.1 The claimant alleges that, on 3 October 2023, Julia Hume sent an email asking the claimant to come into Dundas jobcentre to clear her locker, and made an explicit threat that the claimant's locker would be forcefully entered if she was unable to attend.

403.2 The claimant alleges that, subsequently, the respondent broke into the claimant's locker and removed personal documents (before the date by which she was requested to clear it).

403.3 The claimant further alleges that the respondent denied the request for the CCTV footage (which request was made as a subject access request).

404. Ms Hume had reasonable and proper cause for sending the email she sent on 3 October 2023: the Dundas site was closing and lockers needed to be cleared out; Ms Hume's email gave the claimant the opportunity to empty her locker and explained the consequences if she did not do so. I agree with Mr Allen's submission that the reference to breaking into the claimant's letter was not a 'threat', it was simply an explanation of what the alternative was to the claimant not coming in herself to clear her locker. I have rejected the claimant's allegation that Ms Hume's email was part of a targeted, sustained and deliberate campaign of bullying and unfair treatment. Nothing in her email was calculated to damage the relationship of trust and confidence and, when viewed objectively, nor was it at all likely to do so. Nor, I find, was Ms Hume's email capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

405. In reaching this conclusion I have taken into account that the claimant alleges in these proceedings that Ms Hume's action in sending the email amounted to disability-related harassment. As with the other allegations of harassment, I do not have jurisdiction to consider these as stand-alone complaints under the Equality Act. For the purpose of the constructive dismissal claim, I am satisfied that, for the reasons outlined in the above paragraph, the respondent's conduct in this regard did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Nor, in the circumstances outlined above, was it reasonable for those actions to have the effect of violating the claimant's dignity or creating such an environment, even if the claimant subjectively perceived that they did. Therefore, even if I were to find that this was conduct related to disability, it could not amount to harassment within section 26 of the Equality Act.

406. As recorded above, I have found that the respondent did not break into the claimant's locker and nor did the respondent remove personal documents from the claimant's locker. Therefore, these allegations are not made out.

407. With regard to the claimant's request for the CCTV footage, I have found that the respondent could not provide the claimant with any CCTV footage because it was not the respondent's to

give to the claimant and nor was it in the respondent's possession or control. Therefore, the fact that the respondent did not provide the claimant with any CCTV footage is not something that was capable of amounting to, or contributing to, a breach of the implied term of trust and confidence.

***Allegation 60***

408. The claimant alleges that the respondent breached the implied term of trust and confidence on 25 October 2023 by Ms Hume telephoning the claimant's father without the claimant's knowledge or consent and for no good reason; and providing the claimant's father with inaccurate and misleading personal information about the claimant. As with all of the other allegations in this case, the claimant alleges that Ms Hume's actions were part of a targeted, sustained and deliberate campaign of bullying and unfair treatment which was a direct result of the claimant raising concerns about Covid risks in March 2020.

409. It is not in dispute that Ms Hume telephoned the claimant's father without the claimant's knowledge. I have found that Ms Hume did have a good reason for making this 'phone call, in that Ms Hume believed the claimant had failed to attend a meeting that (Ms Hume believed) she was aware of and that Ms Hume was expecting the claimant to attend; Ms Hume had tried to contact the claimant directly but without success; and Ms Hume was genuinely, and reasonably, concerned for the claimant's wellbeing. Ms Hume had reasonable and proper cause to contact the claimant's father, whom the claimant had identified as her emergency contact.

410. As for the allegation about what Ms Hume told the claimant's father, When Ms Hume told the claimant's father that the claimant had been due to attend a meeting with her, she genuinely believed that to be the case. When Ms Hume told the claimant's father that she had not heard from the claimant and that she wanted to make sure the claimant was okay, that was true.

