



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Flynn

Respondent: East Lancashire Hospitals NHS Trust

Heard at: Manchester

On: 18-22, 26-29 August 2025 and in chambers on 1 and 3 September 2025.

Before: Employment Judge McDonald
Ms J Williamson
Ms V Worthington

REPRESENTATION:

Claimant: Mr D Flood of Counsel
Respondent: Mr A Webster of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. All complaints of direct disability discrimination (s.13 Equality Act 2010) are dismissed on withdrawal.
2. All complaints of indirect disability discrimination (s.19 Equality Act 2010) are dismissed on withdrawal.
3. All complaints of victimisation (s.27 of the Equality Act 2010) are dismissed on withdrawal.
4. The complaints of unfavourable treatment because of something arising in consequence of disability (s.15 of the Equality Act 2010) at 4.11 and 4.13 of the List of Issues are dismissed on withdrawal.
5. The complaint of unfavourable treatment because of something arising in consequence of disability (s.15 of the Equality Act 2010) at 4.1 is well-founded but was brought out of time. It is not just and equitable to extend time for bringing that complaint so it is dismissed.

6. The remaining complaints of unfavourable treatment because of something arising in consequence of disability are not well-founded and are dismissed.
7. The complaints of failure to make the reasonable adjustments for disability (ss.20-21 of the Equality Act 2010) at 10.6, 10.7, 10.8, 10.10, 10.11, 10.15 and 10.16 in the List of Issues are dismissed on withdrawal. That is in relation both to the complaints that there was a failure to comply with the first requirement (s.20(3)) and the third requirement (s.20(5)) in relation those matters.
8. The remaining complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed. That is in relation both to the complaints that there was a failure to comply with the first requirement (s.20(3)) and that there was a failure to comply with the third requirement (s.20(5)).
9. The complaints of harassment related to disability (s.26 of the Equality Act 2010) at 15.10 and 15.12 of the List of Issues are dismissed on withdrawal
10. The remaining complaints of harassment related to disability are not well-founded and are dismissed.

REASONS

Introduction

1. By a claim form filed on 11 August 2023 the claimant brought complaints of breaches of the Equality Act 2010 arising from her employment by the respondent as a medical secretary from 11 October 2021.
2. The final hearing of the case took place in person at Manchester Employment Tribunal. The claimant was represented by Mr Flood of counsel. The respondent was represented by Mr Webster of counsel.

The Issues

3. The issues in the case were set out in a List of Issues prepared by the parties. Following our preliminary discussions on Day 1 of the hearing the parties provided an updated List by Day 2. The changes are shown in track changes in the version of the List annexed to this judgment. They clarify:
 - a. the “something(s) arising” in consequence of the claimant’s disability relied on for her complaints of breach of s.15 of the Equality Act 2010 (Issue 5).
 - b. The provisions, criteria or practices (“PCP”) relied on as the basis for the claimant’s complaints of failures to make reasonable adjustments (Issue 7).

- c. The “substantial disadvantage(s)” to which the claimant says the PCPs put her compared to a person who did not share her disability (Issue 8).
- d. The protected act relied on as the basis for the claimant's complaint of victimisation in breach of s.27 of the Equality Act 2010 (Issue 20).

4. At the start of Day 2 Mr Flood confirmed that the claimant withdrew her complaints of direct disability discrimination, indirect disability discrimination (not included in the List of Issues) and victimisation. In our judgment we have dismissed those complaints on withdrawal. They were withdrawn on the basis that there be no order for costs.

5. In his closing submissions Mr Flood confirmed that allegations 4.11, 4.13, 15.10 and 15.12 in the List of Issues were withdrawn. The claimant also conceded that the duty to make reasonable adjustments was not breached in relation to 10.15 and 10.16 in the List of Issues and withdrew the complaints relating to reasonable adjustments 10.6, 10.7, 10.8. he also confirmed that reasonable adjustments 10.10 and 10.11 were not in issue between the parties. We have dismissed those complaints on withdrawal.

Preliminary Matters

Liability only

6. The parties agreed that the hearing would deal with liability only. A separate remedy hearing would be listed if required.

Reasonable Adjustments.

7. The respondent conceded that the claimant is a disabled person by reason of visual impairment.

8. Reasonable adjustments to the way the Tribunal hearing would be conducted were identified at the preliminary hearing before Employment Judge Holmes on 8 January 2024. They included the claimant being permitted to wear anti-glare glasses during the hearing, using a magnifier during evidence and regular breaks.

9. During the hearing the claimant used an electronic copy of the final hearing bundle on her laptop so that she could magnify documents as required. The respondent raised no objection to that, nor to the claimant's husband sitting next to her while she gave evidence to assist with the documents if required.

10. At the start of the hearing on Day 2, we turned the lights in the Tribunal room off because the claimant indicated that the glare was causing her difficulties. After the initial evidence session, she confirmed that it was preferable to continue with the main room lights on but with the claimant wearing her anti-glare glasses. We adopted that approach for the rest of the hearing.

The Hearing

11. On Day 1 of the hearing we considered and dealt with the preliminary matters set out above. The Tribunal spent the rest of Day 1 reading the witness statements and key evidential documents.

12. On Days 2 to 4 we heard the claimant's evidence.
13. On Days 5 to 7 and the morning of Day 8 we heard the respondent's witnesses' evidence.
14. We heard the parties' submissions on Day 9.
15. We reserved our decision. We deliberated in chambers on the afternoon of Days 9 and on days 10 and 11.
16. The Employment Judge apologises to the parties for the delay in finalising the judgment and sending it to them and is grateful for their patience in that regard.

Evidence

The final hearing bundle

17. The parties had agreed a main final hearing bundle (pp.1-1171). There was a 41-page Supplemental Bundle (pp.1172-1212), a small bundle of "Additional Documents Requested by Claimant's Counsel" (pp.1213-1229) and a further small bundle of "Additional Documents" (pp.1230-1237). We used that combined bundle ("the Bundle") for the hearing. References in this judgment to page numbers are references to pages in the Bundle.
18. The respondent also provided unredacted versions of the Formal Resolution Investigation report and the interview transcripts for Mr Squires, Mr Rogers and Miss Henderson.
19. The parties had agreed a chronology, cast list and key reading list.

Audio Recording and Transcript

20. At the start of Day 2 we raised the fact that there was reference in the evidence to a recording which the claimant said she had created accidentally on her phone. It was of her colleagues talking about her on the 25 October 2022 (allegations 4.9 and 15.8 in the List of Issues). The recording was made as a video recording but included no video footage of the participants. In effect, it was an audio recording.
21. We were provided with the transcript on Day 3 and had the opportunity to read it during the lunch break on Day 3. Having done so, we indicated to the parties that our preliminary view was that we should also listen to the audio recording. That was because it seemed to us the tone of voice of what was said was relevant to the issues we needed to decide. It also seemed to us that the transcript we were provided with included editorial comment by the claimant and that it was important for us to consider the source material rather than just the transcript. As Mr Flood acknowledged, the respondent had not had an opportunity to fully consider whether it objected to inclusion of the recording because of the lateness of the issue arising. We agreed that Mr Webster could clarify the respondent's position overnight on Day 3. If the respondent objected to the Tribunal listening to the recording, the parties could make submissions on that during Day 4.
22. At the start of Day 4 Mr Webster confirmed that the respondent had no objection to the Tribunal listening to the recording. We did so during the lunch break on Day 4.

