EMPLOYMENT TRIBUNALS

Claimant: **Ms Niamh Millar**

Respondent: **NHS England**

Heard at: **London South (hybrid hearing)**

On: **23 – 31 March, 10 April 2026. Deliberation -13, 14 April.**

Before: **EJ Harley**
Mr Mardner
Mr Murphy

Representation

Claimant: **Mr Yetman (Counsel)**

Respondent: **Mr Nichols (Counsel)**

RESERVED JUDGMENT

BACKGROUND

1. These matters were listed for a hybrid liability hearing to run for eight days before a full panel. In the event the case ran for seven consecutive working days, the hearing paused owing to illness, we reconvened for submissions, with the panel meeting to deliberate for two days on the following week.

2. In advance of the hearing, a Case Management Hearing was listed on 12 November 2025 before EJ Richter who issued Case Management Orders, including one limiting the size of the bundles to 800 pages and limiting the length of witness statements. He did this having refused applications from the respondent to postpone this hearing, and from the claimant to consolidate this matter with a separate but related claim. Emphasising the overriding

objective, he urged the parties to cooperate and adhere to the orders he issued.

3. Shortly in advance of the hearing (24 Feb 2026) a joint application was submitted by the parties to increase the size of the bundle from 800 pages to 1500 pages. The claimant applied to increase her statement from 8000 words to 10000 words. The applications were granted. In the event the bundle ran to over 1680 pages, contained many documents to which we were neither taken nor referred, and indeed contained many repeated chains of correspondence creating duplication and confusion for the reader.

4. In addition, an undated application was made on behalf of the claimant received 24 Feb 2026 to introduce two new witnesses, such witness statements being supplied shortly before the hearing. These applications were generously granted on the papers with the reviewing Judge indicating that having granted these applications, this would likely have a knock-on effect on the time available for submissions and argument.

5. The Tribunal was supplied with electronic bundles, electronic witness statements, hard copy bundles and witness statements, an agreed (but incomplete) 'cast list', and a suggested key reading list. Despite the expansion of the bundles the parties failed to include key documents (numerous case management orders, the Disability Hearing Judgment, the Psychiatrist's Report diagnosing ADHD) which had to be sourced by the Tribunal for the panel's consideration. During the hearing at our request we were supplied with a copy of the respondent's Freedom To Speak Up policy. The Tribunal secured copies of the Psychiatrists report of 23 February 2024, EJ Ord's Disability Judgment of 20 October 2025 and the omitted Case Management Orders from the ET's files.

6. Early in the proceedings the parties produced an agreed chronology of key dates. The parties had latterly (21 November 2025) agreed a list of issues in the case which they confirmed at the outset of the hearing were correct and complete.

7. In the days leading to the hearing (17 March 2026), the respondents sought to amend their response to the statement of claim. The original response had not been amended despite there having been a number of developments during the progression of the case including a contested interim hearing which determined the issue of disability, and the late settlement of the list of issues. The revised response addressed and updated aspects of the response in respect of the issues now being pursued. The question of the adoption or rejection of the amendments was not addressed by a duty judge and was therefore left for this Tribunal to determine at the outset of the hearing, which it did.

8. The proposed variation was opposed by claimant's counsel. The Tribunal noted that the revised Response assisted the Tribunal by rationalising now irrelevant issues, updating points which had since been determined by the tribunal and it did not resile from existing positions taken or concessions made, nor did it adopt significant new positions. It also noted that the claimant

had already benefitted from the case management flexibility by the Tribunal acceding to the claimant's late request to adduce evidence from two new witnesses. While acknowledging that it would have been better had this been done earlier the Tribunal detected no practical disadvantage or negative impact to the claimant of making this change. The updated document in fact assisted the Tribunal, and the claimant by making clear the respondent's position in relation to the updated issues. Given the Tribunal's broad case management powers, and seeking to ensure fairness between parties, one of which had been granted late concessions by the Tribunal, the Tribunal acceded to the request to accept the updated response.

9. The balance of Day One was set aside for reading. On Day Two, the claimant case was opened. She adopted her statement and was cross-examined by counsel for the respondent. On Day Three the claimant's cross examination continued in the morning. Cross examination continued in the afternoon. During the afternoon session the claimant indicated that, in her words her brain was "turning to mush". Her Counsel quite properly intervened to suggest that the session should end, but the claimant indicated that she wanted to continue. The Tribunal suggested a short break to allow Counsel to advise the claimant purely on the issue of her ability to continue that day. It was then agreed that we would suspend proceedings, the claimant would remain under oath and we would return the following morning at 9:30 AM. Cross examination of the claimant continued on the morning of Day Four, and she was then re-examined by her Counsel. Owing to witness availability and for ease the parties agreed to take witnesses out of order, and without closing the claimant's case.

10. We next heard from Stephanie Hansley for the respondent (who at the relevant time was HR business partner in the team supporting the Chief Operating Officer and Chief Delivery Officer Directors). One Day Five we heard from Mark Chamberlain for the respondent (a business services associate for Capsticks HR advisory, who was commissioned to conduct an investigation in the case). We then heard from Michael Fell (Executive Director of National Cyber Operations, was asked to chair the grievance meetings in Nov and Dec 2024). We then heard from respondent witnesses Helen Bullars (who at the material time was Director of HR and Organisational Development for NHS England) and Kelly Angus (Development and Change People Director integrated care systems, NHSE), whose evidence ran into Day Six.

11. Day Six we continued hearing from Ms Angus, and later that day we heard evidence from Ronald Ayr (Head of Strategic Human Resources & Organisational Development). We then heard evidence from Daniel Hancock (employed by NHS England as director of finance for new hospital programme). On Day Seven for the respondent we had evidence from Edward Rose (case manager for the Grievance at one stage) and from Kate Howlett (at the time HR and OD Business Partner). We then heard from claimant witnesses Natalie Grosvenor (HR Business Partner for Strategy) and John Dodge (HR Partner, at relevant time managing Workplace Adjustments Service). The parties closed their cases.

12. By this stage, it had become clear that Mr Nichols, who all parties were aware had been suffering from an ailment from week one was by now very poorly. In the interest of fairness the Tribunal agreed to postpone oral submissions until 10 April. The parties supplied the Tribunal with written submissions for which the Tribunal was grateful. Those submissions were rendered and heard as arranged by the full panel. The panel met to consider and discuss the case on 13, 14 April.

13. As indicated there are parallel proceedings currently before the Tribunal involving these parties and concerning claims arising from these same circumstances, including claims of unfair dismissal. The parties made clear at the outset that they were concerned that this Tribunal should not make determinations which might inappropriately bind a Tribunal deciding those other claims. The Tribunal made it clear it was open to receiving the parties' agreed suggestions with regard to avoiding prejudicing those issues. The Tribunal reminded the parties of this at Oral Submission stage and the respondent supplied and claimant agreed a document identifying areas into which they would prefer the tribunal not to step. We have received and considered that document and sought to abide by it.

DISABILITY HEARING

14. At a hearing on 1, 2 October 2025 EJ Ord found that the claimant was disabled at the material time, namely between July 2023 and 20 June 2024 by reason of impairments of depression, anxiety, ADHD and panic disorder.

ISSUES

15. The following issues were agreed between the parties and confirmed as those between them at the outset of the hearing.

1. The Claimant brings the following claims:

1.1. Discrimination arising from disability; section 15 Equality Act 2010 (EqA 2010).

1.2. Failure to make reasonable adjustments; sections 20 and 21 EqA 2010.

1.3. Victimisation; section 27 EqA 2010.

(b) Time limits (section 123 EqA 2010)

2. The Claimant contacted ACAS on 8 April 2024.

3. Therefore, any acts occurring before 9 January 2024 are prima facie out of time.

4. Were the discrimination complaints brought in time? The Tribunal will decide:

4.1. Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

4.2. If not, was there conduct extending over a period?

4.3. If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

4.4. If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

4.4.1. Why were the complaints not made to the Tribunal in time?

4.4.2. In any event, is it just and equitable in all the circumstances to extend time?

(c) Disability

5. The Claimant was disabled at the material time for the purposes of section 6 EqA 2010 because of the following condition(s):

5.1. depression

5.2. anxiety

5.3. panic disorder

5.4. Attention Deficit Hyperactivity Disorder (ADHD)

6. The Claimant says the Respondent had knowledge, or ought to have had knowledge, of the Claimant's depression and anxiety from at least on or about January 2022, ADHD from September 2023 and depression, anxiety and panic disorder from January 2024 to date.

7. When did the Respondent know, or when ought the Respondent to have known, that the Claimant suffered from these disabilities?

(d) Discrimination arising from disability, section 15 EqA 2010.

8. Did the following arise in consequence of the Claimant's ADHD?

The Claimant will aver that the relevant "somethings" for the purposes of section 15 (1) (a) EqA 2010 are her character traits of being forthright and questioning towards others.

9. The Claimant asserts that she was subjected to the following unfavourable treatment in relation to these “somethings”:

a. being unfairly viewed and described as cynical, critical, confrontational and abrasive with questioned suitability based on responsibilities and behaviours expected at Band 9 level on:

i. 9 January 2024 by Kelly Angus in her email to the Claimant setting out feedback written by Ronald Eyre

ii. 19 January 2024 as the Claimant sent this feedback to Helen Bullers and Steve Russell but no response was received

b. lack of contact from HR between October 2023 and June 2024 and deliberate isolation from HR (Kelly Angus, Ronald Eyre and Helen Bullers).

c. not being selected for the Head of Social Value role (having enquired with Kelly Angus in October and November 2023 where the role had gone (having had it offered to her on 30 June 2023, 5 September 2023 (to confirm whether she wanted to accept the redeployment offer of the role within the NHP) and 11 October 2023 (to discuss the Claimant's decision on the offer of the role). The Claimant received an email from Kelly Angus on 9 January 2024 where she was told she was not a suitable candidate for the role).

10. Did this treatment occur?

11. If so, did it occur because of the “somethings” outlined above?

12. If so, was any such treatment a proportionate means of achieving a legitimate aim? The Respondent says that its legitimate aim(s) were:

a. Following its internal processes including the ongoing grievance process;

b. Supporting staff career development and progression;

c. To ensure suitable candidates are recruited to roles, in line with the requirements of the job description and person specification.

13. The Tribunal will decide in particular:

a. Was the treatment an appropriate and reasonably necessary way to achieve those aims?

b. Could something less discriminatory have been done instead?

c. How should the needs of the Claimant and the Respondent be balanced?

14. Has the Respondent shown that it did not know, and could not reasonably be expected to know that the Claimant had the disability relied on?

(e) Failure to make reasonable adjustments, sections 20 and 21 of the EqA 2010

15. Did the Respondent have the following PCP(s)?

a. PCP 1 : a requirement for those that have been absent due to ill-health to return to work;

b. PCP 2 : a grievance process that was unduly protracted and failed to investigate the Claimant's concerns, ignored her evidence, which led to further grievances being raised and no substantive outcomes being provided; and

c. PCP 3 : performance targets or standards and/or the need to complete tasks as part of the Claimant's employment

16. Did the PCP(s) put the Claimant at a substantial disadvantage compared to someone without the Claimant's disabilities and/or someone with different disabilities. That is, did they:

a. Cause her stress/heightened stress and/or anxiety/heighted anxiety and/or panic attacks and/or make her more vulnerable to stress/panic attacks and anxiety?

17. The Claimant relies upon depression, anxiety, panic disorder and Attention Deficit Hyperactivity Disorder (ADHD) , specifically:

a. In relation to PCP 1, the Claimant relies on her conditions of anxiety, depression and ADHD;

b. In relation to PCP 2, the Claimant relies on her conditions of depression, anxiety, panic disorder and ADHD;

c. In relation to PCP 3, the Claimant relies on her conditions of depression, anxiety and ADHD.

18. Did the Respondent know or could it reasonably have been expected to know that the Claimant had a disability?

19. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at such a substantial disadvantage?