411. As recorded in my findings of fact, I have rejected the claimant's allegation that Ms Hume's actions were part of a targeted, sustained and deliberate campaign of bullying and unfair treatment. Nothing in those actions was calculated to damage the relationship of trust and confidence and, when viewed objectively, nor were the actions at all likely to do so. Nor, I find, were these actions capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

412. In reaching that conclusion I have taken into account that the claimant alleges that Ms Hume's actions in contacting her father amounted to disability-related harassment. As with the other allegations of harassment, I do not have jurisdiction to consider this as a complaint under the Equality Act. For the purpose of the constructive dismissal claim, I am satisfied that, for the reasons outlined in the above paragraphs, Ms Hume's conduct in this regard did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Nor, in the circumstances outlined above, was it reasonable for those actions to have the effect of violating the claimant's dignity or creating such an environment, even if the claimant subjectively perceived that they did. Therefore, even if I were to find that this was conduct related to disability, it could not amount to harassment within section 26 of the Equality Act.

***Allegations 61 and 62***

413. The claimant alleges that the respondent breached the implied term of trust and confidence when, during a meeting on 1 November 2023, Ms Hume 'repeatedly made dishonest and untrue comments to the claimant'.

414. The claimant also alleged in her grounds of claim that the respondent breached the implied term of trust and confidence 'between 25 September 2023 and 9 November 2023' by Ms Turner '[sending] the claimant emails in which she made dishonest and untrue comments and sought to gaslight the claimant'. It transpired that this allegation concerned things said by Ms Turner in emails on 9 November, rather than any earlier date.

415. These allegations are not made out because, as recorded above, I have found that:

    415.1 there was nothing dishonest or untrue about anything Ms Hume said that is the subject of this complaint; and

    415.2 none of the statements by Ms Turner that are the subject of this complaint were either untrue or dishonest.

***Allegation 63***

416. The claimant alleges that the respondent breached the implied term of trust and confidence by Ms Hume telling the claimant, in her emails of 23 November 2023, 'that there were no records of any conversation between her and the HR team which related to the claimant, that all discussions about the claimant had been verbal, and that she could not provide the claimant with any details of their discussions.'

417. The allegation that what Ms Hume said in those emails breached the implied term of trust and confidence is not made out, for the following reasons:

    417.1 If the claimant is alleging that Ms Hume told her in this email exchange that there were no records of any of the conversations Ms Hume and Ms Broderick had had at any time during the claimant's employment up to that date then that allegation is unfounded: that is not a reasonable or fair interpretation of what Ms Hume said; she was addressing the claimant's question about the specific conversation Ms Hume had referred to in response to the claimant's question about whether she had spoken to the complex case team after receiving the occupational health report.

    417.2 With regard to that conversation, Ms Hume's statement that there was no 'record' of that conversation that she could send to the claimant was simply a statement of fact made in response to a specific question asked by the claimant. Ms Hume's response was reasonable and proper.

    417.3 Furthermore, viewed objectively, Ms Hume's response was neither calculated nor likely to damage the relationship of trust and confidence at all. Nor was it capable of contributing in any way to a breach of the implied term of trust and confidence in the *Omilaju* sense. In reaching that conclusion I have taken into account that the claimant alleges that Ms Hume's response amounted to disability-related harassment. I do not have jurisdiction to consider this as a complaint under the Equality Act. For the purpose of the constructive dismissal claim, I am satisfied that, for the reasons outlined in the above paragraphs, Ms Hume's response did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Nor, in the circumstances outlined above, was it

reasonable for her response to have the effect of violating the claimant's dignity or creating such an environment. Therefore, even if I were to find that this was conduct related to disability, it could not amount to harassment within section 26 of the Equality Act.

***Allegation 64***

418. On 24 November 2023 the claimant sent an email to Ms Hume in which she asked Ms Hume not to contact her again. Ms Hume subsequently emailed the claimant on 27 and 29 November and on 4 and 6 December 2023.

419. The claimant alleges that Ms Hume 'ignored' the claimant's request that Ms Hume not contact her. That allegation is not made out on the facts. For although Ms Hume did not comply with the claimant's request, she did not simply ignore it; she acknowledged the claimant's request, explained why it was not appropriate for the business to simply cease contact with the claimant and asked the claimant who she would be happy to be contacted by.