Witness Evidence

23. We had a written witness statement from the claimant.
24. For the respondent we had written witness statements from the following:
- Lynne Waddicor (“Mrs Waddicor”). She is employed by the respondent as a Senior HR Business Partner and also held that role at the time of the incidents giving rise to the claimant’s claim.
 - Dayle Squires (“Mr Squires”). He is employed by the respondent as Directorate Manager and also held that position at the time when the incidents giving rise to the claimant’s claim occurred.
 - Gillian Rose (“Mrs Rose”). She was employed by the respondent as a Senior Manager until she retired in 2015. Since then she has worked for the respondent on a bank contract.
 - Pamela Henderson (“Miss Henderson”). She was employed by the respondent as Microbiology Manager until 1 December 2023 when she was appointed as Pathology Operation Manager.
 - Craig Rogers (“Mr Rogers”). He is employed by the respondent as Lead Biomedical Scientist in its Cellular Pathology Department. He also held that role at the time when the incidents giving rise to the claimant’s claim occurred.
 - Tony McDonald (“Mr McDonald”). He was employed as Executive Director of Integrated Care, Partnerships and Resilience for the respondent. He was also employed in that post when the incidents giving rise to the claimant’s claim occurred.
25. Each witness gave oral evidence apart from Mr McDonald. On day 5 of the hearing Mr Flood confirmed that he was not proposing to cross-examine Mr McDonald. The claimant’s position was that she did not accept the contents of his statement but that it was disproportionate to require him to attend the hearing simply to swear the truth of his statement. Mr Flood proposed that the Tribunal accept the statement as if it had been sworn. He confirmed that the claimant accepted that that meant we would give it as much weight as if Mr McDonald had attended to give evidence rather than the lesser weight which a Tribunal might give to a written statement only. After deliberating during the lunch break the Tribunal agreed to that suggestion. We therefore did not hear sworn oral evidence from Mr McDonald but he is treated as having given such evidence.

Relevant Law

26. The claimant’s complaints were brought under the Equality Act 2010.
27. S.39 and s.40 of the 2010 Act prohibit discrimination, victimisation and harassment of employees. So far as material to this case they provide as follows:

“39 Employees and applicants

....(2) An employer (A) must not discriminate against an employee of A's (B)—

(a)

(d) by subjecting B to any other detriment....

40 Employees and applicants: harassment

(1) An employer (A) must not, in relation to employment by A, harass a person (B)—

(a) who is an employee of A's".

The Burden of Proof

28. The 2010 Act provides for a shifting burden of proof. Section 136 so far as material provides as follows:

"(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

29. This means that it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the 2010 Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

30. In **Hewage v Grampian Health Board [2012] ICR 1054, SC**, the need to avoid an overly technical approach to the application of section 136 was emphasised. Lord Hope observed that the burden of proof provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

31. That means that where there is "room for doubt", the approach s.136 lays down provides a valuable tool for determining whether the inference of discrimination should be drawn. In **Field v Steve Pye & Co [2022] IRLR 948 EAT HHJ Tayler** emphasised that if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment. Instead, "where there is evidence that could indicate discrimination there is much to be said for properly grappling with the evidence and deciding whether it is, or is not, sufficient to switch the burden of proof. That will avoid a claimant feeling that the evidence has been swept under the carpet. It is hard to see the disadvantage of stating that there was evidence

that was sufficient to shift the burden of proof but that, despite the burden having been shifted, a non-discriminatory reason for the treatment has been made out.”

32. As for what is required to discharge the burden at the first stage, that must be something more than a difference in the relevant protected characteristic and a difference in treatment; see **Madarassy v Nomura International plc [2007] ICR 867, CA**. That said, the something more required at the first stage need not be a great deal; see **Deman v EHRC [2010] EWCA Civ 1279**.

33. A finding that an employer has behaved unreasonably, or treated an employee badly, will not, however, be sufficient, of itself, to cause the burden of proof to shift; **Glasgow City Council v Zafar [1998] ICR 120**.

34. The guidance in **Igen Ltd v Wong [2005] ICR 931, CA** states when the burden has passed, not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, but that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment. However, that explanation need not be “adequate” in the sense of providing a reason which satisfies some objective standard of reasonableness or acceptability – it does not matter if the employer has acted for an unfair or discreditable reason provided that the reason had nothing to do with the protected characteristic (**Royal Mail Group v Efobi [2021] UKSC 33** at para 29).

Discrimination arising from disability (s.15 Equality Act 2010)

35. Section 15 of the Equality Act 2010 says that:

“(1) A person (A) discriminates against a disabled person (B) if--

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

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

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

36. Para 5.9 of the Equality and Human Rights Commission's Code of Practice on Employment (“the EHRC Code”), in answer to the question “what does “something arising in consequence of a disability” says that:

“The consequences of a disability include anything which is the result, effect or outcome of a disabled person's disability. The consequences will be varied, and will depend on the individual effect upon a disabled person of their disability. Some consequences may be obvious, such as an inability to walk unaided or inability to use certain work equipment. Others may not be obvious, for example, having to follow a restricted diet”.

Unfavourable treatment

36. “Unfavourable treatment” is what the alleged discriminator does or says, or omits to do or say, which then places the disabled person at a disadvantage (**T-Systems Ltd v Lewis EAT 0042/15**). In **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor 2019 ICR 230, SC** the Supreme Court said there in most cases there is likely to be gained by seeking to draw narrow distinctions between the word 'unfavourably' in S.15 and analogous concepts such as 'disadvantage' or 'detriment' found in other provisions of the Equality Act 2010. Lord Carnwath accepted that the EHRC Code provides helpful advice as to the relatively low threshold of disadvantage required to engage S.15. Under the heading "What is 'unfavourable treatment'?", the EHRC Code says:

"5.7 For discrimination arising from disability to occur, a disabled person must have been treated 'unfavourably'. This means that he or she must have been put at a disadvantage. Often, the disadvantage will be obvious and it will be clear that the treatment has been unfavourable; for example, a person may have been refused a job, denied a work opportunity or dismissed from their employment. But sometimes unfavourable treatment may be less obvious. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably."

37. The EHRC Code also provides guidance on the meaning of “disadvantage”:

"4.9 'Disadvantage' is not defined by the Act. It could include denial of an opportunity or choice, deterrence, rejection or exclusion. The courts have found that 'detriment', a similar concept, is something that a reasonable person would complain about - so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable and the worker does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently."

37. Whether or not treatment is “unfavourable” will be a question of fact for the Tribunal to determine. Although a low threshold, by analogy with the approach to “detriment”, it will not simply be established because the complainant considers that they should have been treated better (per Bean LJ at paragraph 43 of **Williams**).

38. **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**, confirmed that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. In **Derbyshire and ors v St Helens Metropolitan Borough Council and ors [2007] UKHL 16** the House of Lords stressed that the test is not satisfied merely by the claimant showing that they have suffered mental distress: it would have to be objectively reasonable in all the circumstances. Accordingly, the test of detriment has both subjective and objective elements. The situation must be looked at from the claimant's point of view but their perception must be 'reasonable' in the circumstances. The employee's own perception of having suffered a 'detriment' may not always be sufficient to found a claim.

Causation

39. There is a need to identify two separate causative steps in order for a s.15 claim to be made out (**Basildon and Thurrock NHS Foundation Trust v Weerasinghe 2016 ICR 305, EAT**):

- the disability had the consequence of ‘something’;
- the claimant was treated unfavourably because of that ‘something’.

40. In **Basildon** the EAT said it does not matter in which order the tribunal approaches these two steps: ‘It might ask first what the consequence, result or outcome of the disability is, in order to answer the question posed by “in consequence of”, and thus find out what the “something” is, and then proceed to ask if it is “because of” that that A treated B unfavourably. It might equally ask why it was that A treated B unfavourably, and having identified that, ask whether that was something that arose in consequence of B’s disability’.