20. If so, did the Respondent fail to take such steps as were reasonable to avoid that disadvantage? The Claimant says that the following adjustments could and should have been made:

a. In relation to PCP 1 : the provision of sufficiently clear return to work plans, including clear instructions on a phased return to work for the period July 2022 to November 2023. There was no role provided during this period despite the Claimant repeatedly chasing and asking for a suitable role (Kelly Angus and Ronnie Eyre). Throughout this period there no phased return to work plan in place and no support from the Respondent to facilitate the return.

b. In relation to PCP 2 :

i. the provision of sufficiently clear and timely updates regarding the Claimant's grievances between July 2022 and June 2024;

ii. informing the Claimant who was investigating grievances in November 2022, April 2023, June 2023, October 2023, January 2024, and February 2024;

iii. informing the Claimant as to when those involved in an investigation process leave in October 2022 and May 2024;

iv. investigating the Claimant's grievances fairly, justifying outcomes (in that outcomes reached were not sufficiently explained or supported with evidence and did not consider her evidence) and the provision of any timely report between July 2022 and June 2024 ; and

v. investigating or concluding her grievance in a timely manner between July 2022 and June 2024.

c. In relation to PCP 3 :

i. providing sufficiently clear timelines and being explicit regarding performance expectations when instructing the Claimant to complete tasks [from July 2022 onwards the Claimant was not given anything to do save for training in May 2023 and was not given (by Kelly Angus) a job title, job description, position number, duration of the role or performance expectations of the interim non-substantive role, in November 2023. There was no workplan and no meetings between the Claimant, Kelly Angus and Ronnie Eyre to confirm working arrangements and reasonable adjustments];

ii. providing constructive feedback [particularly with respect to the meeting the Claimant attended with Ronnie Eyre on 16 October 2023 and the feedback she received on 9 January 2024. In addition, from the return to work in November 2023 there was no discussion about how this would be managed and no feedback was provided. As of 19 January 2024, the Claimant had become unwell again and so the PDP review did not take place (email received 22 January 2024 from Jennie Keane). There was ongoing dialogue between the Claimant, Kelly Angus and Ronnie Eyre from October 2023 to January 2024 (Helen Bullers) where the Claimant requested repeatedly requested feedback and clarification and it was not provided];

iii. providing a career mentor at all either on or after 6 October 2023 in that a career mentor has never been provided to the Claimant.

iv. providing short breaks during between meetings discussed as a reasonable adjustment on 6 October 2023 and as documented in the draft wellness plan submitted on 20 October 2023. These breaks were proposed in relation to 'meetings' generally in the workplace rather than specific meetings per se;

v. providing sufficiently clear instructions and being sufficiently clear in communications from Kelly Angus, Ronnie Eyre, Rachel Allsop, Susan Samuel, Helen Bullers in relation to the Social Value role, reasonable adjustments, a phased return to work, line management & HR support, and the grievances/investigation;

vi. providing sufficiently clear and timely communications to the Claimant regarding her employment status ongoing from January 2022 (first period of sickness) as there was no suitable role from July 2022 when the Claimant returned to work (and no assistance to secure one) and throughout stages 1 and 2 of the redundancy process. Namely Kelly Angus, Ronnie Eyre, Kate Howlett, Susan Samuel, Sharon Rhodes, Helen Bullers, Shareen Pavaday, Tara Robinson, Jennifer Keane.

(f) Victimisation in breach of section 27 of the EqA 2010

21. Did the Claimant do a protected act within the meaning of s27(2) EqA 2010 and/or did the Respondents believe that the Claimant had done or might do such protected act(s)?

22. The Claimant says she carried out the following protected acts:

a. Act 1 : On 3 January 2024, raising Grievance Four, in which she disclosed that she was disabled for the purposes of the EqA 2010 and raised concerns that reasonable adjustments had not been implemented.

b. Act 2 : On 19 January 2024, raising Grievance Five, in which she asserted that she felt she had been subjected to unlawful disability discrimination.

c. Act 3 : On 28 February 2024, raising Grievance Six, in which she disclosed her formal diagnosis of ADHD and raised concerns regarding her mental health and failure to make reasonable adjustments.

23. Did all or any of Act 1 - Act 3 amount to a protected act?

24. Did the Respondent subject the Claimant to the following detriments because she did these protected acts?

a. Failing to address the Claimant's grievances in a timely manner between July 2022 and June 2024;

b. The timing of the withdrawal of the Social Value role immediately after the Respondent became aware of the Claimant's pending ADHD diagnosis (Kelly Angus received the OH report on 14 September 2023) and as discussed with Ronald Eyre and Kelly Angus on 6 October 2023 and described in the wellness action plan on 20 October 2023.

c. Placing the Claimant at risk of redundancy on 29 May 2024 without any indication of who she could turn to support and/or clarification.

(g) Remedy

25. What financial losses has the discrimination caused the Claimant?

26. Has the Claimant taken reasonable steps to mitigate her loss?

27. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

28. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

29. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

a. If so, did the Respondent unreasonably fail to comply with it?

b. If so, is it just and equitable to increase any award payable to the Claimant?

c. If so, by what proportion, up to 25%?

30. Should the Tribunal make a declaration in respect of such discrimination as the tribunal sees fit?

31. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

32. Should interest be awarded? How much?

Facts

16. We found these facts on the balance of probabilities, on the basis of the evidence we heard, statements we reviewed and the materials in the agreed bundle. For the avoidance of doubt, where there was a dispute over a fact and we have stated a finding, that was our decision as to that issue. We heard and considered a good deal of evidence, not all of which has proved relevant, and so we will not refer to it all here.

17. The claimant commenced employment with the respondent on 4 April 2016 as a Band 8D Senior Finance Manager. The claimant subsequently applied for and was appointed to a secondment as Chief of Staff to a National Director, a Mr Dodge, a role at Band 9 level, with management responsibility. This is a senior NHS position carrying an NHS Director level salary and as well as supporting the National Director's work involved management of a small team of up to 5 staff. It was originally advertised as a three-month role but during internal negotiations became a six-month secondment with effect from 1 October 2019.

18. The secondment policy required for secondment arrangements to be agreed in advance (including start and end dates, and salary) and where the secondee could not return to their substantive post, the employee's status on return had to be agreed prior to their acceptance of the secondment, confirmed in writing, and where the original post was unavailable, suitable alternative employment would be sought in accordance with Organisational Change Policy. Secondees were not automatically entitled to be made permanent in the seconded role without undergoing a recruitment process.

19. Correspondence from Sept 2019 confirms that the claimant was offered and accepted the role knowing that her substantive role would not be kept open, and on the basis that if she was unsuccessful in applying for the permanent role at the higher banding, she would be found suitable alternative employment by the importing team at her current substantive grade.

20. The latter part of the secondment coincided with the COVID-19 pandemic and the operational disruption affecting the respondent between March 2020 and August 2020, November to December 2020, and January to July 2021.

21. An interview process for the permanent Chief of Staff role was due to take place during the week commencing 23 March 2020. However, the interview process was cancelled following the commencement of the national lockdown. The claimant subsequently made requests for the permanent Chief of Staff role to be advertised.

22. An interview process was scheduled for the last week of September 2021 but was cancelled. Interviews ultimately took place in January 2022 and the claimant applied for the post. Two days prior to the interview the National Director announced that he would be leaving the organisation, in June 2022.

23. The outcome of the interview process was communicated on 14 January 2022, with the claimant proving unsuccessful in her application. On that date

the claimant telephoned the Head of HR, Ms Bullers. During a long call the claimant was tearful, upset and angry, expressed her frustration at not securing the permanent role, and expressed unhappiness about her management by the National Director. Ms Bullers suggested in the face of her upset that the claimant take time off. During the exchanges Ms Bullers asked the claimant to consider if she might be depressed. The claimant disclosed no pre-existing medical or mental health conditions during this call. She also indicated that the National Director would soon be moving on, that she would inform the National Director of her absence but not the reason, and that arrangements would later be made to recategorise that absence from a sickness absence.

24. The claimant commenced a period of stress-related sickness absence. She self-certified from 24 to 31 January 2022 and produced Fitness to Work notes covering periods 1 February 2022 to 1 March 2022, 2 March 2022 to 31 March 2022, 15 April 2022 to 12 May 2022, and 13 May 2022 to 5 June 2022, each stating that owing to 'stress at work' she was not fit for work.

25. On 9 March 2022 the National Director wrote to the claimant referring to their meeting earlier that day, recording that he had re-confirmed an undertaking given at the outset of their engagement that she would be offered an alternative substantive Band 8D role given her failure to secure the Band 9 role, and made suggestions about progressing this either with him or Ms Grosvenor (an HR Business Partner who Ms Bullers asked to support the claimant from Jan 2022).

26. That same day the claimant sent an email entitled "Help Please" to Ms Bullers and Ms Grosvenor. In that email the claimant complained that the National Director was seeking to "find me an 8D role", that she had "zero interest" in a Band 8D role and did not wish "to go backwards" as a result of the National Director "managing me into an 8D role". In a second paragraph indicated "I think I would like to progress with an official complaint against him for bullying" but then expressed concern about "the bad rap that comes with making things official". The claimant also stated that she did not wish to remain absent from work on sick leave, wished to return, adding that she did not want "my records wrecked because of him".

27. On 18 March 2022, the National Director made a further proposal concerning a Band 8D role. He referred to the meeting of 9 March, her failure to secure the Chief of Staff role and addressed ending her secondment in line with NHS England HR policy guidance. He stated:

> "I continue to reiterate the commitment I have you when you first joined as an interim band 9 chief of staff: namely, that you would be offered a substantive 8D role within the Directorate, when your secondment came to an end, were you not to be appointed to the substantive band 9 job. "

He reiterated having outlined the options around Band 8D roles in his directorate, seeking to take her views into account.

28. On 14 April 2022 a further email issued from the National Director to the claimant, c.c.ing Ms Grosvenor among others, noting recent communication and liaison between the claimant and others within the group regarding role opportunities.

29. He confirmed that the claimant would be offered a Band 8D position, identifying and outlining two roles as Suitable Alternative Employment (SAE) within the Primary care Group. He identified the managers, the groups and the work areas (Integrated Care System delegation; Policy Development for General Practice workforce policy). He stated that a job description would be created once the claimant selected her preferred role. The communication further stated that the role would commence on 19 April 2022 and that the Band 9 uplift would conclude on 18 April 2022. There is no recorded response from the claimant to the National Director regarding this offer.

30. The claimant's secondment as Chief of Staff ended on 18 April 2022.

31. On 12 May 2022, the claimant was referred to Occupational Health.

32. On 6 June 2022, Ms Moulds, Deputy Director of Primary Care, informed the claimant that she had been assigned to her team and her management by the National Director and wrote to her suggesting they speak, suggesting she:

> "…have a think about the way you want to work, how we connect you into the team, and how we make best use of you coming over, so that you not only feel a sense of enjoyment out of the work but also you feel a sense of belonging in the team. I'll await hearing from you, but until then, I hope all is well and that you only come back in when you feel ready. I think we will have a lovely opportunity to create some better experiences for you in our team and we look forward to you joining us."

33. On 15 June 2022, the claimant emailed Ms Grosvenor querying whether she was required to accept Ms Moulds as her line manager, given the 'uncertainty' of her 'role status'.

34. By email dated 24 June 2022, Ms Moulds informed the claimant that, following discussions with Ms Grosvenor, it was anticipated that the claimant would return to work on 4 July 2022. Reference was made to a proposed work plan, consideration of work patterns, wellbeing conversations and proposed the benefits of a phased return, so as

> "…to ensure that you have the right return to work plan in place to enable you to have a smooth, successful and happy return."

She was provided with a ten-page job description for the role together with six pages of deliverables, with Ms Moulds noting "brand new workstreams" which might "…offer fulfilling opportunities."