420. I have found that Ms Hume's actions in continuing to send the claimant emails were not, as alleged by the claimant, part of a targeted, sustained and deliberate campaign of bullying and unfair treatment which was a direct result of the claimant raising concerns about Covid risks in March 2020. Ms Hume was emailing the claimant because she was still an employee, still expected to comply with the respondent's policies about providing fit notes if she did not attend work, and was still on the respondent's priority mover list. It was entirely reasonable and proper for Ms Hume to maintain contact with the claimant in the way she did. Furthermore, nothing in those actions was calculated to damage the relationship of trust and confidence and, when viewed objectively, nor were the actions at all likely to do so given that, on any objective assessment, no employee in these circumstances could reasonably expect their employer to cease contact with them.

421. The claimant alleges in these proceedings that Ms Hume continuing to email the claimant amounted to a breach of a duty to make reasonable adjustments and disability-related harassment contrary to the Equality Act. I do not have jurisdiction to consider those allegations as stand-alone complaints. For the purpose of the constructive dismissal claim I say the following.

    421.1 Ms Hume's actions were not done with the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Nor was it reasonable for Ms Hume's actions to have that effect. Therefore, even if I were to find that this was conduct related to disability, it did not amount to harassment within section 26 of the Equality Act.

    421.2 For the reasons outlined in the above paragraphs I consider it was not reasonable to expect Ms Hume to cease all contact with the claimant, even if I were to assume that the claimant was put at a substantial disadvantage (compared to someone without a disability) by the respondent's usual practice of maintaining contact during sick leave and the respondent knew she was likely to be so disadvantaged. Therefore there was no discrimination in this regard.

422. It follows that Ms Hume's actions in emailing the claimant did not breach the implied term of trust and confidence as alleged at allegation 64. Nor, I find, were these actions capable of contributing in any way to a breach of the implied term of trust and confidence in the sense envisaged in the case of *Omilaju*.

***Conclusion as to whether the claimant was dismissed***

423. The result of my analysis is that, after the claimant affirmed the contract of employment, the respondent did not do anything that either amounted to a breach of the implied term of trust and confidence in itself or was capable of contributing in some way to any breach of the implied term of trust and confidence that may have occurred before the claimant affirmed the contract.

424. Therefore, as explained in the case of *Omilaju*, there is no need to examine the earlier history of the case to see if anything the respondent did before June 2023 amounted to a breach of the implied term of trust and confidence. That is because, having affirmed the contract, the claimant could no longer rely on any earlier breach of contract and treat herself as dismissed.

425. As the claimant was not constructively dismissed, the claim of unfair dismissal fails.

**Discrimination and harassment claims**

426. The claimant began early conciliation with ACAS on 26 March 2024. For the purpose of calculating time limits in section 123 of the Equality Act 2010, that was 'day A' as defined by section 140B. ACAS emailed an Early Conciliation certificate on 2 April 2024. That was 'day B' for the purpose of section 140B. The claim form was presented on 17 May 2024.

427. In its grounds of resistance the respondent said that any complaints made under the Equality Act 2010 about things that happened, or are alleged to have happened, before 27 December 2024 have been brought outside the primary three month time limit provided for in section 123 of the Equality Act 2010. In so far as it may have been taken to imply that a complaint about anything that occurred on or after 27 December 2024 has been brought in time, that was not correct. It would have been correct if the claimant had brought her claim on or before 2 May 2024 (ie within a month of day B). But she did not do so.

428. The respondent sought to set out the position accurately in a position statement prepared by Mr Allen and sent to the tribunal and the claimant on 3 October 2025. In that document (and in closing submissions) the respondent submits that only acts/omissions that occurred (or are to be treated as having occurred) on or after 9 February 2024 are within the primary time limit. In my judgment, this is not right either, although the point is academic. It is only acts/omissions that occurred (or are to be treated as having occurred) on or after 11 February 2024 that are within the primary time limit. That is for the following reasons:

    428.1 Were it not for section 140B, the three month time limit for making a complaint of discrimination or harassment that occurred (or is to be treated as having occurred) on 11 February 2024 would expire on 10 May 2024. If the discrimination/harassment occurred (or is to be treated as having occurred before 11 February 2024, the time limit would expire before 10 May 2024.