41. In **Pnaiser v NHS England and anor 2016 IRLR 170, EAT**, the EAT summarised the proper approach to establishing causation under S.15:

- First, the tribunal has to identify whether the claimant was treated unfavourably and by whom.
- It then has to determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant.
- The tribunal must then determine whether the reason was ‘something arising in consequence of the claimant’s disability’, which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

42. For a s.15 claim to succeed the ‘something arising in consequence of the disability’ must be part of the employer’s reason for the unfavourable treatment. The key question is whether the something arising in consequence of the disability operated on the mind of the alleged discriminator, consciously or unconsciously, to a significant extent (**T-Systems Ltd v Lewis EAT 0042/15**).

43. A claimant needs only to establish some kind of connection between the claimant’s disability and the unfavourable treatment. In **Hall v Chief Constable of West Yorkshire Police 2015 IRLR 893, EAT** the EAT confirmed that a s.15 claim can succeed where the something arising has a significant influence on, or was an effective cause of, the unfavourable treatment.

44. In **Sheikholeslami v The University of Edinburgh [2018] IRLR 1090** the EAT said that the connection with the disability may involve more than one link in the chain of consequences. However, the more links in the chain there are between the disability and the reason for the impugned treatment the harder it is likely to be to establish the requisite connections as a matter of fact (**Pnaiser** at para 31 (e)).

Objective justification

45. A s.15 claim will only succeed if the employer (or other person against whom the allegation is made) is unable to show that the unfavourable treatment to which the

claimant has been subjected is objectively justified as a proportionate means of achieving a legitimate aim.

46. The EHRC Code sets out guidance on objective justification. In summary, the aim pursued should be legal, should not be discriminatory in itself and must represent a real, objective consideration. Although business needs and economic efficiency may be legitimate aims, the EHRC Code states that an employer simply trying to reduce costs cannot expect to satisfy the test (see para 4.29). As to proportionality, the EHRC Code notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective (see para 4.31).

47. A failure to make a reasonable adjustment will make it very difficult for the employer to argue that unfavourable treatment was nonetheless justified. In **Dominique v Toll Global Forwarding Ltd UKEAT/0308/13/LA, para 51**, the EAT said that there is no legal requirement to consider questions of failure to comply with reasonable adjustments before considering questions of justification of disability-related discrimination. However, where there is a link between the reasonable adjustments said to be required and the disadvantages or detriments being considered in the context of disability-related discrimination, it is important to ensure that any failure to comply with a reasonable adjustment duty is considered as part of the balancing exercise in considering questions of justification. This is because it is difficult to see as a matter of practice how a disadvantage that could have been addressed or prevented by a reasonable adjustment that has not been made can, as a matter of practical reality, be justified.

48. The converse is not necessarily true. Just because an employer has implemented reasonable adjustments does not guarantee that unfavourable treatment of the claimant will be justified, e.g. if the particular adjustment is unrelated to the unfavourable treatment complained of or only goes part way towards dealing with the matter.

The burden of proof in s.15 cases

49. The burden of proof provisions apply to s.15 claims. Based on **Pnaiser**, in the context of a S.15 claim, in order to prove a prima facie case of discrimination and shift the burden to the employer to disprove his or her case, the claimant will need to show:

- that he or she has been subjected to unfavourable treatment
- that he or she is disabled and that the employer had actual or constructive knowledge of this
- a link between the disability and the ‘something’ that is said to be the ground for the unfavourable treatment
- some evidence from which it could be inferred that the ‘something’ was the reason for the treatment.

50. If the prima facie case is established and the burden then shifts, the employer can defeat the claim by proving either:

- that the reason or reasons for the unfavourable treatment was/were not in fact the ‘something’ that is relied upon as arising in consequence of the claimant’s disability, or
- that the treatment, although meted out because of something arising in consequence of the disability, was justified as a proportionate means of achieving a legitimate aim.

Failure to make reasonable adjustments (including by failing to provide auxiliary aids)

38. The duty to make reasonable adjustments appears in Section 20 Equality Act 2010 as having 3 requirements. The requirements of relevance in this case are the first requirement (S. 20(3)) and the third requirement s.20(5). Those requirements are as follows: -

“the first requirement is a requirement, where a provision, criterion or practice [“the PCP”] of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage” (s.20(3)).

“the third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid” (s.20(5)).

39. The EHRC Code at para 6.10 says that the term PCP “should be construed widely so as to include, for example, any form or informal policies, rules, practices, arrangements, criteria, conditions, qualifications or provisions.” In para 4.10 it says that a PCP “may include decisions to do something in the future as well as a one off or discretionary decision”.

40. While a one-off act can amount to a practice there has to be some indication that it would be repeated were similar circumstances to arise in the future. This issue was considered in the case of **Ishola v Transport for London 2020 ICR 1204** by the Court of Appeal. The Court of Appeal said that having regard to the function and purpose of the PCP all three words carry the connotation of a state of affairs indicating how similar cases are generally treated or, how a similar case would be treated if it occurred again. “Practice” connoted some form of continuum in the sense that it is the way in which things generally are or will be done. That did not mean that it was necessary for the PCP or practice to have been applied to anyone else in fact. Something may be a practice or done in practice if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises.

41. Section 20(11) EqA 2010 provides that a reference in sections 20-22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service. The EHRC Code explains (at para 6.13) that

“An auxiliary aid is something which provides support or assistance to a disabled person. It can include provision of a specialist piece of equipment such

as an adapted keyboard or text to speech software. Auxiliary aids include auxiliary services; for example, provision of a sign language interpreter or a support worker for a disabled worker.”

42. In **Maellon v Aecom Limited [2021] ICR 1151** the EAT emphasised the importance of tribunals recognising the difference between first requirement and third requirement claims. An auxiliary aid claim does not depend on the application of a PCP. However, in that case and in **Hindmarch v North-East Ambulance NHS Foundation Trust [2025] EAT 87** the EAT confirmed that there can be cases where a claim is made in parallel under s.20(3) and s.20(5) and where the claim fails for the same reason in relation to both sections, e.g. because it was not reasonable to provide an auxiliary aid or make an adjustment to a PCP which would not have any real prospect of helping the claimant to alleviate or surmount his disadvantage.

43. The importance of a Tribunal going through each of the constituent parts of s.20 was emphasised by the EAT in **The Royal Bank of Scotland –v- Ashton [2011] ICR 632** (approved by the Court of Appeal in **Newham Sixth Form College v Sanders [2014]**). A Tribunal must identify:

- a) the provision, criterion or practice applied by or on behalf of an employer, or
- b) [where relevant] the physical feature of premises occupied by the employer,
- c) the identity of non-disabled comparators (where appropriate) and
- d) the nature and extent of the substantial disadvantage suffered by the Claimant. It should be borne in mind that identification of the substantial disadvantage suffered by the Claimant may involve a consideration of the cumulative effect of both the ‘provision, criterion or practice applied by or on behalf of an employer’ and (where relevant) the, ‘physical feature of premises’ so it would be necessary to look at the overall picture.

The EAT added that although it will not always be necessary to identify all four of the above, (a) and (d) must certainly be identified in every case.

44. As to whether a disadvantage resulting from a provision, criterion or practice is substantial, Section 212(1) of the 2010 Act defines “substantial” as being “more than minor or trivial”.