35. On 27 June 2022, the claimant responded to Ms Moulds stating that she felt she was being "railroaded". She stated that she had been waiting for job descriptions for several months, despite repeated requests to HR, and described her stress levels as "sky high". She further stated that any phased return should be discussed with HR. Later that day, Ms Moulds apologised and explained that the respondent used generic job descriptions for Head of Service roles, with the accompanying 'deliverables' described intended to provide substantive detail for the role. She explained that she had understood that the claimant had accepted the role in her team, hence her engagement via email. She stated:

> "As you have indicated that you haven't accepted the role in my space at this point in time, I will defer to HR to advise on the next steps in this process, and I will not contact you further until and unless you decide that you do want to come into my team, whereupon I would be happy to hear from you ***and we can pick up your RTW etc***. This step back is so that you do not have any unwanted or unexpected contact from work, and you can focus on next steps with HR***."* (ET emphasis)***

And further:

> "…I hope to hear from you whenever you have had chance to go through the process with the HR team. I understand that there are likely to be some changes to the way the HR team is set up which Natalie will be able to take you through, and I understand this is likely to be beneficial, as it will provide a wider net into the organisation, to hopefully find you something that you are happy with."

36. The claimant formally returned to work in or around 4 July 2022. On 4 July 2022, the claimant emailed Mr Eyre and Ms Grosvenor indicating that she was due back at work that day but had been assigned a role which was unsuitable, and that she was submitting an attached grievance. In that correspondence, the claimant confirms that Ms Moulds had offered a phased return to work in the context of a role within her team. The claimant stated that she had only been provided with one job description and asserted that she had not, in fact, been given a choice of roles prior to receipt of the job description. She queried how any phased return arrangement would operate. In evidence she acknowledged that she was in fact familiar with phased return from having previously returned to work from maternity leave.

37. The formal grievance ("Grievance 1") was submitted 4 July 2022 (but is dated 29 June). The grievance expressly referred to legal advice she had taken which, according to the claimant, indicated that the grievance policy's requirement for complaints to be submitted within 3 months of incidents,

should not apply given her sickness absence. In that grievance, running to 8 A4 pages, she complained about the outcome and process surrounding her application for the permanent Chief of Staff role and sought reinstatement to a permanent Band 9 role, characterising the suggestion of her taking a Band 8D role as the National Director having "insisted that I be demoted to an 8D". She suggested that she had suffered bullying and oppressive behaviour over the period of her secondment (running to over two years). She gathered her grievances under the headings:

- 'Deliberate Demotion and Job Insecurity';
- 'Disregard of Organisational Change and Recruitment Policies';
- Breach of Terms and Conditions/Work Relations';
- 'Bullying and Victimisation'; and
- 'Suitable Alternative Employment.

She mentioned that she had been off work with work related stress from January 2022. The remedies sought by the claimant to address these grievances comprised:

- reinstatement as a permanent Band 9 employee;
- an offer of suitable alternative employment at Band 9 level;
- retrospective compensation, training, career counselling;
- the recategorisation of her sickness absence as special leave; and
- an undertaking by the National Director not to "badmouth" her.

The National Director had left the respondent's employment on 30 June 2022, four days before the claimant submitted her grievance.

38. Also on 4 July 2022, Ms Grosvenor emailed the claimant following a discussion between them, noting that it appeared unlikely that the claimant would accept a Band 8D role and indicated that Mr Eyre would take over management of the matter, although she would continue to provide support. Ms Grosvenor further stated that the claimant could not be considered for Band 9 redeployment opportunities because her substantive grade remained Band 8D. The claimant confirmed that the work she undertook prospectively from this time amounted to personal administration (clearing her inbox) and pursuing her job search.

39. On 13 July 2022, Mr Eyre emailed the claimant proposing a discussion concerning her return to work and grievance. A meeting took place between them the following day.

40. On 26 July 2022, the claimant sought to raise a 'Freedom to Speak Up' complaint – an internal whistleblowing process to highlight issues, and ensure actions are taken - with a Mr Grimes concerning her grievance. Mr Grimes responded saying that the formal grievance process she had instigated appeared to be the appropriate route for this and that FTSU could become involved once that process resolved. The claimant reverted expressing no faith in the processes. On the same date, Mr Eyre recommended that the claimant's grievance be formalised, and Mr Bowler wrote to the claimant confirming he had was case manager in respect of the grievance. Terms of

reference were provided, and it was stated that the process was intended to conclude no later than 1 October 2022.

41. On 28 July 2022, in correspondence with Mr Grimes the claimant indicated that:

> "… (*Mr Eyres*) asked Helen to resolve informally - the answer was to accept the SAE (*Suitable Alternative Employment*) offered. That is in no way sufficient to attempt to informally resolve this (sic). Therefore why I've gone to a formal grievance… I've been given until 9th august to accept the unsuitable SAE or go back on sick leave and half pay. I was initially told that the time I had off would not be sick leave as was being 'protected' but this changed about 4 months in. It feels like pressure to drop my case in all honesty although I don't think that's the intention."

She then stated

> "…the merger and consequent reduction in workforce is a big factor in this now too. If I end up back at 8D level I will spend years trying to progress… ….if I choose to not accept the 8D role I won't have a substantial post. If I accept it, it takes away from my argument. I'm damned if I do and damned if I don't."

By way of context we heard from the respondent's HR witnesses that the matters before us fell to be addressed during a period of substantial organisational change following the merger of NHS Digital, Health Education England and NHS England on 1 April 2022. That process gave rise to a significant and extended restructuring and consultation exercise affecting a large number of staff across the organisation, together with associated redeployment and redundancy arrangements. The claimant was in effect noting that, if she accepted a Band 8D role, she believed that would undermine her argument concerning Band 9 status. She further acknowledged that, if she declined such a role, she would be left without a substantive position, and the "merger and consequent reduction in workforce" created risk for her. She accepted in evidence that she could have accepted the Band 8D role and still pursued the grievance.

42. On 1 August 2022, the claimant was invited by letter to attend an investigation interview with Ms Maher, the Investigating Officer in respect of her grievance. Reference was also made in the letter to the availability of the Employee Assistance Programme and arrangements for welfare support. An investigation meeting between the claimant and Ms Maher took place on 8 August 2022.

43. On 28 August 2022 the claimant wrote to Ms Buller:

> "I'm emailing you as I'm not getting anywhere with my formal grievance and am being forced into either accepting an unsuitable

> role or taking a 50% pay cut to go back on sick leave. I'm at the end of my tether and my employment lawyer is recommending actions I am unwilling to take."

Further

> "During JWP (Joint Working Programme) we allowed people who were on secondment for longer than 12 months to be permanently promoted without interview to their seconded role. Contractors are deemed to be employees at the role they are working in (role, band and salary) after 24 months. Why am I being offered one singular 8D role as SAE… instead of B9 roles given the duration of my seconded role? I have been told today to accept it for immediate start or go on sick leave."

44. Ms Maher left under voluntary redundancy in early October 2022. An Investigation Officer Report into Grievance 1 dated 24 October 2022 was subsequently produced by Ms Handsley and sent to Mr Bowler. No further action appears to have been taken with the report until March 2023, when Ms Howlett was tasked with a case review and sought sight of the papers from Mr Bowler and Ms Handsley.

45. The claimant discovered Ms Maher had left the organisation and on 4 November 2022, raised a further grievance ("Grievance 2") complaining about the handling of Grievance 1, about how the issues were creating stress and that her solicitor was recommending she "…take a much harder stance on this, I will be following up with her next week". This followed references to her solicitor and legal advice in emails of 9/8/22, 31/10/22, and 3/11/2022. She stated that her mental health, personal life and professional life had fallen apart and that there was an astounding lack of empathy.

46. Following the correspondence and engagement between the parties concerning the claimants banding, her status was confirmed as Band 9. On 25 November 2022, in an email addressing the banding issue Ms Bullers confirmed that while "proper banding principles had been followed", there was flexibility available and as she had acted up at the higher grade for 2 years, 4 months, and the interviewing process had been delayed causing her uncertainty, that the claimant should be treated as a Band 9 employee for redeployment purposes and should be considered for Band 9 redeployment opportunities. The subsequent redeployment discussions proceeded on that basis.

47. The claimant raised the recording of her sickness absences in internal correspondence during January 2023, and these were cancelled on the internal systems (initially removing absences from April 2022, then from February 2022). An instruction was issued to payroll that her banding should be corrected to Band 9 commencing from the point she had reverted to Band 8D, meaning she was paid back pay for the period.

48. On 28 February 2023 the claimant wrote to Ms Bullers copying in Mr Eyre to "update (her) on progress". She stated

> "I appreciate that this is a difficult time for both the organisation and the HR teams (merger and reorganisation / downsizing); and that the HR team is still working through both grievances (4 July 2022 and 4 November 2022);…", and
>
> "Ronnie (Mr Eyre) and I have looked in earnest for suitable substantive roles. Although there was initial expressions of interest, particularly as the role would be created with little difficulty; the lack of funding for the role became a blocker which we could not navigate. More recently, the feedback has been that the organisation is solely focused on reducing workforce and that interest is expansion is nil."   And further:
>
> " …(I) would welcome a discussion with you if you are available within the next 1-2 weeks if possible? I will follow up with you again… as I understand how busy you are and that you may need some time before you have the free time and bandwidth to respond."

49. On 20 April 2023, the claimant raised a further grievance ("Grievance 3") by way of an email to Ms Bullers, a Ms Ibbotson (from the respondents legal team) and copied to Mr Eyre. This complained that neither Grievance 1 or 2 had been investigated, she had not been 'offered and suitable alternative employment opportunities', had been offered no support, no line management, no career support or development opportunities, and repeated the charge that the respondent had 'destroyed my life, my career and my mental health'.

50. On 15 May 2023 Ms Howlett wrote to the claimant confirming that she would now be supporting her regarding her grievance. She mentioned the investigation report, and the claimant indicated that she had not seen the report and would not meet her without seeing it. Internal correspondence followed and the report was sent to the claimant by Mr Eyre on 1 June 2023. Ms Howlett's role effectively ended in June 2023 when Ms Angus assumed the liaison regarding grievance matters.

51. Ms Angus met with the claimant and Mr Eyre on 6 June 2023. On 7 June 2023 Ms Angus wrote to the claimant recording the meeting, where they had discussed her grievance and the investigation report produced which the claimant had now seen, and outlined her understanding of the position pertinent to the resolutions to the grievances she had sought. She noted that her requirement to be reinstated as a Band 9 had been met. She noted that efforts were being made to secure her suitable alternative employment at Band 9. She noted the claim made for retrospective payment for work she asserted she was owed for alleged additional responsibilities (this was never substantiated or upheld). She noted her request for training but that the claimant could not identify what that would be. She noted the claimants refusal to undertake mandatory MAST training, pointing out it was a contractual requirement. She noted her request for career counselling, which Ms Angus agreed to consider but noted that contrary to the suggestion that she needed this to return to work that she was in fact at work, and looking for a Band 9 role. Ms Angus further noted that she did not currently have a line

manager but that she would work with her to appoint one and that in the meantime she had discussed potentially suitable Band 9 roles in the New Hospitals Programme. She noted the request to have her sick leave recategorised (which by now had also been resolved). Finally noting the request that the national director not disparage her, she confirmed that he had left the respondent's employment.

52. On 23 June 2023 Ms Angus sent the claimant a letter documenting a meeting from 14 June where they met together with Mr Eyre. It captured discussions on two roles and stated she would send a "formal offer of redeployment opportunities" to her separately "so that you could review these and then confirm whether you wish to proceed with any of these". It confirmed that she or Mr Eyre would act as line manager to allow administrative requests to be processed, captured that they had agreed an Occupational Health referral would be appropriate to support her redeployment, and noted that she had engaged with an Executive Coach whose contracting arrangements they were progressing. It also captured that they had discussed her 'grievance issues', captured progress on these and asked her to confirm how she wished to progress them.

53. The claimant forwarded details of her chosen coach to Ms Angus on 26 June 2023, with Ms Angus confirming they had been in contact with the coach and were making arrangements to engage her. The initial contract was for 6 months. The programme was defined as executive and leadership coaching programme offering "…support for a seamless return to work", to support and explore neurodiversity, to "fine-tune your executive functioning skills, building networks, and…adapting seamlessly to the new role and environment" and be provided with unlimited coaching support throughout the six-month coaching engagement, including coaching sessions, messages and phone calls.