    428.2 Section 140B(3) extends that time limit by 7 days ie the period beginning with 27 March 2024 (the day after Day A) and ending with 2 April 2024 (Day B).

    428.3 That means that the time limit for making a complaint of discrimination or harassment that occurred (or is to be treated as having occurred) on 11 February 2024 expires 7 days after 10 May 2024 ie on 17 May 2024, the date the claimant brought her claim. If the discrimination/harassment occurred (or is to be treated as having occurred) before

11 February 2024, the time limit expired before 17 May 2024 ie before the claimant brought her claim.

429. The last act of alleged harassment about which the claimant complains is Mr Hatfield sending the claimant a written warning on 31 January 2024, which occurred more than three months before the claimant presented her claim.

430. As for the complaints of discrimination by failing to make reasonable adjustments, even if these complaints were made out, for time limit purposes the last of the alleged failures to make adjustments occurred no later than November 2023. I say that for the following reasons:

430.1 The latest alleged failure to make adjustments is that related to the respondent's practice of contacting employees directly when they were off sick. The claimant's case is that this put her at a substantial disadvantage, in comparison with someone without a disability from November 2023 and that the respondent's failure to cease contacting her directly following her request on 24 November 2023 amounted to a failure to comply with a duty to make reasonable adjustments. In her grounds of complaint, the claimant specifically alleges that it was Ms Hume's contact with her that amounted to a failure to comply with the duty to make adjustments. Ms Hume's last contact with the claimant was on 6 December 2023. But even if I were to interpret the claimant's claim under the Equality Act 2010 more broadly to cover contact from other managers, the complaint is out of time, for the following reasons:

430.1.1 For the purposes of applying the time limits in section 123 of the Equality Act 2010, if this did amount to a failure to comply with a duty to make adjustments it is to be treated as having occurred when the person in question decided on it or is to be treated as having decided on it section 123(3) – (4).

430.1.2 After the claimant asked not to be contacted on 24 November 2023, Ms Hume sent further correspondence to the claimant on 27 and 29 November and 4 and 6 December 2023. Ms McNab also sent correspondence to the claimant on 11, 14 and 20 December 2023, 8, 9, 15 and 17 January 2024 and 5 February 2024. Mr Hatfield also corresponded with the claimant about the disciplinary proceedings and then at the end of January Ms Baird contacted the claimant asking her to attend a meeting to discuss her sickness absence. It is clear from this correspondence that the respondent had decided not to cease contacting the claimant. Both Ms Hume and Ms McNab made it clear to the claimant that the respondent would not simply cease contacting her.

430.1.3 Applying sections 123(3) and (4) I find that, if the respondent's failure to cease contacting the claimant amounted to a failure to comply with a duty to make reasonable adjustments, that failure occurred on 27 November 2023, more than five months before the claim was made.

431. The claimant also complains there was a failure to comply with a duty to make reasonable adjustments by omitting to move her from the Durham Tees Valley Job Centre Plus's management chain (and to a location with opening windows) within a reasonable time. However, even if such a claim were well founded, any such failure must have ended months before 11 February 2024 as the claimant had by then long since ceased cooperating with the respondent's efforts to find for her an alternative post.

432. There is a complaint about the fact that the respondent did not agree to the claimant's request to have her father attend the absence management meeting on 30 June 2023, more than 11 months before the claim was made to the tribunal.

433. The other complaints concern alleged failures to make adjustments that are said to have occurred more than a year before the claim was made to the tribunal.

434. Although Mr Allen's calculation of time limits was out by two days (an error that was, theoretically at least, in the claimant's favour), that miscalculation is academic. That is because, for reasons explained above, even if I were to find that there had been harassment or discrimination, the last act occurred on 31 January 2024.

435. All of the complaints under the Equality Act 2010 were made to the Tribunal more than three months after the acts (or alleged acts) to which the complaints relate. I must therefore decide whether the proceedings were brought within 'such other period as the employment tribunal thinks just and equitable': s123(1)(b). In other words, I must decide whether it is just and equitable to extend the time for bringing these proceedings under the Equality Act 2010.