45. Paragraph 20(1) of Schedule 8 to the 2010 Act provides that:

“a person is not subject to the duty to make reasonable adjustments if he or she does not know, and could not reasonably be expected to know:

(a) in the case of an applicant or potential applicant for work, that an interested disabled person is or may be an applicant for the work in question;

(b) in any other case referred to in Part 2 of the Schedule, that an interested disabled person has a disability and is likely to be placed at a disadvantage by [the employer’s provision, criterion or practice (PCP), the physical features of the workplace, or a failure to provide an auxiliary aid]”

46. The employer's knowledge can be actual or "constructive". A Tribunal should approach this aspect of a reasonable adjustments claim by considering two questions:

- first, did the employer know both that the employee was disabled and that the disability was liable to disadvantage the employee substantially?
- if not, ought the employer to have known both that the employee was disabled and that the disability was liable to disadvantage the employee substantially? **Secretary of State for Work and Pensions v Alam 2010 ICR 665, EAT**, and **McCubbin v Perth and Kinross Council EATS 0025/13**.

47. In **Smith v Churchills Stairlifts plc 2006 ICR 524, CA**, the Court of Appeal confirmed that the test of reasonableness in the context of what is now S.20 of the Equality Act 2010 is an objective one and it is ultimately the employment tribunal's view of what is reasonable that matters.

48. The obligation to take such steps as it is reasonable to have to take to avoid the disadvantage is one in respect of which the EHRC Code provides considerable assistance. A list of factors which might be taken into account appears at paragraph 6.28 and includes the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources and the type and size of the employer. Paragraph 6.29 makes clear that ultimately the test of the reasonableness of any step is an objective one depending on the circumstances of the case. Examples of reasonable adjustments in practice appear from paragraph 6.32 onwards

49. The question of whether there was a failure to make reasonable adjustments must be considered by reference to the position during the entirety of the period to which the claim relates. A Tribunal should not find that an employer had acted reasonably by reference to matters that were not known by the employer at the relevant time (confirmed in **Hindmarch**).

50. In **Linsley v HM Revenue and Customs [2019] IRLR 604** the EAT recognised that for any given disadvantage there may be a number of adjustments that could be made, each of which might individually be reasonable. It confirmed that an employer is not required to select the best or most reasonable of a selection of reasonable adjustments, nor is it required to make the adjustment that is preferred by the disabled person.

51. In **Chief Constable of Lincolnshire v Weaver UKEAT/0622/07/DM** the EAT stressed that in assessing the reasonableness of steps to be taken a Tribunal must take into account all the circumstances. That means taking into account such matters as the effect of any adjustment on other employees.

52. Paragraphs 6.36-6.39 of the EHRC Code refer to the Access to Work Scheme. It explains the scheme "may assist an employer to decide what steps to take" (6.36), that if financial assistance is available from the scheme, it may also make it reasonable

for an employer to take certain steps which would otherwise be unreasonably expensive (6.36) and that it may be unreasonable for an employer to decide not to make an adjustment based on its cost before finding out whether financial assistance for the adjustment is available from Access to Work or another source (6.39).

53. If the steps that it is suggested that a Respondent should have taken by way of reasonable adjustment (whether in the form of the provision of an auxiliary aid or otherwise) would have no real prospect of avoiding or reducing the disadvantage, then the Respondent is under no duty to take those steps. It cannot be reasonable to require a party to make an adjustment that has no prospect of achieving the desired effect (**Hindmarch**, relying on **Paulley v FirstGroup plc [UKSC 4]** and other). That applies to s.20(5) as well as to s.20(3) cases (**Hindmarch** para 62).

54. However, it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage. **Cumbria Probation Board v Collingwood [2008] All ER (D) 04**.

55. In **Rider v Leeds City Council [2013] Eq. L.R. 98** the EAT confirmed that the making of an assessment as to what reasonable adjustments might be made in respect of a disabled employee was not itself capable of amounting to a reasonable adjustment. It followed the decision in **Tarbuck v Sainsbury's Supermarkets [2006] IRLR 664**.

56. The burden of proof also applies in reasonable adjustment claims. The burden is on the employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment (**Rentokil Initial UK Ltd v Miller [2024] EAT 37, para 43; Project Management Institute v Latif [2007] IRLR 579**).

Disability-related harassment (s.26 Equality Act 2010)

57. The definition of harassment appears in section 26 of the 2010 Act which so far as material reads as follows:

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

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and**
- (b) the conduct has the purpose or effect of**
 - (i) violating B's dignity, or**
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...**

- (4) In deciding whether conduct has the effect referred to sub-section (1)(b), each of the following must be taken into account -**
- (a) the perception of B;**
 - (b) the other circumstances of the case;**
 - (c) whether it is reasonable for the conduct to have that effect.”**

58. The EHRC Code gives guidance on the factors relevant in deciding whether conduct has the effect referred to in s.26(1)(b) (“a harassing effect”) at paragraph 7.18:

“7.18 In deciding whether conduct had that effect, each of the following must be taken into account:

- a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment.
- b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker’s health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.
- c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended.”

59. For a complaint of disability-related harassment to succeed, the Tribunal must be satisfied that there was unwanted conduct which was disability-related and which had a harassing purpose or a harassing effect. Harassment can occur even if the conduct did not have a harassing purpose, so long as it had the harassing effect.

60. The test of whether conduct is “related” to a protected characteristic (in this case disability) is different to that of whether it is “because of” a protected characteristic which applies in a case of direct discrimination. The term ‘related to’ is wider and more flexible than “because of”. In a disability-related harassment case, conduct could be found to be “related to” disability where it was done because of disability, but that is not a requirement. So, for example, if A subjects B to unwanted conduct with the purpose of “creating an intimidating environment for B” in circumstances in which it is established that A would not have subjected someone without the disability to the same conduct, that would establish that the conduct was “related to disability”. But there are many other ways in which conduct could be “related to disability”. One

example given in a case of race-related harassment is where there is conduct that is inherently racist such as telling racist jokes (**Blanc de Provence Ltd v Ha [2023] EAT 160**).

61. Mr Flood directed us to **Bakkali v Greater Manchester Buses (South) Ltd (trading as Stagecoach Manchester) [2018] I.C.R. 1481, para 31**, in which the EAT which confirmed the need for a “broader enquiry” and “an intense focus on the context of offending words or behaviour”. Considering **Bakkali** in **British Bung Manufacturing Company Ltd & King v Finn [2023] EAT 165**, the EAT said that “the context of a remark said to constitute harassment within the meaning of section 26(1)encompasses the prevalence amongst persons having the relevant protected characteristic of the feature to which that remark alludes and the absence of any other factor or circumstances said to explain the remark.”

62. Whether conduct is ‘related to’ a protected characteristic is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it. The fact that the claimant considers that the conduct is related to that characteristic is not determinative. There must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim (**Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 495**).

63. Case-law has made it clear that the language used in s.26, i.e. “violation of dignity” and “intimidating, hostile, degrading, humiliating, or offensive” is significant:

“Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.” (per **Elias LJ Grant v HM Land Registry [2011] EWCA Civ 769 at paragraph 47**)

“The word ‘violating’ is a strong word. Offending against dignity, hurting it, is insufficient. ‘Violating’ may be a word the strength of which is sometimes overlooked. The same might be said of the words ‘intimidating’ etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.” (per Langstaff P **Betsi Cadwaladr University v Hughes UKEAT/0179/13 at paragraph 12**)”.