54. On 30 June 2023 Ms Angus sent a letter to the claimant outlining what was described as a 'formal offer of redeployment' in respect of two Band 9 Leadership roles. In relation to one the Social Value Lead (SVL) role (elsewhere and earlier described as Head of Social Value), as part of the New Hospitals Programme (a Substantive, Permanent Band 9 role) she offered an introductory discussion with the New Hospitals Programme Senior Lead "if (she) would find this helpful". Another Band 9 Secondment role was mentioned. She stated:

> "Our ways of working apply to both roles and these can be considered as part of any introductory discussion with the key leads for each of the roles. I would be grateful if you could review the two roles above and consider your suitability for these vacancies. I will arrange for us to meet as soon as possible and we can discuss a proposed offer of a trial period for four weeks for (one of) the roles identified above, subject to an agreed starting date and occupational health review. As part of the occupational health review, we would like to consider any support and/or reasonable adjustments that you would require to be put in place during the trial period. The trial period is designed to be an opportunity for both you and the team

> you are working with to assess your suitability for the role. Please be aware that the trial may end at an earlier time if there is a legitimate reason from either yourself or the department concerned. I would be grateful if you could consider the roles as set out above and I will arrange for us to meet within the next 7 days to discuss these further."

55. An occupational Health report was subsequently produced on 1 August 2023, but recommended escalation to an OH Physician. It noted no home or personal stressors, that the claimant was under GP care but with no medication management and was attending CBT sessions.

56. On 2 August 2023 Mr Eyre sent an introductory email to the claimant and Ms Bhamber (Associate Director of People) proposing a conversation "to get a sense of suitability, and fit for the (SVL) role". A meeting occurred on 7 August with the claimant indicating via email on 9 August she was interested, but continuing "I would like to know who would be line managing me as this is more important to me than the programme or the role".

57. On 30 August 2023 the respondent issued directorate wide pro-forma emails outlining the publication of the online Consultation Outcome Report in relation to the restructure and a people impact assessment. It indicated that provisional status letters would issue the next day indicating provisional grading status and the process for challenging that.

58. On 31 August 2023 the respondent issued a pro-forma Confirmation of Final Status letter to the claimant erroneously categorising her at 8D. This banding was corrected to the previously agreed Band 9 status after correspondence, on 28 September 2023. In the course of this latter correspondence, the claimant mentioned on 7 September to Ms Angus that she had met with Ms Bhamber but had asked to meet the manager "…to discuss the role in advance of agreeing to undertake the role which I am sure you understand given my previous line managers behaviour which has ended in my current situation".

59. On 7 September 2023 an OH Report was issued. It captured that there was a deterioration in the claimants mental health due to a workplace dispute. It found that the claimant was fit for work, had no medical problems and required no reasonable adjustments for a return to work. It captured that she had experienced depressive episodes in 2012 (work related) and 2016-17 (personal), currently scored for having moderately severe depression and moderate anxiety and as a result of psychological therapy was identified as a possibility for an ADHD diagnosis. It noted that she had a reactive mood disorder which would not impact performance if the grievances were resolved. Based on the incorrect assumption that the claimant was not at work – it recommended a phased return to work. It recommended a further OH report if ADHD was confirmed. It also advised the reader that the Equality Act may apply to the case. From correspondence within the bundle the report became available to the respondent on 14 September with a revised version supplied late on 25 Sept 2023.

60. During September 2023 the claimant undertook the second piece of work she outlined having undertaken after the end of her secondment, the review of a report for a Mr Ward, which she estimated took her approximately one half-day.

61. On 26 September 2023 the claimant wrote a five-page email to Mr Russell, the respondent's Chief Delivery officer, headed 'Private and confidential - on going (20 months) of HR issues surrounding 3 unresolved grievances and suitable alternative employment.' In it she outlined her history of the disputes, stating that she had been "shafted" by the National Director. She outlined the banding issue, and that she was being asked to consider two Band 9 roles. She stated the following:

> "The 3 roles initially discussed with me have reduced to 2 – one is Head of Social Value for the NHP – ***this role should not exist; the programme arguably should not exist as it is a capital and construction project – I cannot fathom how the organisation can justify the employment of 250 full time staff and 150 contractors and consultants to run this programme (ET emphasis).*** The JD for the role emphasises EDI rather than social value, however discussions with (Ms Bhamber) indicate that EDI is the sole aspect of the role – however when discussed in greater detail it is unclear if she means EDI or health inequalities. ***Either way we have a huge HR function which should cover EDI and a full team working on health inequalities. The JD also requires CIPD qualifications and relevant experience of EDI – neither of which I have***."

She closed the letter as follows:

> "There is no ideal outcome for me and realistically it's likely going to be a negative outcome. My situation should have (in order) 1. Never happened; 2. Resolved swiftly when (Mr Dodge) was in post; 3. Resolved swiftly on 4th July … this would have set me up for a level playing field for the restructure, would have allowed me to redevelop my skills and experience, reconnect with my defunct networks etc. Instead, I'm being set up to fail. I have been totally failed by your HR function and the organisation. I am beyond frustrated."

62. On 3 October 2023 Ms Angus wrote to the claimant to seek to arrange a meeting, setting out an agenda for discussion. The meeting was arranged and took place on 6 October 2023 between the claimant, Ms Angus and Mr Eyre, followed by a letter of the same date from Ms Angus to the claimant setting out what was discussed.

63. Among the points covered they had discussed the OH report of 7 September, including the potential ADHD diagnosis. It noted that they discussed potential reasonable adjustments (treating the diagnosis as if it were confirmed) but the

claimant was "…currently trying to figure this out in terms of what it means for you in life, work etc." Ms Angus suggested using the Wellness Action Tool used to support neurodivergent colleagues, and that she would share this with her. It noted that they could consider reasonable adjustments as required. She confirmed that contrary to the OH report, the claimant was in fact at work but that she would be phased into any new role. In terms of other conditions, the claimant disputed the existence of reactive mood disorder, indicated that she had experienced depression and anxiety as a result of work-related matters over the previous 20 months and was unable to determine what reasonable adjustments might be required. She further confirmed that the claimant showed interest in the SVL role but had not had confirmation as to the identity of the manager. Said person was yet to be announced but she offered the claimant a discussion with Mr Hancock, Director of Finance and Acting Director of Workforce/ People, to which she agreed. No specific reasonable adjustments for this meeting were sought, offered or discussed. Ms Angus further noted in the letter:

> "…that if your redeployment offers were not accepted that with immediate effect you would be allocated a senior leader as your line manager within the Chief Operating Officer's (COO) Directorate who would determine your immediate workplan as you work through the organisational change process. You accepted that this would be the case and you were intending to take one of the redeployment offers but you did accept that there was a need to do this if these were deemed by you to not be suitable."

64. Ms Angus and made the arrangements for the meeting in correspondence. The call, set for 45 minutes, was arranged for 12:15pm, 13 October 2023. The claimant cancelled the meeting at 1:17pm, advising that she was stuck in a traffic jam and unable to join Teams. The meeting was then rescheduled for a 30-minute call on 16 October, again via teams, as arranged by Mr Eyre.

65. The suitability conversation in respect of the SVL role took place on 16 October 2023, attended by the claimant, Mr Hancock and Mr Eyre. The claimant and job holder had no dealings prior to this call. The jobholder Mr Hancock had no indication that the claimant had a medical condition or any confirmed or suspected disability. He was unaware of any previous grievances. The claimant did not request any adjustments prior to or during the meeting.

66. Accounts of the call varied. The claimant reported that the meeting passed without incident. She had been encouraged to believe that this was a safe space in which she could ask questions and so she did so. She reported that the job holder did not ask her any questions. She was happy with how the meeting went, she did not suggest that she had been disadvantaged in the aftermath of the meeting, though she subsequently raised issues after receiving the feedback. She stated on oath that she believed the account offered by the respondent's witnesses was a fabrication triggered by her disclosure of the pending ADHD diagnosis and which, in what she described as a "lightbulb moment" for them in which they resolved to use her diagnosis

against her, to deny her the role and "to get rid of her". She repeatedly asserted that it was her opinion that feedback was worded in such a way to use her triggers to create emotional dysregulation, and this was a concerted effort involving multiple actors.

67. Mr Hancock confirmed that he asked the claimant questions, specifically about her experience in her last and previous roles, so as to assess her suitability. He reported surprise that the claimant had not researched the New Hospitals Programme, and that she then criticised the NHP paper (written by a colleague she would have managed had she been engaged) which she characterised as if "…written by a year 6 school student". He viewed that as an offensive comment. He described her as being cynical to the point of hostility, that she questioned the financial commitment to the programme of two key stakeholders, and suggested that NHSE were not interested in equality or diversity (supporting these being a key aspect of this leadership role), and that this emphasis was tokenistic. He stated that he had decided by the end of the conversation that the claimant was not suitable for the role, as he had serious concerns as to whether she could carry out the role effectively, given the need to maintain sensitive stakeholder relations at a high level and to foster diverse and inclusive teams. He considered that he had been rude, unprofessional and openly hostile regarding the role. Mr Eyre who was in attendance, noted that the claimant had voluntarily spoken about her previous issues with managers, prompting him to steer the conversation back to the role. Given the close echo here of the contents of the email sent to Mr Russell regarding the merits of the programme the role was intended to support, the panel preferred Mr Hancock's account of this meeting.

68. On 20 October 2023, a draft Wellness Action Plan was created by the claimant and sent to Ms Angus which outlined her needs and which she considered represented potential reasonable adjustments. In response to the question what can I/your manager do to support you at work, she recorded the following :

> "Regular meaningful 1-2-1 line manager conversations, Clear agenda for meetings, Clear timelines and explicit expectations, Constructive feedback with an emphasis on constructive, Career mentoring / crafting: I need progression, novelty, challenge etc. to motivate me; Protected lunchbreak: I need to move during the day; Be respectful of my time; Short breaks between meetings: I need to move during the day; Prioritisation clarity. If a deadline moves or a piece of work becomes urgent something else must give and I would appreciate a conversation about the shifting priorities; Clarity on asks: if I ask for clarity it means I actually need it – it won't happen regularly, give me the 2 minutes it takes to understand."

Under triggers that might cause a decline at work she noted:

> "Confrontation – there should be no need for it; Threatening me – explicit or implicit; Forcing me to work through annual leave that was already agreed; Being asked to do something that goes against our and/or my values examples of things I will not do: Fix interview

> scores to ensure particular outcomes; Ensure a particular favoured person is employed / promoted / paid more than someone else; Ensure chosen people are manoeuvred out of the organisation with no justifiable basis; Make a FTSU problem disappear; Lie for you..."

Under the question if we notice early warning signs that you are feeling stressed/triggered or unwell – what should we do? She noted:

> "Don't become confrontational or aggressive with me – it will tip me over the edge. Put some time in my diary for the following day to have a short chat."

Under additional information she included the following:

> "I don't need regular 121s or line management, I haven't had any in 6 years but I would like some. I would like someone to show a minimum level of support at least."

69. A meeting took place on 18 October between claimant, Ms Angus and Mr Eyre, and captured in a letter of 23 October 2023. It noted discussions around two roles, and that Mr Eyre "agreed to seek feedback from Dan (Hancock) on the meeting (of 16 October) and confirmation of suitability of the role" . She further confirmed a goal of 1 November for a phased orientation period into a new assignment…".

70. Ms Angus set a catchup call with the claimant for 31 October. The claimant mailed her on 31 October indicating she had not heard further about the "…2 potential line managers for the Social Value Role…" and wondered if their call should be postponed, but Ms Angus suggested they meet regardless, indicating that Mr Eyre was following up with Mr Hancock.