436. One of the factors to consider is the reason for the delay in bringing a claim.

437. The claimant did not volunteer, in her witness statement, any reason for the delay in making her discrimination and harassment claims. Nor had she done so in her claim form or the grounds of claim that accompanied it. Therefore, at the end of her oral evidence I gave the claimant a further opportunity to explain why she had not brought any claims of harassment or discrimination sooner than she had. The reason the claimant gave was that she had not wanted to bring a claim against her employer and that she had wanted to stay in her job. The claimant also said she did not think a tribunal claim was the right type of claim to bring, and, even now, still thinks that is the case. The claimant did not say she was too unwell to bring a claim sooner and I find that she was not. Nor did she suggest that she was unaware of the time limit for making a claim of discrimination or harassment.

438. The claimant's desire to remain in employment is understandable. However, remaining in employment did not preclude claims of harassment and discrimination. The claimant's desire to avoid litigation in the hope that there would be an internal resolution of her concerns was legitimate. However, I have found that such was the claimant's distrust of the respondent's managers that she stopped cooperating with the respondent's efforts to find her an alternative position in the Autumn of 2023. Given that the claimant's position was that the only way she could return to work was under an entirely different management line, I infer that whatever hope the claimant might have had at an earlier point in time for an internal resolution, such hope had ceased to exist, and ceased to operate on her mind as a reason for not bringing a claim, by the second half of November 2023, after the last occupational health report was received and it was clear the occupational health adviser was no longer suggesting that a change of management might assist the claimant to get back to work. In any event, whatever desire the claimant may have had to avoid litigation, that must be balanced against the interests of the respondent, and the general public, in bringing claims in a timely manner so that there can be finality in legal proceedings.

439. The practical result of extending time would be the respondent defending claims relating to matters which, in many cases, had happened months and even years before the claim was presented, and which, on the claimant's case, were in any event related to events that had happened some four years before the claim was made. I accept the respondent's submission that the passage of time adversely affected the cogency of the evidence, and this prejudiced

the respondent's ability to defend the claims. The fact that the claimant had invoked the respondent's grievance procedure did not remove that prejudice.

440. The respondent's ability to defend itself against the complaints of disability-related harassment was not helped by the fact that the bases of claims made under the Equality Act 2010 were not clearly set out in the grounds of claim. In particular: in respect of the complaints of harassment, the grounds of claim did not say how the alleged conduct of the respondent (as opposed to the context in which that conduct arose) was said to be related to the claimant's disability; and in respect of the failure to make adjustments claims the grounds of claim did not say how any provision, criterion or practice of the respondent put the claimant at a disadvantage that was connected with her disability. Those were not matters which could clearly be discerned from the grounds of claim.

441. It appeared that an issue at the centre of many of these claims was the motivation of individuals for doing the acts (or omissions) said to be unlawful. In addition, in respect of some of the claims there was a dispute as to whether the alleged act or omission occurred at all, or happened in the way alleged. Also in issue were the extent of and effects of the claimant's disability, whether and how the respondent's practices disadvantaged the claimant for reasons to do with a disability, and the respondent's knowledge of those matters at various times. Whilst some facts that may have a bearing on those issues could be established by reference to documents, others were dependent on the recollections of individuals. Having heard evidence from numerous witnesses, it was clear that witnesses had difficulty in recalling events. That is the case for even some of the most recent events about which the claimant complained, including the complaints about Mr Hatfield's actions; the impression I gained from hearing witnesses give evidence was that their recollection of relevant events was, understandably, less reliable given the passage of time. Even where witnesses believed their evidence to be accurate, the passage of time left their evidence more vulnerable to being considered unreliable.

442. It is no answer to that to say that the respondent has been able to respond to the allegations and lead evidence. The the fact that time points in a case like this cannot sensibly be determined until the final hearing means that a respondent has no alternative than to defend the claims as best it can. Nor is the fact that I have made findings on many of the factual allegations underpinning the Equality Act claims to be taken to mean there was no prejudice to the respondent in defending claims based on those factual allegations. Making findings of fact is unavoidable because the claims of harassment and discrimination overlap with the factual allegations which underpin the claimant's (in time) complaint that she was unfairly (constructively) dismissed.