Time limits for Equality Act 2010 claims

64. The time limit for bringing a claim under the Equality Act 2010 appears in section 123 as follows:-

“(1) subject to Sections 140A and 140B proceedings on a complaint within Section 120 may not be brought after the end of –

(a) the period of three months starting with the date of the act to which the complaint relates, or

(b) such other period as the Employment Tribunal thinks just and equitable.

(2) ...

(3) for the purposes of this section –

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.”

Continuing acts

65. In **Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96** the Court of Appeal confirmed that in deciding whether there was conduct extending over a period of time (commonly referred to as a “continuing act”):

‘The focus should be on the substance of the complaints ... was there an ongoing situation or a continuing state of affairs in which [officers] ... were treated less favourably? The question is whether that is ‘an act extending over a period’ as distinct from a succession of unconnected or isolated specific acts’.

66. In considering whether separate incidents form part of an act extending over a period, ‘one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents’ **Aziz v FDA 2010 EWCA Civ 304, CA**.

67. Acts which the Tribunal finds are not established on the facts or are found not to be discriminatory cannot form part of the continuing act: **South Western Ambulance Service NHS Foundation Trust v King EAT 0056/19**.

Just and equitable extension of time

68. The onus is on the claimant who requires an extension of time to persuade the Tribunal to grant it (**Chief Constable of Lincolnshire Police v Caston [2009] IRLR 327** and **Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132**).

69. In **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA**, the Court of Appeal stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) of the 2010 Act, ‘there is no presumption that they should do so...a tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.’ However, this does not mean that exceptional circumstances are required before the time limit can be extended. In **Caston**, the Court of Appeal said that **Robertson** emphasises the wide discretion which the Tribunal has and that there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised.

70. In **British Coal Corporation v Keeble [1997] IRLR 336** the EAT suggested that in determining whether to exercise their discretion to allow the late submission of a discrimination claim, tribunals would be assisted by considering the factors listed in S.33(3) of the Limitation Act 1980. Those factors are in particular: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be

affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

71. In **Southwark London Borough Council v Afolabi [2003] ICR 800, CA**, the Court of Appeal confirmed that, while that checklist in S.33 provides a useful guide for tribunals, it need not be adhered to slavishly.

72. In **Adedeji v University Hospitals Birmingham NHS [2021] EWCA Civ 23** the Court of Appeal approved what was said by the Court of Appeal in **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640**. At paragraph 25 of that Judgment the Court of Appeal stressed that:

“Factors which are almost always relevant to consider when exercising any discretion whether to extend time are:

The length of and the reasons for the delay; and

Whether the delay has prejudiced the respondent (for example by preventing or inhibiting it from investigating the claim while matters were fresh.”

73. The Court of Appeal in **Morgan** also made clear that there was no justification for reading into section 123 a requirement that the Tribunal had to be satisfied there was “good” reason for the delay, let alone that time could not be extended absent an explanation from the employee. However, the reason for the delay is a relevant matter to which the Tribunal can have regard.

74. Reviewing **Morgan** and other authorities in **Concentrix Ltd v Miss Obi [2022] EAT 149, para 66**, HHJ Auerbach concluded that:

“it cannot be said that a conclusion that no explanation appears at all from the evidence for why the claim was not presented any sooner, must necessarily as a matter of law always lead to the conclusion that time cannot be extended. It would usually be an error not to consider the question at all, but that is a different point. If the Tribunal, having considered the question, concludes that there is no such evidence, then it will need to put that into the scales. But provided that it does so, it will not err in law merely because it nevertheless decides to extend time, unless it does so in a manner that is amenable to challenge on what for shorthand Elisabeth Laing J referred to as the Wednesbury grounds.”

75. Any reason relied on must be a cause of the delay (**Hunwicks v Royal Mail Group plc EAT 0003/07**).

Findings of Fact

76. We set out below our findings of fact based on the evidence we heard and read and taking into account the parties’ submissions on that evidence.

Background Facts

77. The respondent is an NHS Trust. On 8 September 2021 the claimant was appointed as a Band 4 Histology (also known as Cellular Pathology) Medical Secretary. The claimant's working hours when appointed were 30 hours per week, working Tuesday to Friday. They reduced to 18.75 hours on 18 May 2023. The claimant's husband already worked for the respondent as a Pathology Manager.

78. The main duties of the claimant's role were to type up lab reports for the Histology department. Those reports came to the secretaries in handwritten or on a pre-typed form depending on the kind of report. The details from the reports were entered on the respondent's electronic databases by the secretaries. The reports sometimes used unfamiliar medical terminology. The handwritten reports could sometimes be difficult to decipher. The secretaries were also sometimes required to do audio typing or take minutes at meetings. The claimant's evidence was that she was not given any audio typing to do in the period when she worked in the Office.

79. The claimant's employment by the respondent began on 11 October 2021. That was also due to be her start date at work. However, in mid-September 2021 the claimant was diagnosed with a brain aneurysm. The claimant underwent neurosurgery in September 2021 and March 2022. That meant that the claimant did not actually start work until 1 September 2022.

80. Due to trauma to her optic tract, the claimant is significantly visually impaired compared to before the aneurysm. She is not allowed to drive. The claimant's unchallenged evidence in her witness statement was that her vision is "like looking through a frosted window". The impairment affects both the claimant's eyes. The respondent accepts that the claimant was at all relevant times a disabled person for the purposes of the Equality Act 2010 by reason of the effects of that visual impairment.

The shared office and management structure

81. Most of the allegations of unfavourable treatment/harassment were about things which the claimant said happened in the office she shared with the other medical secretaries ("the Office"). It was shared with 5 other Histology medical secretaries (Ms Claire Hurst, Ms Lakha, Ms Rachael Hurst, Ms Anderson and Ms Waring) and 2 Microbiology medical secretaries (Ms Singleton and Ms Potts). Ms Claire Hurst and Ms Lakha had started some 6 weeks before the claimant but the other Histology secretaries had worked together for many years. Although based together in the Office, the Histology and Microbiology medical secretaries did different work and were separate teams.

82. We find the Office was a cramped space. The claimant and the other secretaries had their own designated desks but there was not much room around them. The desk allocated to the claimant had been empty since her predecessor left. Its placement meant she had her back to the door. For some of the time the secretaries would be wearing headsets while audiotyping. It was a busy and loud office. In addition to the secretaries, other people would come in and out to use the printer and shredder. The door did not close automatically. The kitchen and toilet used by the medical secretaries was down the corridor from the Office.

83. Mr Rogers was the lead scientist in the Histology department. He had responsibility for line management of the staff in that department, including the

claimant and the 5 other Histology medical secretaries. We find that although Mr Rogers was the line manager with authority to sign off holidays and so on, the Histology medical secretaries organised their day-to day work between themselves.

84. Mr Rogers was based in an office down the corridor from the Office. One of those sharing that office with him was the claimant's husband ("Mr Flynn"). They worked in the same lab.

85. The claimant made one allegation of unfavourable treatment/harassment against Ms Musa (4.7 and 15.6). Ms Musa was also a medical secretary but was not based in the shared office and was not managed by Mr Rogers. She was based in another office down the corridor.

Overview chronology

86. We set out below our detailed findings of fact about the events in the case in chronological order. By way of overview, the claimant started work on 1 September 2022. She began a period of sick leave on 28 October 2022. Her last day in the Office was 25 October 2022. She undertook some training from home and a Corporate Induction during April 2023. However, there was some uncertainty about which days the claimant had actually worked (as opposed to being on annual leave or on sick leave) and which of those she had worked from home and which from the Office. We asked the parties to provide a table clarifying that. That did not prove straightforward. Based on that and the evidence we heard we find the claimant worked for between 10-20 days (the claimant's estimate was 12 days) between 1 September 2022 and 11 August 2023 when she filed her Tribunal claim. The claimant started in another role with the respondent from September 2024.