71. The claimant wrote again to Mr Russell on 1 November, updating him on her grievance and suitable alternative employment. She confirmed she had met Ms Angus and Mr Eyre the day prior, that the second role had now gone (it was time limited) and she was awaiting feedback on the SAV role. She complained about being asked to return to working in the office two days per week, suggesting this was not coherent with a phased return to work, and that being assigned to the Chief Operating Officers Directorate (COO) Directorate countered her wish to ensure her line manager was 'a good fit'. While noting an agreement that an external investigator be appointed to look into her grievances, she indicated inner conflict – she wanted an apology for the National Directors behaviours, and HR's approach, but "part of me thinks this is utterly pointless…"

72. On 10 November 2023 Ms Angus wrote to the claimant confirming that Sir James Mackey had confirmed that Ms Marsh and Ms Hunt would work to support a workplan for her to work within the COO Directorate and identified three potential independent investigators to look into her grievances.

73. The claimant responded on 13 November querying why feedback was being sought regarding the SAV role as "…I wasn't interviewed"… she "was told that

the role was mine if I wanted it – which I said I did assuming meetings with the 2 potential line managers went well". She then forwarded the exchanges to Ms Pavaday, asking her to update Mr Russell, complaining about various aspects of her treatment and that she was being sent to COO "to do whatever they want with me".

74. On 13 November Mr Eyre sent emails to Ms Marsh and Ms Hunt regarding their roles supporting the claimant, resulting in further exchanges, while the claimant wrote to Ms Samuels (HR) regarding her management and Band 9 roles. The next day the claimant wrote to Mr Eyre and Ms Angus regarding applications for stage 2 roles.

75. On 16 November 2023 Ms Angus wrote to the claimant confirming that Ms Keane would became the Claimant's line manager with immediate effect and would assist her with applications for stage 2 roles, and addressed the other questions raised in her email of 13 November.

76. On 17 November 2023 a letter (drafted for him by Ms Angus) was issued by Mr Russell to the claimant in response to her complaint of 26 September. In it he noted that an independent investigator was being sourced to investigate her grievances, and he would look into the handling of the situation from 2022 indicating that the timeline was not satisfactory. He noted she was investigating Band 9 opportunities and that she was being allocated a manager in the Chief Operating Officers Directorate and would be allocated Band 9 work . He noted the requirement for her to attend at the office 2 days per week (raised in a follow up email to him on 1 November) was related to her claim for High Cost Area Supplement but that it was open to her to apply to become a contractual homeworker.

77. Ms Keane was formally introduced to the claimant via an email from Ms Angus of 20 November, and a meeting took place between the claimant and her new manager on 21 November. On 22 November Ms Keane proposed regular 1:1 meetings with herself to integrate her into the team, introduce her to the SLT and set up 1:1's with them to assist with her integration. Ms Keane supplied the claimant with information about the team and its work, and the claimant characterised reviewing these as the third discrete piece of work done during the period under consideration.

78. On 3 January 2024, the claimant raised a further grievance ("Grievance 4") sent to Ms Bullers. In it she acknowledged Ms Angus efforts, but noted she was "…focused purely on bringing me back to work and not the open grievances". The claimant mentioned her stress levels, that she was supposed to have reasonable adjustments which had not been made, and that as a result of the pressures she had "now got depression and anxiety" to the level of a disability. She complained that the existing grievances remained open, noted the appointment of the external investigator but complained about lack of HR support, progress on Band 9 roles, lack of feedback on the SVL role and that she believed she was offered the role. She stated the following:

> "(Mr Eyre) was also supposed to get back to me with feedback from the call I had about the NHP role (SVL role) which (Ms Angus) said

> was left open for me to accept but ***subsequently told me that I was unsuitable*** (there was no interview, I was just told to ask Dan Hancock any outstanding questions…. – he did not ask me a single suitability question or any questions regarding my background or experience)…" (***ET emphasis***).

This establishes that the claimant was aware prior to 3 January 2024 that she had been found unsuitable for the SVL role and confirms comments the claimant made under cross examination that she had 'an inkling' that the role was not going to be hers in late 2023. The later provision of feedback sent to her on 8 January remained a distinct subsequent act relied upon by the claimant.

79. An Occupational Health referral was made on 8 January 2024. By letter dated 8 January 2024, Ms Angus addressed a number of issues and supplied the claimant with a copy of the feedback arising from the suitability conversation for the SVL role, noted that it would likely be disappointing to her and offered a discussion with herself or Mr Eyre. The feedback document was prepared by Mr Eyre but is itself undated.

80. On 19 January 2024, the claimant forwarded the feedback relating to the SVL role to Ms Bullers and Mr Russell. On the same date, she raised a further grievance ("Grievance 5"). This related to the feedback provided and proceeded to raise issues with the way in which the meeting was structured, that its description in the feedback was inaccurate and designed to discredit her, that she was substantially disadvantaged, and treated less favourably because of her disability (no comparator was identified however). She complained about the ongoing lack of HR support and that reasonable adjustments she had identified were not actioned.

81. The claimant commenced a further period of sickness absence on 19 January 2024, citing stress, and she did not thereafter return to work.

82. On 30 January 2024, Mr Chamberlain (the independent investigator selected by the claimant) invited the claimant to attend an investigation meeting. Mr Chamberlain subsequently met with the claimant for investigation meetings on 6 February 2024, 9 February 2024, and 26 February 2024.

83. On 23 February 2024, the claimant received a diagnosis of ADHD in a report from a Consultant Psychiatrist Dr Sadiq. She was assessed via video consultation the consultant having reviewed a GP referral letter, the claimant's self-completed pre-assessment questionnaires, and a parental questionnaire. Applying the DSM-5 criteria for ADHD in adults, he found that she met criteria for inattentive and hyperactive symptoms, that she gave a history of a lifelong patterns of these symptoms, found that she had impairment in multiple domains of functioning, and found that her symptoms could not be better explained by another psychiatric disorder. The report specified hyperactivity, inattention and impulsive behaviour in all domains in her child and adulthood. No further detail on this diagnosis was supplied for consideration. The report noted that that she had studied natural sciences to undergraduate degree

level and had proceeded to commence a PHD in genetics which she later abandoned. It emerged in evidence that the thesis she undertook to complete her undergraduate degree was a study into ADHD in teenage boys.

84. On 28 February 2024, she raised a further grievance ("Grievance 6") to Ms Bullers. This included a number of complaints – that grievance 5 had not been acknowledged, that she had no support from HR regarding her new sickness absence (though she had supplied her sickness note to her manager, as per policy), and a number of complaints of lack of engagement on redeployment issues, and by the external investigator appointed to investigate her grievances. She disclosed her ADHD diagnosis and reported comments from her GP.

85. The claimant commenced ACAS Early Conciliation on 8 April 2024. An ACAS Early Conciliation Certificate was issued on 20 May 2024. The claimant presented her ET1 on 20 June 2024, and the respondent presented its Grounds of Resistance on 19 July 2024.

86. A Grievance Investigation Report was produced on 15 August 2024. A grievance hearing took place on 15 November 2024 and reconvened on 16 December 2024. The grievance outcome was provided to the claimant on 23 January 2025. The claimant appealed that outcome on 30 January 2025. The grievance appeal outcome was subsequently provided on 20 June 2025.

SCOPE OF RELATED PROCEEDINGS

87. The focus of Claim 2 is events arising on or after 20 June 2024 and/or such other matters as are pleaded in those proceedings. Claim 2 was presented on 28 February 2025 and is brought without prejudice to the findings and conclusions in Claim 1.

88. Nothing in this Judgment is intended to determine, pre-empt, or otherwise bind the determination of any issue arising in Claim 2, including in particular:

(a) whether the claimant was at any time after 20 June 2024 disabled within the meaning of section 6 Equality Act 2010, including the nature, extent, duration, or effects of any alleged impairment after that date;
(b) whether Claim 2 was presented in time, or if not, whether it is just and equitable for time to be extended;

(c) any issues arising from events occurring after 20 June 2024, save where reference is made to such events solely as background or chronological context relevant to the determination of Claim 1;

(d) the adequacy, appropriateness, fairness, or lawfulness of the respondent's handling of grievances, sickness absence, redeployment processes, or workplace management after 20 June 2024;

(e) the cause, nature, or extent of any alleged deterioration in the claimant's health, functioning, or ability to work after 20 June 2024;

(f) the fairness or otherwise of any redundancy, redeployment, or dismissal process, including any decision to dismiss or the selection of any alternative roles, and whether such outcomes would have occurred irrespective of matters considered in Claim 1;

(g) the handling, progress, or outcome of Grievance 8 or any subsequent grievance process; and

(h) any allegation of discrimination, victimisation, harassment, failure to make reasonable adjustments, unfair dismissal, detriment, or other statutory or contractual claim arising after 20 June 2024.

89. Any reference within this Judgment to events after 20 June 2024 is included solely for narrative, background, or contextual purposes insofar as relevant to the issues determined in Claim 1 and does not constitute a determination of any issue falling for consideration in Claim 2.

90. For the avoidance of doubt, nothing in this Judgment should be taken as limiting or inhibiting the findings of any Tribunal determining Claim 2.

LAW

REASONABLE ADJUSTMENTS

91. Sections 20 and 21 of the Equality Act 2010 impose upon an employer a duty to take such steps as it is reasonable to have to take to avoid a disabled employee being placed at a substantial disadvantage by a provision, criterion or practice ("PCP") applied by the employer. By paragraph 20 of Schedule 8, that duty does not arise unless the employer knew, or could reasonably have been expected to know, both that the employee was disabled and that they were likely to be placed at the relevant disadvantage.

92. The authorities emphasise the need for a structured statutory analysis. In **Environment Agency v Rowan [2008] ICR 218 (EAT)** and **Royal Bank of Scotland v Ashton [2011] ICR 632 (EAT),** the EAT stressed that a tribunal must identify with precision: i) the PCP relied upon; ii) the nature and extent of the substantial disadvantage caused by it; and iii) the adjustment said to have been reasonable. The Tribunal must avoid approaching the matter as a broad inquiry into whether the employer acted reasonably overall.

93. The concept of a PCP is to be construed broadly. In **Carreras v United First Partners Research UKEAT/0266/15,** the EAT observed that the protective purpose of the legislation supports a broad rather than overly technical approach. Likewise, in **Nottingham City Transport Ltd v Harvey [2013] EqLR 4**, the EAT recognised that the threshold for identifying a "practice" is

relatively low, requiring some element of repetition rather than a wholly isolated occurrence.

94. As the Court of Appeal explained in **Ishola v Transport for London [2020] EWCA Civ 112**, Parliament chose the language of "provision, criterion or practice" rather than "act" or "decision", and not every one-off managerial act, omission or administrative failing can properly be characterised as a PCP. The concept ordinarily connotes a state of affairs indicating how similar cases are generally treated or would be treated if repeated.

95. As to substantial disadvantage, section 212(1) EqA 2010 defines "substantial" as meaning more than minor or trivial. We noted the parties' reference to **Sheikholeslami v University of Edinburgh UKEATS/0014/17/JW,** where Simler P explained that the comparison exercise is directed to whether the PCP disadvantages the disabled person more than persons who are not disabled. The Tribunal must therefore assess objectively whether the PCP places the claimant at a disadvantage which is more than minor or trivial compared with those who are not disabled.

96. We also note the observations of Laws LJ in **Newham Sixth Form College v Saunders [2014] EWCA Civ 734** that the nature and extent of the disadvantage, the employer's knowledge of it, and the reasonableness of any proposed adjustment are closely related questions. However, as emphasised in Rowan, the Tribunal must identify clearly the nature and extent of the disadvantage before it can properly assess whether any adjustment would have been reasonable. The Tribunal must identify the fit between the proposed adjustment and the extent of the disadvantage.

97. It would be wrong to consider that the duty to make reasonable adjustments arises only upon a formal request by the employee, because under sections 20 and 21 of the Equality Act 2010, read with paragraph 20 of Schedule 8, the duty depends upon the employer's actual or constructive knowledge of the disability and the substantial disadvantage caused by the PCP, and upon whether there were reasonable steps which should have been taken to avoid that disadvantage**. In Southampton City College v Randall [2006] IRLR 18 (EAT)**, the EAT did not treat a prior formal request as a prerequisite to the duty arising; the question remained whether, on the facts known or reasonably to be known to the employer, reasonable adjustments ought to have been made.