443. Weighing on the other side of the balance is the fact that if I do not extend time for these claims, the claimant will experience prejudice in that she will not have these matters determined and, if I were to decide any of the complaints are well founded, would not have a remedy for unlawful acts. However, having considered the complaints about many of the most recent matters in the context of the claimant's claim to have been constructively dismissed, it is clear that those complaints would not succeed in any event. There is therefore no substantive prejudice to the claimant in not having those complaints formally determined as complaints under the Equality Act 2010.

444. In respect of the other complaints made under the Equality Act 2010, the claimant's case is that the incidents about which she complains amounted to a discriminatory course of conduct extending over time. Even if I were to assume that was the case, the claimant has not persuaded me that it is just and equitable to extend time in relation to the whole compendious

alleged course of conduct, particularly in light of the forensic prejudice to the respondent of having to defend claims about or relating to matters that happened, or are alleged to have happened, many months and even years before the claim was made.

445. I have considered whether it is, alternatively, just and equitable to extend time in relation to the disciplinary proceedings that took place in December 2023 and January 2024. The delay in bringing proceedings relating to acts or alleged acts dating from January 2024 was relatively short. However, I have decided it is not just and equitable to extend time. The respondent has still faced forensic difficulties in relation to complaints about Mr Hatfield's conduct or alleged conduct. I consider that alone to be sufficient reason not to extend time, when weighed against any prejudice to the claimant.

446. In any event, the claimant has not explained how Mr Hatfield's conduct was conduct related to disability, despite having been directed to do so. The claimant suggested in relation to some other complaints that the situation would not have arisen had it not been for her disability. However, it is not enough to establish a claim of disability-related harassment that the context in which the respondent's conduct arises is somehow related to disability, or that the claimant's own conduct was somehow related to disability. The fact that the claimant did not identify what it was about Mr Hatfield's conduct that was related to disability indicates to me that she was unable to do so which, in turn, is a sign that this was a weak claim and that there is little if any prejudice to the claimant in not extending time.

447. In sum, weighing all of the relevant factors, including the public interest in enforcing time limits, the claimant has not persuaded me that it is just and equitable to extend time for any of complaints of discrimination or harassment.

448. It follows that the Tribunal does not have jurisdiction to determine those complaints.

449. Therefore, none of the claimant's complaints of harassment or discrimination are made out.

**Schedule**
**List of issues**

**Equality act complaints**

**Whether claimant had a relevant disability**

***Issues for the tribunal to decide***

1. Between the date of the first of the allegations of discrimination/harassment (which appear to be in May 2021) and December 2021, did the claimant have a disability by reason of anxiety and depression? ie
   1.1. Did the claimant have a mental (or physical) impairment in that period by reason of anxiety and depression.
   1.2. If so, at that time did the impairment have a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities?

2. Between 27 Jan 2023 and January 2024, did the claimant also have a disability by reason of sensory overload (whether in combination with or separate to anxiety and depression and/or, from March 2023, PTSD ).
   2.1. Did the claimant have a mental (or physical) impairment in that period by reason of sensory overload, whether the condition is taken in isolation or together with the claimant's anxiety and depression and/or PTSD)?
   2.2. If so, in that period did that impairment by reason of sensory overload have a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities?

3. Between March 2023 and January 2024, did the claimant also have a disability by reason of PTSD (whether in combination with or separate to anxiety and depression and/or sensory overload).
   3.1. Did the claimant have a mental (or physical) impairment in that period by reason of PTSD, whether the condition is taken in isolation or together with the claimant's anxiety and depression and/or sensory overload)?
   3.2. If so, in that period did that impairment by reason of PTSD have a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities?

**Disability related harassment**

4. Did the respondent do thoe things labelled as 'Harassment complaints' in the Table in the 'Claims and Issues' section of this judgment?