Events up to the claimant's phased start at work on 1 September

87. After her second surgery the claimant had a series of appointments with the respondent's Occupational Health and Wellbeing Service ("OH"). The claimant also had Long Term Sickness Review Meetings ("LTSR") from home by Teams with Mr Rogers and Chloe Wilkison (HR) on 26 May 2022 (pp.1218-1219) and 18 August 2022 (p.1224-1229). Although each of the OH reports confirmed that the claimant was not fit to attend work, she was keen to start work. She confirmed that she was able to read text if the font was large and was able to type. The OH report dated 10 August 2022 (pp.161-164) reported her as saying that she felt that she would be able to work as a Medical Secretary with workplace adjustments and had already contacted Access to Work ("AtW") for assistance.

88. We find Mr Rogers was supportive of the claimant's aim to start work when fit. In June 2022 they discussed the possibility of the claimant working at home undertaking training if the claimant was fit to work but still unable to drive. They also discussed the likelihood that the claimant would start on a phased start over 4 weeks.

89. The 10 August OH Report had not been released to the respondent when the 18 August 2022 LTSR meeting took place by Teams. Mr Rogers had no OH advice at that meeting about what adjustments might be required to enable the claimant to start work. However, the claimant made it clear at the meeting that she was desperate to start work and that being stuck at home was affecting her mental health. We accept Mr Rogers's evidence that Mr Flynn had also told him that the claimant was finding it

difficult being at home. Given those concerns, having discussed with Ms Wilkinson, Mr Rogers decided it would be better for the claimant to start work even if the respondent did not yet know for certain what adjustments the claimant would require. Based on Mr Rogers handwritten notes of the review meeting (pp.1224-1229) we find there was a discussion about the hours the claimant would work on her phased return. The need for an assigned person to help her in the event of a fire was noted. When it came to equipment the claimant required, Mr Rogers noted she would need a keyboard and mouse and “aids to read”.

90. We accept Mr Rogers’s evidence that the claimant did not specifically identify equipment she needed at that meeting. However, we find his evidence that the claimant had not at that point contacted AtW was not correct. She had contacted them about a grant to support with travel to work but was waiting for a response. Mr Rogers recorded that in his notes (p.1226). AtW responded to the claimant’s application on 22 August asking her to provide her GP’s confirmation of her medical condition. We find she provided that confirmation on or around 6 September 2022 (pp.165-167).

Events from 1 to 23 September 2022 - the phased start at work

91. The claimant’s phased start at work began in the week commencing 29 August 2022. She and Mr Rogers agreed that she would work 1 day in that first week, 2 days in the second week, 3 days in the third week and 4 days in the fourth week (the week commencing 19 September 2022). It was agreed the claimant could work 8 a.m. to 4 p.m. (rather than 9-5) so she could get a lift in to work with Mr Flynn on the days she was required to work from the Office rather than from home.

92. There does not appear to have been a fixed agreement about which days of the week the claimant was going to work during her phased return or about which she would work from the shared office and which from home. Instead, matters seem to have been agreed between the claimant and Mr Rogers on an ad hoc basis, seeing how things went and fitting round the claimant’s medical appointments (p.172).

93. Doing our best with the evidence we had we find that in her first week, the claimant worked from home on Thursday 1 September undertaking online training with Mr Rogers. She had been provided with a laptop and standard keyboard to enable her to work from home. In her second week the claimant did more online training from home on Tuesday 6 September.

94. The claimant’s first day in the Office was on Thursday 8 September in that second week. We find that first day did not go smoothly. Although Mr Rogers had emailed the Histology medical secretaries late in the evening on Monday 5 September to let them know that the claimant would be coming in (p.971) we find there was lack of clarity about what was intended to happen on the day. Mr Rogers thought the claimant was coming in “to meet the team and see her desk etc” but the claimant’s expectation was that she was going to be working her first full day (8 a.m.- 4 p.m.). As a result, we find she expected something in the way of a structured induction, including a workplace assessment and identification of reasonable adjustments.

95. Matters weren’t helped by the fact that the claimant arrived about an hour before Mr Rogers. That left the other medical secretaries who arrived before him to try and work out what should be done. We accept that they were aware that the claimant had had what Mr Rogers described in his emails a “difficult time”. We find they knew in

general terms from what Mr Rogers had previously told them that the claimant had a visual impairment. However, we find they had not been made fully aware of the nature and impact of the claimant's disability and were not clear that the intention was to identify reasonable adjustments before she started undertaking her work. We find their expectation from Mr Rogers's email was that the claimant was just popping in to meet them and see the Office.

96. The result, we find, that there was no real preparation for the claimant's starting work in the Office. She was allocated the desk, chair and other equipment left by the person who had last filled her role. That predecessor had left some time ago. It turned out that the chair was broken so Mr Flynn had to find a replacement for her. The claimant also raised issues with the position of her desk, the lighting, her computer and keyboard. We find it was a negative experience for the claimant. We find that at least some of her colleagues interpreted the claimant's attitude as being negative and overly-complaining (e.g. Ms Waring p. 778).

97. Although the claimant later complained that she had not been made to feel welcome by the other medical secretaries on that first day she did not refer to that in the 2 emails she sent Mr Rogers on Saturday 10 September (pp.168-172). In those emails she confirmed she would be coming into the office on Tuesday 13 September 8-4. We find that Mr Rogers was taking a flexible approach to the claimant's working days at this point, letting the claimant decide which days she worked and which days she came into the Office. In her email the claimant sent him details of a magnifying desk lamp which she needed for her work (p.168). We find they had discussed the claimant needing that magnifying lamp when they spoke on 8 September. She also asked whether she would be getting Dragon dictation software on her laptop (p.172). She did not say she needed it to work or expressly link her request with her disability.

98. We accept Mr Rogers's evidence that in the absence of advice from OH or AtW he was reliant on the claimant to tell him what equipment or adjustments she needed. We find that at this point the magnifying lamp was the only specific equipment the claimant had said she needed. We accept that from the claimant's point of view she did not yet know what equipment or adjustments might be available and effective to meet her needs because she had not heard back from AtW.

99. The claimant next worked in the Office on 13 September 2022. Her colleagues showed her how to do reports. It is accepted that there was no workplace assessment carried out at that point. The claimant does not make any complaint in this claim about the behaviour of her colleagues on that day or on the 20 September when she was next in the Office.

The "bullying and harassment" incidents

100. The claimant's claim included allegations of what she termed "bullying and harassment" incidents by other medical secretaries. Those incidents happened between 23 September and 25 October 2022

101. When it came to direct evidence about those incidents we had the claimant's witness evidence and, in the case of allegation 4.9/15.8, an audio recording and transcript of the incident. In making our findings about these incidents we have also taken into account what the claimant herself said about the incidents in the documents in the Bundle. We accept Mr Webster's submissions that the specifics of the majority

of the incidents were not provided by the claimant until her Formal Investigation interview on 4 August 2023. Some were not provided until after that. The claimant said that she had compiled a timeline of the incidents at the time they occurred but that was not in the Bundle.