98. There is no freestanding duty to consult about adjustments, nor does a failure to consult itself constitute a breach of the statutory duty. In **Tarbuck v Sainsbury Supermarkets Ltd UKEAT/0136/06,** the EAT held that the statutory question is whether the employer failed to take reasonable steps, not whether it adequately discussed those steps with the employee.

99. The reasonableness of any proposed adjustment is an objective question for the Tribunal: **Smith v Churchill's Stairlifts plc [2006] IRLR 41 (CA).** Relevant considerations may include the extent to which the adjustment would alleviate the disadvantage, its practicability, cost, disruption, and the resources available to the employer. An adjustment need not guarantee

removal of the disadvantage; a prospect of alleviation may suffice**: Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10.** However, there is no duty to implement an adjustment where there is no realistic prospect that it would avoid or materially reduce the disadvantage identified.

100. We also note the decision in **Carphone Warehouse Group plc v Martin UKEAT/0371/12,** where the EAT held that an isolated instance of incompetence, poor administration or failure to comply with internal timescales does not, without more, amount to a provision, criterion or practice applied by the employer. We also note **West v The Royal Bank of Scotland plc UKEAT/0296/16/BA,** where the EAT treated the question whether any workplace assessment was required as depending upon the factual circumstances, including whether the employee was in a role with a workplace to assess.

101. Finally, the Tribunal has noted that even where the respondent had knowledge of the claimant's disability, the duty to make reasonable adjustments did not arise unless it knew, or could reasonably have been expected to know, of the particular substantial disadvantage relied on. The employer was not required to anticipate a disadvantage which was not, on the facts, reasonably apparent: **Glasson v The Insolvency Service [2024] EAT 5.**

SOMETHING ARISING – SECTION 15 EqA 2010

102. Section 15 of the Equality Act 2010 provides as follows.

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

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

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

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

103. The Tribunal must adopt a staged approach to section 15. It must identify the unfavourable treatment, identify the "something" said to arise in consequence of the claimant's disability, and determine whether the treatment was because of that "something": **Pnaiser v NHS England [2016] EWCA Civ 1103.** Whether the "something" arose in consequence of disability is a question of fact. The employer's knowledge is addressed separately by section 15(2) and is not part of that causal inquiry. The expression "arising in consequence of" is capable of extending beyond the disability itself to its effects, including symptoms, absence and conduct, where the evidential chain is established**: City of York Council v Grosset [2018] EWCA Civ 1105; Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265.**

104. "Unfavourable treatment" in section 15 is a broad concept. It does not require a comparator. The question is whether the claimant was subjected to treatment which was adverse or disadvantageous in the relevant sense: **Williams v Trustees of Swansea University Pension & Assurance Scheme [2018] UKSC 65.**

105. In applying section 15, the Tribunal must proceed in stages. First, it must identify the disability. Second, it must identify the "something" said to arise in consequence of that disability. Third, it must determine, on the evidence, whether the "something" did in fact arise in consequence of the disability. Fourth, it must determine whether the unfavourable treatment was because of that "something". The requisite causal connection need not be sole, direct or immediate, but there must be a proper evidential basis for concluding that the "something" arose in consequence of the disability: **Pnaiser v NHS England [2016] EWCA Civ 1103; City of York Council v Grosset [2018] EWCA Civ 1105.**

106. If the elements of section 15 are established, the respondent avoids liability only if it shows that the treatment was a proportionate means of achieving a legitimate aim. The burden of establishing justification rests on the respondent. The Tribunal must therefore identify the aim relied upon, determine whether it is legitimate, and assess whether the treatment was proportionate having regard to the discriminatory impact: **Akerman-Livingstone v Aster Communities Ltd [2015] UKSC 15; Grosset.**

VICTIMISATION

107. The relevant provision is section 27 of the Equality Act 2010. A claimant must establish: (i) that they did a protected act; (ii) that they were subjected to a detriment; and (iii) that the detriment occurred because of the protected act.

108. A protected act includes bringing proceedings under the Act, giving evidence or information in connection with such proceedings, or making an allegation, whether express or implied, that there has been a breach of the Equality Act. The assessment is a contextual one focused on substance rather than form. Protection does not depend upon the use of technical legal language or express reference to the Act. The question is whether, viewed objectively and in context, the communication would reasonably be understood as alleging treatment capable of amounting to a contravention of the Equality Act. In **Martin v Devonshires Solicitors [2011] ICR 352 (EAT),** the EAT proceeded on that contextual basis.

109. In **Kokomane v Boots Management Services Ltd [2025] EAT 38**, the EAT confirmed that the relevant question is how the communication would reasonably be understood in context. A complaint may constitute a protected act even without express reference to discrimination, provided its substance would reasonably be understood as alleging conduct falling within the scope of the Equality Act. This approach is consistent with **Durrani v London Borough of Ealing UKEAT/0454/2012,** which confirmed that non-specific

grievances about bullying, harassment or undefined "discrimination" do not qualify as protected acts for victimisation purposes.

110. The threshold for detriment is relatively low. The question is whether a reasonable worker might regard the treatment as disadvantageous in the relevant sense: **St Helens Borough Council v Derbyshire [2007] ICR 841 (HL).** As confirmed in **Warburton v Chief Constable of Northamptonshire Police [2022] EAT 42,** detriment is to be construed broadly and requires only treatment which a reasonable worker would regard as disadvantageous.

111. On causation, the Tribunal must identify the reason why the treatment occurred: **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337**. The protected act need not be the sole cause of the treatment, but it must have had more than a trivial influence on the decision: **Nagarajan v London Regional Transport [1999] IRLR 572**. Victimisation may arise even where the motivation is unconscious, provided it remains a reason for the treatment: **Ahmed v Amnesty International [2009] IRLR 884**. The Tribunal must therefore identify the operative reason for the treatment and distinguish between treatment caused by the protected act and treatment explained by other factors: **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48.**

TIME LIMITS – SECTION 123 EqA 2010

112. The relevant provision is section 123 Equality Act 2010. A claim must be presented within three months less one day of the act complained of, subject to the Tribunal's discretion to extend time where it considers it just and equitable to do so: **Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576.**

113. In cases involving alleged continuing conduct, time runs from the end of the act or series of acts constituting the continuing act. The Tribunal's discretion under section 123 is broad and evaluative and requires consideration of all relevant circumstances, including delay, knowledge, prejudice, and overall fairness: **British Coal Corporation v Keeble [1997] IRLR 336** and **Abertawe Bro Morgannwg University Health Board v Morgan [2018] EWCA Civ 640.**

114. The existence of a workplace dispute does not preclude the operation of the Equality Act 2010. Each of the statutory tests under sections 15, 20 and 27 must be considered independently and on its own evidential basis. The Tribunal must distinguish between the factual background of an ongoing workplace dispute, the alleged effects said to arise from disability, and the separate statutory questions of knowledge, causation and reasonableness.

DISCUSSION

115. This case depends centrally on the claimant's disability and the respondent's knowledge of it. The claimant's case, as pleaded and advanced, was that the respondent had knowledge of depression and anxiety as disabilities from January 2022, said to arise from a conversation involving Ms Bullers. Ms Bullers was a senior HR colleague who had occasional professional contact with the claimant but no managerial responsibility for her. On this occasion, the claimant contacted her to express dissatisfaction with the outcome of a recruitment process and became upset during the call. The Tribunal did not accept that the comment that the claimant "sounded depressed" amounted to knowledge of a medical condition, psychiatric history, or awareness of a disability within the meaning of the Act. Nor did the proposal that she take time away from work amount, on the facts, to an acknowledgment of disability. The arrangement for time off was agreed pragmatically in the context of a workplace dispute and was subsequently recategorised and removed from the sickness system. The Tribunal further noted that the parties' conduct in agreeing to this arrangement, and the claimant's own concern to avoid her record being affected, was inconsistent with this being treated at the time as disability-related absence. The Tribunal expressed concern at the use of sickness absence processes to manage a workplace dispute.

116. The Tribunal accepted the respondent's case on knowledge. Prior to September 2023, the claimant had not disclosed any disability. Her presentation, supported by evidence from witnesses including Ms Grosvenor, was that of an experienced senior professional engaged in a difficult and prolonged workplace dispute. The Tribunal accepted that the claimant was distressed and frustrated by the grievance and redeployment processes. The handling of those processes was poor in several respects and contributed to ongoing stress and frustration. However, the Tribunal was not satisfied that the claimant's presentation, viewed objectively at the material time, would reasonably have indicated the presence of a long-term substantial impairment as opposed to the effects of a prolonged workplace dispute and organisational uncertainty. Those reactions were not materially distinguishable from those which may arise in employees engaged in contentious workplace processes or restructuring exercises. The Tribunal further notes that, prior to the Occupational Health report in September 2023, the claimant had not identified herself as disabled within the meaning of the Equality Act 2010 or described functional impairments of the kind later relied upon in these proceedings. The Tribunal's conclusions on knowledge should not be read as findings that the grievance or redeployment processes were satisfactory or appropriately managed.

117. The Tribunal further found that, prior to September 2023, there was no objective basis on which the respondent could reasonably have been expected to conclude that the claimant was disabled within the meaning of the Act or likely to suffer a substantial disadvantage as a result of any impairment relied upon in these proceedings. While the claimant was engaged in active workplace disputes and expressed significant frustration, she did not identify functional difficulties in communication, processing, or workplace participation of the kind later relied upon. The Tribunal therefore concluded that the

statutory threshold for actual or constructive knowledge was not met prior to mid-September 2023. Therefore for the purposes of issue 7, we found that the respondent did not know, and could not reasonably have been expected to know, that the claimant was disabled within the meaning of the Act before mid-September 2023, but that it did have such knowledge from that point following receipt of the Occupational Health report.

118. The Tribunal also considered it relevant that, during the relevant period, the claimant remained actively engaged in redeployment discussions at Band 9 level, including the SAV role, notwithstanding her dissatisfaction with aspects of the respondent's processes. The evidence indicated that her principal concerns related to her Band 9 status as recorded following the relevant correspondence, redeployment at an appropriate seniority level, managerial fit, and organisational fairness. This context did not undermine the genuineness of her distress but formed part of the wider factual background against which the Equality Act claims fell to be assessed.

Reasonable Adjustments

119. Applying the statutory framework, the Tribunal considered whether, at the material time, the respondent knew or could reasonably have been expected to know both that the claimant was disabled and that she was likely to be placed at a substantial disadvantage by any provision, criterion or practice relied upon.

120. The claimant's case was that, by September 2023, the respondent had sufficient knowledge of ADHD and associated functional effects to trigger the duty to make reasonable adjustments. Reliance was placed upon the Occupational Health report dated 7 September 2023, the meeting of 6 October 2023, subsequent correspondence, and a draft Wellness Action Plan dated 20 October 2023. It was submitted that adjustments were identified during this period, including clearer communication, structured meetings, phased working, and supportive management arrangements, and that these were not implemented, or not implemented in time to prevent the difficulties which culminated in the events of 16 October 2023.

121. The respondent accepted that it had knowledge of disability from approximately mid-September 2023 following receipt of the Occupational Health report. It denied any earlier actual or constructive knowledge.

122. The Tribunal accepted that, following receipt of the Occupational Health report, discussions about possible adjustments took place. HR invited the claimant to identify any adjustments she considered necessary, and broader discussions occurred regarding support mechanisms and working arrangements. However, whilst no formal request is required to trigger the duty to consider reasonable adjustments, the Tribunal was not satisfied that the information available at the material time made it reasonably apparent that the claimant would be placed at a substantial disadvantage in relation to participation in the suitability meeting, such as to put the respondent on notice that specific adjustments to that meeting were required.