5. If so, was that unwanted conduct?

6. If so, was that unwanted conduct related to a disability?

7. If so did that conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

**Failure to make reasonable adjustments**

***Complaint at para 13.2 of the Grounds of Complaint read with paras 6.21, 6.29, 6.32, 6.36, 6.38, 6.39 and 6.41***

Whether respondent was under a duty to make adjustments

8. Did the claimant have the relevant disability relied on at the material time(s)? See above

9. Did the respondent have the following provisions, criteria and/or practices (PCPs) which were applied to the claimant:
   9.1. a requirement for windows be closed from May 2021;
   9.2. a requirement to work from the office;
   9.3. a requirement to start work at 9am;
   9.4. a requirement to work at James Cook Jobcentre Middlesbrough.

10. Did these PCPs put the claimant at a substantial disadvantage, in comparison with someone without a disability?

11. If so, what was that disadvantage?

12. Has the respondent shown that it did not know and could not reasonably have been expected to know:

    12.1. that the claimant had the relevant disability at the relevant time; or
    12.2. that the claimant was likely to be disadvantaged by the relevant PCP?

Whether respondent failed to comply with duty

13. Would one or more of the following steps have avoided the relevant disadvantage?
    13.1. Allowing the claimant to open windows and/or to work near a window she could open.
    13.2. Agreeing to the claimant's requests to be allowed to work from home
    13.3. Agreeing to the request the claimant made on 23 January 2023 to start work at 8am.
    13.4. Not requiring the claimant to work at James Cook Jobcentre Middlesbrough.

14. If so:
    14.1. Was it reasonable for the respondent to have to take that step?
    14.2. Did the respondent fail to take that step?

***Complaint at para 13.2 of the Grounds of Complaint read with para 6.33 and 6.34***

Whether respondent was under a duty to make adjustments

15. Did the claimant have the relevant disability relied on at the material time(s)? See above

16. Did the respondent have the following provisions, criteria and/or practices (PCPs) which were applied to the claimant: requiring the claimant to work under the line management of Cath Robson and Caroline Spensley?

17. Did these PCPs put the claimant at a substantial disadvantage, in comparison with someone without a disability?

18. If so, what was that disadvantage?

19. Has the respondent shown that it did not know and could not reasonably have been expected to know:

    19.1. that the claimant had the relevant disability at the relevant time; or

19.2. that the claimant was likely to be disadvantaged by the relevant PCP?

Whether respondent failed to comply with duty

20. Would one or more of the following steps have avoided the relevant disadvantage?
    20.1. Agreeing to the claimant's requests for a change of line management made from September 2022 and 30 December 2022 onwards.

21. If so:
    21.1. Was it reasonable for the respondent to have to take that step?
    21.2. Did the respondent fail to take that step?

***Complaint at para 13.2 of the Grounds of Complaint read with para 6.36***

Whether respondent was under a duty to make adjustments

22. Did the claimant have the relevant disability relied on at the material time(s)? See above

23. Did the respondent have the following provision, criterion and/or practice (PCP) which was applied to the claimant: requiring the claimant to be managed by the Durham Tees Valley Job Centre Plus's management chain?

24. Did the PCP put the claimant at a substantial disadvantage, in comparison with someone without a disability?

25. If so, what was that disadvantage?

26. Has the respondent shown that it did not know and could not reasonably have been expected to know:

    26.1. that the claimant had the relevant disability at the relevant time; or
    26.2. that the claimant was likely to be disadvantaged by the relevant PCP?

Whether respondent failed to comply with duty

27. Would the following step have avoided the relevant disadvantage?
    27.1. Agreeing to the claimant's request made on 24 March 2023 to be moved from that management chain.

28. If so:
    28.1. Was it reasonable for the respondent to have to take that step?
    28.2. Did the respondent fail to take that step?

***Complaint at para 13.2 of the Grounds of Complaint read with para 6.46***

Whether respondent was under a duty to make adjustments

29. Did the claimant have the relevant disability relied on at the material time(s)? See above

30. Did the respondent have the following provision, criterion and/or practice (PCP) which was applied to the claimant: requiring the claimant to be managed by Margaret Thompson?

31. Did the PCP put the claimant at a substantial disadvantage, in comparison with someone without a disability?

32. If so, what was that disadvantage?

33. Has the respondent shown that it did not know and could not reasonably have been expected to know:

    33.1. that the claimant had the relevant disability at the relevant time; or
    33.2. that the claimant was likely to be disadvantaged by the relevant PCP?