102. We did not have witness statements or oral evidence from the other secretaries involved in the alleged incidents. We did have the written records of the interviews carried out by Ms Rose with them as part of her formal investigation (“the Formal Investigation”) of the claimant’s allegations commissioned in July 2023. When it comes to the incidents themselves, we have treated that evidence with caution. Apart from the fact those witnesses did not give sworn evidence to the Tribunal and were not cross-examined, those interviews took place between 27 October and 1 December 2023, over a year after the alleged incidents. The specific details of the allegations made by the claimant in this claim were not always put to the witnesses during those interviews. We also accept Mr Flood’s submission that (even allowing for the passage of time until that investigation) some of the evidence given by the claimant’s colleagues was demonstrably incorrect. Evidence was given to Ms Rose that no-one talked about the claimant behind her back. The recording of incident 14.9/15.8 clearly shows that some of them did so on at least one occasion.

103. Although we have taken into account the evidence given by the respondent’s witnesses such as her managers and Ms Rose about the complaints raised by the claimant, the lack of direct evidence from the respondent means that our findings of fact about most of these incidents turn to a large extent on our assessment of the claimant’s credibility as a witness and the reliability of her evidence about them. We did not always find the claimant a credible witness. In particular, we did not accept her evidence about how the recording of the conversation between Ms Waring and Ms Lakha on 25 October (4.9 and 15.8) came about. We accept Mr Webster’s submission (written submission para 14.1.7 at p.22-23) that the number of steps it would take to start a recording on the claimant’s phone made it inherently implausible that it had happened by accident. We find the claimant did on that occasion set her phone to record what was being said about her behind her back when she left the room.

104. We also accept Mr Webster’s submission (para 13 especially para 13(xvii)) that the claimant’s case has evolved over time, ultimately leading to her accusing almost all the managers involved of bullying and harassing her (p.446-447) and referring to having been “constantly bullied”. We did find that the claimant was prone to placing negative interpretations on colleagues’ and managers’ actions. Mr Webster submitted that might reflect the claimant becoming more entrenched in her position over time to the extent that she reimagined events (consciously or unconsciously). Whatever the reason for it, we did find that the claimant’s evidence about these incidents was coloured by hindsight and not always reliable. We also found that the claimant’s witness evidence about incidents was not always consistent with what she did (or did not) say or do at the time they are said to have occurred. We are very conscious that a claimant not complaining about an event at the time does not necessarily mean it did not happen. There may be good reasons why someone would choose not to complain. In this case, however, the claimant showed a willingness to complain about events at the time, so it does seem to us that her not doing so in other instances is relevant in our assessment of her evidence. There were times when we found the claimant’s evidence about events to be sometimes vague and confused, particularly when it came to when events occurred. (In fairness to the claimant, that was also the

case for some of the respondent's witnesses given the passage of time). in relation to these incidents, however, these factors mean that even where the claimant was the only witness to give live evidence about them events, we have not always accepted her version of those events as reliable.

105. The context for the incidents is important in our assessment of what happened and why. We find the work of the medical secretaries had to be accurate because of the subject matter of the reports they were typing up. The work was pressurised. The Histology secretarial team had been short staffed for 18 months-2 years until Ms Lakha and Ms Claire Hurst started in August 2022.

106. We find the medical secretaries were to a large extent self-governing. For example, they would discuss annual leave between them to take into account everyone's needs. Mr Rogers's role would be to formally sign off annual leave rather than get involved in deciding who could take it when. Similarly, they worked out training and workload for new arrivals between them (with Ms Waring and Rachael Hurst taking the lead) rather than there being a structured or managerially imposed training schedule. We find that for the first 6 weeks or so new starters would be given MACROS to copy type before moving on to more complex tasks. That gave them the chance to get used to the terminology used in the reports and the respondent's systems before moving on to more complex tasks. Some of their work involved deciphering handwritten reports which might not always be clear. Sometimes they would ask each other with help in deciphering what had been written. They would sometimes have to google terms to check they had deciphered them correctly (p.946).

107. Having considered the evidence about all the incidents, we find that at times the claimant's relationship with some of her medical secretary colleagues was an uneasy one. We find that applied in particular to Ms Waring and Rachael Hurst whose role it was, in practice, to provide supervision of the claimant's work albeit without any formal line management status. Based on the evidence we heard from the respondent's witnesses and the Formal Investigation interviews we find the claimant could be very firm in her own mind about the right way to do things and what she was entitled to. She was not shy of expressing those views to her colleagues and to her managers. She could be blunt and assertive in doing so. The claimant had, historically, significant experience as a medical secretary. We find that she did not react well to having her work challenged or corrected by her new colleagues. In turn, we find that the long-standing members of the team did not take kindly to the claimant suggesting that things could be done differently.

108. The extent of the other medical secretaries' knowledge of the impact of the claimant's visual impairment was also an important part of the context for these incidents. As we have said, they knew she had some degree of visual impairment. That would have been evident from the fact she used a handheld magnifier. However, we find they had no detail about the extent of her impairment or the impact it might have on what work she could do and the speed with which she could do it.

Events on 23 September and 26 September 2023 (allegations 4.1, 4.2, and 15.1 in the List of Issues)

109. The first allegations of "bullying and harassment" raised by the complaint relate to 2 incidents on 23 September 2022. The claimant had come into the shared office to

work. Mr Rogers was not at work that day. 23 September was a Friday, when fewer staff were in the Office.

110. The first incident involved Rachael Hurst. We find that she had left some reports on the claimant's desk for her to type up. A while later she picked up the reports the claimant had done and said "This all?". Ms Hurst then returned to her own desk and said "You'd better get on with them because they are waiting for them".

111. The claimant's complaint about this incident in her claim form (p.24 at para 30) said that Rachael Hurst made her comments in "an unpleasant manner". However, the claimant's witness statement about the incident (para 28) does not refer to the comments being made in an "unpleasant manner". Nor does the claimant's report of the incident in her interview with Ms Rose on 4 August 2023 (p.696). While we accept Rachael Hurst made the comments, the claimant has not satisfied us that she made them in an "unpleasant manner". We are, however, satisfied that the comments made were critical of the claimant's speed of working and that the claimant found that upsetting.

112. The claimant told Ms Rose that Rachael Hurst made her comments to single her out and humiliate her in front of colleagues. She did not identify who those colleagues were. The evidence we heard was that there were usually not many staff in the Office on a Friday.

113. Mr Rogers's evidence was that when he spoke to Rachael Hurst about the incident, she explained that she was working on her own in the Office with the claimant when it happened. We found Mr Rogers to be a sincere witness doing his best to recollect matters. His recollection of events was not always clear. We find that was due both to the passage of time and to the events relating to a period of time which, by his own admission, he found distressing. We find his evidence on this point consistent with what he told Ms Rose in his Formal Investigation interview in 2023 (p.915). On this point, we prefer Mr Rogers's evidence and find that when this incident happened, there was only the claimant and Rachael Hurst in the Office.

114. The second alleged incident on 23 September was Ms Lakha, Ms Claire Hurst, Ms Singleton, Ms Anderson and Rachael Hurst "bombarding" the claimant with questions about why she was allowed to work from home and begrudging that she was able to do so. As we have said, we find that on 23 September, Rachael Hurst was working alone in the Office with the claimant. There was no evidence that the claimant had raised this second issue with Mr Rogers on 26 September. It is not referred to in the email the claimant sent to Mr Squires on 6 October. We find this incident did not happen as alleged in 4.1/15.1.

115. There was no dispute that the claimant had raised the incident involving Rachael Hurst with Mr Rogers on 26 September 2022. In submissions, Mr Flood and Mr Webster disagreed about what Mr Rogers's evidence had been about the extent of detail the claimant gave him about the event. We find that the claimant did tell him about the specific remarks alleged to have been made by Rachael Hurst. We find that Mr Rogers spoke to Rachael Hurst about the incident. She accepted it had happened and should not have. She explained that she was stressed because she was under pressure and working alone in the Office with a new starter. We find she accepted it was inappropriate and it would not happen again. Mr Rogers did not report back to the claimant that he had had that conversation with Rachael Hurst.