123. That distinction is significant in light of how the case was ultimately advanced. A substantial part of the claimant’s reasonable adjustments case focused on the consequences of the meeting of 16 October 2023 and the respondent’s reaction to it. However, the meeting itself was not pleaded as a standalone provision, criterion or practice, nor was any specific adjustment identified in advance in relation to participation in it. The claimant’s own evidence was that the meeting proceeded without incident and that she was satisfied with how it had been conducted. She did not contemporaneously report difficulty participating, processing information, or communicating during the meeting. Any concerns about the meeting arose only after the grievance submitted following receipt of feedback.

124. The Tribunal assessed matters prospectively and not with hindsight. The statutory duty is not triggered simply by awareness of a possible disability in the abstract. The relevant question is whether the respondent knew or could reasonably have been expected to know that the claimant was likely to be placed at a substantial disadvantage by the relevant provision, criterion or practice, absent reasonable adjustment.

125. The Tribunal was not satisfied that this threshold was met. The meeting was understood by those involved to be informal and exploratory rather than a formal assessment process. Although the claimant had opportunities to raise concerns about participation, including following the cancellation of an earlier meeting, she did not do so. She also did not identify in advance any adjustment requirements specific to the meeting itself. While the statutory duty does not depend upon an employee formulating adjustments, the Tribunal considered that the absence of any contemporaneous indication of difficulty during or immediately after that meeting formed part of the factual matrix relevant to whether the respondent could reasonably have been expected to anticipate a substantial disadvantage.

126. The Tribunal therefore concluded that the respondent could not reasonably have foreseen, at that stage, that the claimant was likely to experience a disability-related substantial disadvantage during the discussion. The Tribunal also accepted the respondent’s submission that a number of the adjustments relied upon were identified retrospectively and, in substance, amounted to criticisms of general management practice rather than adjustments directed to a specific disadvantage arising from disability.

127. As to each of the pleaded provisions, criteria or practices, the Tribunal noted that they were framed at a high level of generality and evolved to some extent during evidence and submissions. The Tribunal nevertheless identified them as accurately as possible and assessed whether the statutory requirements under sections 20 and 21 of the Equality Act 2010 were satisfied in relation to each.

128. In relation to PCP 1, for the period we are considering, the Tribunal accepted that the absence of a structured redeployment and return-to-work process could potentially create uncertainty for the claimant. However, the evidence did not establish that this amounted to a sufficiently discrete provision,

criterion or practice applied to her in a way that placed her at a substantial disadvantage by reason of disability. The uncertainty arose from broader organisational and operational difficulties affecting multiple employees. The Tribunal was not satisfied that, prior to knowledge of disability, the respondent could reasonably have been expected to appreciate that such uncertainty placed the claimant at a materially greater disadvantage because of any impairment. Further, the evidence did not identify how the alleged PCP in fact operated in practice to disadvantage the claimant compared with non-disabled employees, or what adjustment would have alleviated that disadvantage. Even if the matters identified were capable of amounting to a provision, criterion or practice, the Tribunal would in any event find that the requirements of substantial disadvantage and reasonable adjustment were not met.

129. PCP 2 concerned alleged deficiencies in the grievance process, including the provision of clear and timely updates, consistency of personnel involved in investigations, timeliness and fairness of investigation outcomes, and overall management of grievance procedures.

130. The Tribunal accepted that the grievance process was poorly managed in several respects. There were staffing changes associated with organisational restructuring, and delays occurred. The respondent acknowledged shortcomings in the handling of aspects of the process, and Ms Buller apologised for certain elements of its management.

131. The context was one of organisational change and restructuring, as reflected in the documentary evidence. The claimant herself acknowledged periods of work pressure for HR in contemporaneous correspondence. The Tribunal also found that the process was made more complex by the claimant's own engagement in multiple overlapping processes, including additional grievances and parallel complaints, which required coordination and response from the respondent.

132. Focusing on the relevant period, the Tribunal accepted that Ms Angus engaged with the outstanding grievances, offered the claimant a choice of independent investigators, and facilitated the appointment of the investigator selected by the claimant. The investigation thereafter proceeded in an orderly manner. The Tribunal did not accept that there was evidence of material delay or dilatory conduct on the part of the investigator.

133. The Tribunal considered that, although the grievance process was prolonged, fragmented and unsatisfactory in several respects, the evidence did not establish that it operated in a materially different or more disadvantageous way after knowledge of disability or the protected acts relied upon. The process was capable of causing distress and frustration to any participant. However, the Tribunal was not satisfied that the claimant established a disability-specific disadvantage materially distinct from the difficulties inherent in the wider grievance and restructuring process itself. The Tribunal is not applying a requirement that the disadvantage be unique to disability; rather it

finds that the disadvantage identified has not been shown to arise in a materially greater degree because of disability.

134. The Tribunal accepted that the grievance process remained prolonged and unsatisfactory during the period from September 2023 onwards. However, the evidence did not establish any material deterioration in the nature or quality of the process following knowledge of disability compared with the earlier period. The Tribunal's conclusions in relation to sections 20 and 21 Equality Act 2010 are confined to the statutory questions of knowledge, substantial disadvantage, and reasonable adjustment. They do not constitute findings that the grievance processes themselves were handled reasonably or without procedural deficiency.

135. The Tribunal was not persuaded that the matters identified amounted to a sufficiently defined provision, criterion or practice rather than a series of individual management decisions, delays, and administrative shortcomings. In any event, even if they were capable of constituting a PCP, the statutory requirements were not satisfied. The Tribunal was not satisfied that any disability-related substantial disadvantage was established, nor that the respondent's knowledge affected its response to the process. Accordingly, PCP 2 does not give rise to liability under sections 20 and 21 of the Equality Act 2010.

136. PCP 3 was described as the application of performance expectations, including requirements relating to communication, responsiveness, task completion, and professional interaction in the course of employment. The Tribunal accepted that such expectations existed throughout the claimant's employment and that, in principle, they may engage the duty to make reasonable adjustments in cases involving neurodevelopmental conditions

137. However, the Tribunal was not satisfied that, prior to September 2023, the respondent had actual or constructive knowledge of any disability-related difficulties affecting communication or processing such as to make a relevant disadvantage reasonably foreseeable.

138. Following allocation of a role in November 2023, the evidence showed that the claimant's manager engaged with her to discuss working arrangements and planned integration into the team. Those discussions included consideration of phased working, engagement intended to integrate her into the team and ongoing support. The Tribunal did not find evidence that the claimant was placed at a disadvantage by the manner in which performance expectations were communicated during this period.

139. The claimant raised concerns regarding feedback on the suitability process. However, the Tribunal was not satisfied that the provision of feedback engaged PCP 3 or gave rise to a requirement for reasonable adjustment under sections 20 and 21 Equality Act 2010. The feedback was provided following her request. The Tribunal was not satisfied that its timing or content materially affected the claimant's position in relation to redeployment.

140. The claimant's request for a career mentor was considered. The Tribunal noted that executive coaching had in fact been provided, including coaching with a provider experienced in neurodiversity-related workplace support. The Tribunal was not satisfied that any further adjustment was required in addition to those already offered.

141. In relation to breaks, the evidence indicated that the claimant had significant autonomy over her working schedule and was able to regulate her working time. There was no evidence that she was prevented from taking breaks when required.

142. In relation to clarity of communication and instructions, the Tribunal was not satisfied that there was evidence of a communication barrier amounting to a substantial disadvantage. The issues raised by the claimant related primarily to disagreement about decisions, processes, and outcomes rather than inability to understand communications or instructions.

143. Similarly, in relation to communications concerning employment status, the Tribunal found that the dispute centred on disagreement regarding roles, banding, and process rather than any inability to understand the communications provided.

144. Standing back, the Tribunal concluded that the claimant's difficulties arose within the context of a prolonged and poorly managed workplace dispute following a failed recruitment and redeployment process. The Tribunal nevertheless considered each of the statutory claims separately and was not satisfied, for the reasons set out above, that the legal tests under sections 15 and 20 Equality Act 2010 were met. Even if the matters identified were capable of amounting to a provision, criterion or practice, the Tribunal would in any event find that the requirements of substantial disadvantage and reasonable adjustment were not met.

145. The Tribunal was not satisfied that any failure to implement the adjustments relied upon caused the disadvantages alleged. Accordingly, the claims under sections 20 and 21 of the Equality Act 2010 fail.

Something Arising

146. The claimant's case under section 15 Equality Act 2010 concerned the respondent's reaction to her presentation during the meeting of 16 October 2023. She contended that behaviours relied upon by the respondent, including forthright questioning, difficulty accepting responses and challenging communication, arose in consequence of ADHD, including difficulties with processing, emotional regulation and communication under pressure. She further disputed the accuracy of the respondent's characterisation of her behaviour. The respondent submitted that the matters relied upon did not arise from disability but reflected ordinary workplace disagreement and tone, and in any event were not sufficiently distinct from the disability itself to constitute a separate "something".

147. The Tribunal did not accept the respondent's submission that the alleged conduct could not, as a matter of law, constitute a "something" for the purposes of section 15 Equality Act 2010. Section 15 is drafted in broad terms and encompasses consequences or manifestations arising from disability, as illustrated in the attendant examples in the legislation. The phrase "something arising in consequence of disability" is capable of including behavioural effects, communication difficulties, absence, or other functional impacts, depending on the evidence in the individual case. The authorities, including ***City of York Council v Grosset*,** confirm that the focus is on factual causation rather than analytical separation between condition and consequence.

148. The Tribunal therefore accepted that, in principle, behavioural presentation, communication style or interpersonal responses may constitute a "something" for the purposes of section 15 where the evidence establishes that they arise in consequence of disability. Whether any such behaviour is in fact shown to arise in consequence of disability remains a separate evidential question requiring proof on the balance of probabilities.

149. However, it remained necessary to determine as a question of fact whether the behaviours relied upon in this case were shown to arise in consequence of the claimant's ADHD. The Tribunal's task was to determine whether the evidence established a sufficient causal connection between disability and the alleged behaviours, applying the balance of probabilities and considering whether disability was a material influence on the conduct in question.

150. The Tribunal considered the evidence concerning the claimant's presentation during the meeting. The claimant disputed much of the respondent's account of her behaviour and maintained that the meeting proceeded appropriately. At the same time, she relied upon that same conduct as evidence of disability-related manifestation. The Tribunal considered that these positions required careful scrutiny, as the evidential basis for each was not consistent. The Tribunal's assessment of consistency was directed to the reliability of the factual account of events, not to the existence of the condition.

151. The Tribunal accepted that the medical evidence did not establish that the behaviours relied upon during the meeting arose from ADHD. The diagnosis of 23 February 2024 post-dated the meeting and was reached following a video consultation and analysis of the GP referral letter, the claimant's self-completed pre-assessment questionnaires and a parental questionnaire, applying DSM-5 criteria. It identified general diagnostic features such as inattention, impulsivity and hyperactivity but did not address the specific events of 16 October 2023 or provide an opinion on causation in relation to the behaviours relied upon. The Tribunal accepted the validity of the diagnosis but treated it as evidence of a condition rather than determinative evidence of causation in relation to the events in question.

152. Causation under section 15 is a matter for the Tribunal. It is not dependent on medical attribution in relation to specific incidents. Specifically, expert psychiatric opinion is not required to establish causation under section 15. This remains a question for the Tribunal on all the evidence. The absence of expert evidence on causation is neutral and does not undermine the possibility of a causal link. While expert evidence is not required in every case under section 15, the Tribunal must still be satisfied on the balance of probabilities that the alleged "something" arose in consequence of disability: ***Pnaiser v NHS England; Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14/RN***. The Tribunal notes that the assessment was based on the referral material provided but did not specifically address or analyse the factual circumstances of the meeting of 16 October 2023 for the purposes of attributing or considering causation. In this case, while the diagnosis established the existence of ADHD it did not assist on the separate factual question of causation in relation to the specific behaviours relied upon.