Whether respondent failed to comply with duty

34. Would the following step have avoided the relevant disadvantage?
    34.1. Agreeing to the claimant's request made on 5 April 2023 to change line manager.

35. If so:
    35.1. Was it reasonable for the respondent to have to take that step?
    35.2. Did the respondent fail to take that step?

***Complaint at para 13.2 of the Grounds of Complaint read with para 6.49***

Whether respondent was under a duty to make adjustments

36. Did the claimant have the relevant disability relied on at the material time(s)? See above

37. Did the respondent have the following provision, criterion and/or practice (PCP) which was applied to the claimant: requiring the claimant to attend an investigation meeting (arranged in June 2023) either alone or with a Trade Union representative?

38. Did the PCP put the claimant at a substantial disadvantage, in comparison with someone without a disability?

39. If so, what was that disadvantage?

40. Has the respondent shown that it did not know and could not reasonably have been expected to know:

    40.1. that the claimant had the relevant disability at the relevant time; or
    40.2. that the claimant was likely to be disadvantaged by the relevant PCP?

Whether respondent failed to comply with duty

41. Would the following step have avoided the relevant disadvantage?
    41.1. Allowing the claimant to have her father at the meeting to act as support person.

42. If so:
    42.1. Was it reasonable for the respondent to have to take that step?
    42.2. Did the respondent fail to take that step?

***Complaint at para 13.2 of the Grounds of Complaint read with para 6.57***

Whether respondent was under a duty to make adjustments

43. Did the claimant have the relevant disability relied on at the material time(s)? See above

44. Did the respondent have the following provision, criterion and/or practice (PCP) which was applied to the claimant: a practice of contacting employees directly when they were off sick?

45. Did the PCP put the claimant at a substantial disadvantage, in comparison with someone without a disability?

46. If so, what was that disadvantage?

47. Has the respondent shown that it did not know and could not reasonably have been expected to know:

    47.1. that the claimant had the relevant disability at the relevant time; or
    47.2. that the claimant was likely to be disadvantaged by the relevant PCP?

Whether respondent failed to comply with duty

48. Would the following step have avoided the relevant disadvantage?
    48.1. Ceasing contacting the claimant directly following her request on 24 November 2023.

49. If so:
    49.1. Was it reasonable for the respondent to have to take that step?
    49.2. Did the respondent fail to take that step?

**Whether claim in time**

50. Were the discrimination and harassment complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
    50.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
    50.2. If not, was there conduct extending over a period?
    50.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
    50.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
        50.4.1. Why were the complaints not made to the Tribunal in time?
        50.4.2. In any event, is it just and equitable in all the circumstances to extend time?

**Unfair dismissal**

51. Was the claimant dismissed? Ie

    51.1. Did the respondent do what is alleged in the Table in the 'Claims and Issues' section of this judgment?
    51.2. If the respondent did those things, by doing that did the respondent breach the implied term of trust and confidence? The Tribunal will need to decide:
        51.2.1. Whether, by doing those things, 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
        51.2.2. whether it had reasonable and proper cause for doing those things.
    51.3. Was the breach a fundamental one? It is axiomatic that a breach of the implied term of trust and confidence is a fundamental/repudiatory breach.

51.4. If so, did the claimant resign in response to it? I would need to decide whether the breach of contract was a reason for the claimant's resignation.

51.5. Did the claimant affirm the contract before resigning? I would need to decide whether the claimant's words or actions showed that she chose to keep the contract alive even after the breach.

52. Did the claimant make protected disclosures as alleged?

52.1. The respondent admits that the respondent made the alleged email protected disclosures. The only issue in dispute is whether the claimant disclosed information to Mr Emmerson as alleged.

53. If the claimant was dismissed, was the dismissal unfair? Ie

53.1. What was the reason or principal reason for the actions that amounted to a breach of contract?

53.2. Was it that the claimant made the protected disclosures identified above?

53.3. If not, was the reason that there was an irretrievable breakdown in the relationship?

53.3.1. If so, was that a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held?

53.4. 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?

Employment Judge Aspden

21 May 2026