153. The Tribunal accepted that impulsivity or emotional dysregulation may affect communication style. However, it does not follow that the critical or challenging content of communications will necessarily arise from disability as opposed to arising from professional disagreement, strongly held views or workplace conflict. The Tribunal has considered whether the manner, tone, and context of communication could themselves constitute disability related effects and has assessed the evidence accordingly. The Tribunal distinguished potential behavioural manifestations of ADHD from the content and substance of the communications relied upon in this case. The Tribunal recognises that behavioural presentation may itself be part of the disability-related effect; however it must still be established on the evidence that such presentation, rather than disagreement or context, was the operative cause relied upon under section 15.

154. The Tribunal accepted that the decision-maker who had no prior knowledge of the claimant's disability or grievances formed a negative assessment following the interaction during the meeting itself. While knowledge of disability is not required for section 15, the Tribunal considered that the evidence supported the conclusion that his assessment reflected the decision-maker's perception of the claimant's presentation and the views she expressed during the discussion rather than assumptions about disability as such. The Tribunal also noted that the claimant had expressed similar views in writing regarding the programme and role, including in correspondence dated 26 September 2023.

155. Taking the evidence as a whole, the Tribunal was not satisfied that the claimant established that the behaviours relied upon during the meeting arose in consequence of her ADHD. The Tribunal considered that the claimant's case risked conflating aspects of communication style and workplace disagreement with disability-related effects. The Tribunal was not satisfied on the balance of probabilities that the behaviours relied upon during the meeting arose in consequence of ADHD rather than from the claimant's strongly held views regarding the role and the wider workplace dispute. In reaching this conclusion, the Tribunal considered whether disability was a material factor in

the behaviour relied upon but found the evidence insufficient to establish that causal connection on the balance of probabilities.

156. Accordingly, the Tribunal was not satisfied that the claimant established the necessary "something arising in consequence of disability" for the purposes of section 15. In any event, had that test been met, the Tribunal would have concluded that the respondent acted proportionately in deciding not to progress the appointment further, given the seniority of the role and the importance of effective stakeholder engagement and professional judgment. So far as issue 14 is concerned, the respondent had, by the time of the October 2023 and January 2024 matters relied upon under section 15, the requisite knowledge of disability, and accordingly did not establish the defence under section 15(2) Equality Act 2010 in relation to those matters.

157. Addressing the pleaded issues:

- The Tribunal was not satisfied that the asserted behavioural traits were established or shown to arise from ADHD.

- The feedback provided was based on assessment of performance in the meeting and was not shown to be unfairly formed.

- The provision of feedback by Ms Angus reflected information received from the relevant decision-maker and was not shown to reflect personal views or bias.

- The absence of response from HR or senior stakeholders was not shown to arise from disability-related factors or the alleged "something arising".

- There was insufficient evidence that any alleged lack of engagement or isolation was linked to disability rather than operational workload and communication flows.

- The issue regarding non-selection for the SVL role was, on the evidence, part of an ongoing exploratory redeployment process rather than withdrawal of an unconditional offer. The Tribunal uses the term 'role' in a descriptive sense; it does not find that an unconditional offer had been made at any stage. It was evident from a fair reading of the letters of 23 and 30 June 2023 that these were not unconditional offers. The references to "potential suitable redeployment opportunities", requests to "review…consider whether you wish to proceed", "consider your suitability", "introductory discussion", "proposed offer of a trial period", "subject to… occupational health review", "assess your suitability", "trial may end at an earlier time", were all indicative of conditional, exploratory discussions. Throughout the relevant discussions the claimant consistently treated the proposed redeployment discussions as conditional and exploratory rather than as a concluded appointment, repeatedly emphasising that identifying and meeting any prospective line manager was a fundamental condition to be met before deciding whether she would proceed. The claimant continued to exercise agency and reserve her position regarding whether she would accept the redeployment opportunity at all, and at no point did she accept it.

The Section 15 claims therefore fail.

Victimisation

158. The claimant relied upon a series of grievances and complaints raised from July 2022 onwards as protected acts for the purposes of section 27 Equality Act 2010.

159. Her case was that, viewed contextually and cumulatively, those complaints went beyond mere dissatisfaction with management or process and amounted to allegations of unfair and discriminatory treatment engaging Equality Act rights. She submitted that the respondent was aware of the impact the ongoing processes were having upon her health and wellbeing and that, particularly after the disclosure of disability, her complaints should reasonably have been understood as engaging discrimination concerns. The claimant further submitted that the deterioration in her treatment following those complaints — including delay, exclusion, failures of communication, and the handling of the October 2023 events — demonstrated retaliatory treatment linked to her protected acts.

160. The respondent disputed that analysis. It submitted that the grievances relied upon were, properly analysed, complaints about workplace process, grievance handling, management dissatisfaction and organisational dysfunction rather than allegations of discrimination or breaches of the Equality Act. Reliance was placed upon the distinction drawn in the authorities between workplace grievances unrelated to discrimination and complaints which, viewed objectively and contextually, amount to allegations of unlawful discrimination. The respondent further submitted that, even if some communications could arguably amount to protected acts, there was no evidential basis for concluding that the treatment complained of occurred because of those acts. Its position was that the chronology instead demonstrated longstanding operational inefficiency, fragmented grievance handling and managerial dysfunction which pre-dated any Equality Act complaints and continued in substantially the same form thereafter.

161. The Tribunal considered the chronology carefully and proceeded on the agreed basis that grievances 4–6 constituted protected acts for the purposes of section 27 Equality Act 2010. Earlier grievances were considered primarily as factual context. Viewed objectively and in context, those earlier complaints were directed principally toward workplace processes, management decisions and grievance handling rather than allegations of unlawful discrimination contrary to the Equality Act.

162. We accepted that, by mid-September 2023, the respondent had knowledge of disability following receipt of the Occupational Health report. However, we did not accept that there was earlier actual or constructive knowledge.

163. The Tribunal accepted that the respondent's handling of the claimant's grievances and related workplace processes was characterised over a prolonged period by delay, changing personnel, fragmented communication, and administrative inefficiency. Those difficulties pre-dated both the

respondent's knowledge of disability and the protected acts relied upon. The Tribunal has not approached causation on the basis that absence of change in treatment is determinative. The question remained whether the protected acts materially influenced the treatment complained of.

164. The Tribunal was not satisfied that the evidence demonstrated a material change in the nature or quality of treatment following the protected acts or disability disclosure. While the claimant experienced the ongoing difficulties as serious and impactful, the Tribunal concluded that the evidence supported continuation of an already dysfunctional process rather than treatment shown to have been materially influenced by protected acts within the meaning of section 27 Equality Act 2010. That conclusion included the January 2024 communications and feedback relating to the SVL role. The Tribunal noted on her own evidence, she had already been informed prior to Grievance 4 that she was unsuitable for the role. In those circumstances, the subsequent January 2024 feedback was not, on the evidence, demonstrative of treatment materially influenced by the protected acts relied upon.

165. So far as issue 24(c) is concerned, the Tribunal was not satisfied that the claimant's placement at risk of redundancy on 29 May 2024 was materially influenced by any protected act but occurred in the course of the wider organisational restructuring and redeployment process already affecting her position.

Time Limits

166. The claimant submitted that the relevant claims formed part of a continuing course of conduct extending into the later period culminating in the October 2023 events and the January 2024 notification of outcome. She submitted that, at the earliest, time should properly run from January 2024 when key decisions and outcomes were formally communicated to her. Alternatively, she submitted that the earlier grievance history formed part of an interconnected sequence of discriminatory conduct such that the Tribunal should treat the matters as a continuing act extending across the broader period relied upon.

167. The respondent submitted that substantial parts of the factual history relied upon fell outside the primary limitation period. It further submitted that the claimant had access to legal advice from a relatively early stage, had been actively engaged in the grievance process throughout, and had ample opportunity to formulate and pursue claims earlier had she wished to do so.

168. The Tribunal accepts that aspects of the later events formed part of a connected sequence extending into the operative period surrounding the events of October 2023 and the subsequent January 2024 communication.. We found that the January 2024 matters were prima facie in time for the purposes of issue 4.1; and while the October 2023 acts were not prima facie in time, they formed conduct extending over a period for the purposes of issue 4.2, sufficiently linked to the January 2024 feedback and related communications, so that for the purposes of issue 4.3, they fell to be treated as part of the same connected sequence ending within the limitation period.

For the purposes of issue 4.2, we found that the October 2023 suitability process relating to the SVL role, including the arrangements for the meeting, the meeting, the provision of feedback, and the related January 2024 communications, constituted conduct extending over a period rather than isolated and unrelated acts. For the purposes of issue 4.3, that continuing conduct ended, at the latest, with the January 2024 communication of the feedback and related communications, and the claim was therefore presented within three months, allowing for early conciliation, of the end of that period.

169. We therefore accept that the claimant is entitled to rely upon elements of that later period as forming part of the actionable chronology.

170. However, the Tribunal does not accept that the entirety of the earlier grievance history should be treated as independently actionable discrimination extending continuously across the whole period now relied upon. The Tribunal has considered the earlier events as contextual background relevant to understanding the deterioration of the employment relationship and the chronology leading to the pleaded claims. Those earlier matters were not treated as independently actionable allegations of discrimination within the scope of these proceedings.

171. The earlier grievances and workplace disputes were not originally framed or advanced as disability discrimination complaints. The Tribunal must therefore determine the case by reference to the claims and issues as ultimately pleaded and agreed between the parties. We considered the case as pleaded and as set out in the list of issues agreed between the parties and confirmed at the outset of the hearing.

172. The Tribunal was satisfied on the basis of the timeline (presentation of claim and formal notification of outcome of the SVL process) that it was just and equitable to permit consideration of the claims as pleaded insofar as they related to the 16 October 2023 meeting, the preceding arrangements for that meeting, and the January 2024 feedback. In reaching that conclusion, the Tribunal distinguished between the claimant's earlier awareness that the redeployment discussions concerning the SVL role had found her unsuitable, and the subsequent provision of formal feedback and related communications in January 2024, which the claimant separately relied upon as part of the treatment complained of.

173. In all the circumstances, we considered it just and equitable to extend time only so far as necessary to permit reliance on the October 2023 to January 2024 matters forming part of the same connected sequence, but not to render the earlier grievance history independently actionable as freestanding claims.

174. So far as the earlier matters are concerned, the claimant advanced no specific explanation for not presenting any freestanding Equality Act complaint within time, notwithstanding her ongoing engagement with the grievance process and access to legal advice during that period.

175. However, we were not satisfied that it would be just and equitable to extend time so as to render the earlier grievance history independently actionable as

freestanding claims. In reaching that conclusion, we took into account that the claimant advanced no specific explanation or evidential basis as to why such an extension would be appropriate in relation to those earlier matters. Accordingly, the earlier matters were treated as background context only.

176. The Tribunal's conclusions on limitation are confined to the claims and causes of action before it in these proceedings and are not intended to determine any limitation issues arising in separate proceedings.

177. Nothing in these findings should be taken as determining the claimant's medical condition, disability status, or functional presentation after the period relevant to these proceedings. Nothing in the findings or conclusions in this Judgment is intended to determine, preclude, or otherwise constrain the issues to be determined in Claim 2, which concerns events arising after 20 June 2024. Any references to events after that date are made solely for the purpose of providing relevant background or context to the matters determined in Claim 1 and should not be read as containing any concluded findings on issues falling for determination in Claim 2. For the avoidance of doubt, this Judgment should not be treated as expressing any view on the merits of Claim 2 or on any factual or legal question arising within it.

CONCLUSION

178. Standing back and considering the evidence as a whole, the Tribunal unanimously concludes that the claimant's complaints arose within the context of a prolonged and poorly managed workplace dispute following a failed progression and redeployment process. While the Tribunal accepted that aspects of the respondent's handling of matters were unsatisfactory, it was not satisfied, for the reasons set out above, that the statutory tests under sections 15, 20 or 27 Equality Act 2010 were established. Accordingly, the claims fail and are dismissed.

Employment Judge **Harley**

Date: 28 May 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON

29th May 2026

FOR THE TRIBUNAL OFFICE