The 26 September OH report

116. Mr Rogers referred the claimant for an OH assessment which took place on Monday 26 September 2022. It was undertaken by Dr Ferguson, who had prepared the 10 August OH report. Since then he had received further details about the claimant's diagnosis and management from her ophthalmologist and neurologist. He confirmed that the claimant was partially blind with loss of sight in both eyes, that she did not meet the driving standards set by DVLA and that she had completed her white cane training.

117. In that September 2022 OH Report, Dr Ferguson's advice was that the claimant was fit to continue working with permanent adjustments.

118. His opinion was as follows (p.174):

- "I would advise a Display Screen Equipment (DSE) risk assessment. Consideration should be given towards:

- o A larger computer monitor, to assist with viewing text
- o Computer software packages e.g., magnification, text to speech
- o Large button phones
- o Magnification aids (e.g., desk-based) to magnify hard copy documents
- o The colour of paper on which text is printed on
- o Evaluation of workplace lighting
- o Assessment of floor space / potential trip hazards.

I note that Ms Flynn has already contacted the Access to Work Scheme, who may be able to assist with the above suggestions.

- I would advise management to risk assess Ms Flynn's duties with consideration given towards Ms Flynn's visual problem. Adequate time should be provided for completion of tasks.
- Ms Flynn would likely benefit from short / flexible breaks throughout the course of a working day, in order to rest her eyes."

119. Mr Rogers could not remember when exactly he received the September 2022 OH Report. His evidence was that it would usually take 7 days or so for OH reports to come through. Based on that, we find he would probably have received the report in the week starting Monday 4 October 2022.

The holiday leave request incident on 27 September 2022 (4.3 and 15.2)

120. The medical secretaries team had a hard copy calendar up in the Office on which each secretary recorded her annual leave. The practice was for the secretaries to discuss proposed annual leave before adding it to the calendar to make sure that there was enough cover in the Office. We find the claimant had added her annual leave to the calendar without having discussed her proposed leave with others

beforehand. We find that she had a lot of annual leave to take because she had accrued it during her sickness absence.

121. We accept the claimant's evidence that while the claimant was standing outside the closed door of the Office she heard her colleagues discussing the number of holidays she had added to the calendar. Ms Waring was the most prominent in the discussion and remarked on the number of days the claimant had booked. We do not accept that the claimant was directly challenged by her colleagues about the leave she was taking. Instead, they spoke about it while she was out of the Office. On balance, we find it was not their intention that she should overhear what was being said. Instead, they were "sounding off" about her behind her back in the same way as captured in the recording on 25 October 2022 (incident 4.9).

122. The claimant raised the incident with Mr Rogers on or around the 4 October 2022. We find he told her that it was ultimately for him to decide on annual leave matters. We accept his evidence that he saw it as a minor disagreement of the kind that happens day-in and day-out in teams. The claimant did not refer to it in her email of 6 October to Mr Squires.

The incidents on 4-6 October 2022 (4.4-4.6 and 15.3-15.5)

4 October - Ms Waring reading a report out loud (4.4 and 15.3)

123. On 4 October the claimant asked Ms Waring with help to decipher an illegible word in the handwritten lab report she was copy typing. We find that was a common practice among the team. We find Ms Waring held the handwritten report at arm's length and read the whole of it out loud. A report was a relatively short document. The claimant's unchallenged estimate was that it took up to 30 seconds for Ms Waring to read it. When Ms Waring had finished the claimant said she had only asked about one word and Ms Waring responded "oh". We accept the claimant's evidence that there were others working in the Office at the time.

124. The claimant did not specifically raise this incident until her Formal Investigation interview with Ms Rose on 4 August 2023 (p.697). She did not raise it with Mr Rogers nor specifically refer to it in her emails of 6 and 12 October to Mr Squires. In her Tribunal witness statement, the claimant said Ms Waring had read out the document "loudly". That was not consistent with her evidence to Ms Rose, which only referred to her having read it "aloud". We did find that the claimant had a tendency in her evidence to exaggerate what she viewed as negative aspects of colleagues' and managers' behaviour. On balance we find that Ms Waring did read the document aloud but do not accept that she did so in an exaggeratedly loud way, which is what we understand the claimant's case to be.

5 and 6 October 2022 - Rachael Hurst accusing the Claimant of making mistakes in her work that the Claimant says she had not made (4.5, 4.6 and 15.4, 15.5)

125. Both these alleged incidents related to Rachael Hurst pointing out what she said were errors in the claimant's work. As we have said, we found that the experienced secretaries, Ms Waring and Rachael Hurst, had a supervisory role which meant they would check and give feedback on the work of new colleagues. The claimant did not allege that she was singled out in that respect and Ms Lakha's evidence to the Formal Investigation confirmed she was also supervised in that way

(p.938). The claimant also accepted that it was important that the typed reports were accurate and that any mistakes were corrected.

The 5 October incident

126. We find that on Wednesday 5 October Rachael Hurst when reviewing the claimant's work pointed out a couple of mistakes she said the claimant had made. She did so while standing at the claimant's desk. One alleged mistake was that the claimant had missed a paragraph in the report. The claimant showed her that the apparently missing paragraph had been included but Ms Hurst said it should be further down in the report. The claimant responded that it didn't matter where it was (p.698). Moving the text would involve a significant amount of re-typing for the claimant because copying and pasting was not possible on the system. Ms Hurst then dropped the matter and went back to her own desk.

127. The claimant alleged that Ms Hurst had invented mistakes she had not made. She accepted in cross-examination that she could not know whether or not Ms Hurst genuinely thought the claimant had made a mistake. The claimant's own version of events suggests that Ms Hurst expected the "missing" paragraph to appear in a different part of the report. On balance, we find she genuinely thought the claimant had missed the paragraph out. When it was put to the claimant in cross-examination that it was legitimate for Ms Hurst to raise what she thought was a genuine mistake she accepted that it was but suggested that it was the way Ms Hurst raised the matter which was the problem. By that she said she meant doing it in front of everyone and doing so loudly by "bellowing" it across the room. We do not accept that Ms Hurst did so. The claimant did not refer to her doing what she did loudly in her evidence to the Formal Investigation. We accept that the exchange happened in the Office in front of others but that was inevitable given the nature of the office. We find it was the fact of the criticism which the claimant did not like rather than the manner of it.

The 6 October incident (4.6 and 15.5)

128. The claimant's evidence was that Rachael Hurst made a similar criticism on the 6 October, telling the claimant she had missed out a line when she had not done so. However, the claimant did not refer to this incident in her Formal Investigation Interview on 4 August 2023. We also find that the claimant was on leave on 6 October (p.483 and the table produced by the parties) so this incident could not have happened on that date as the claimant alleged.

On or around 06 October 2022, Ms Waring belittled, humiliated and upset the Claimant when she tried to join in a conversation. Ms Waring sat with her arms crossed and stared at the Claimant until she finished speaking;

129. The claimant did not raise this incident in her evidence to the Formal Investigation so it was not put to Ms Waring. Her witness statement alleges the incident happened on 6 October but we find that cannot have been the case because the claimant was not in the office that day. This incident could not, therefore, have happened as alleged.

The Claimant's Complaint to Mr Squires and Mrs Waddicor on 6 October and the follow-up call with Mr Squires on 13 October

130. On the morning of 6 October 2022 the claimant sent Mrs Waddicor and Mr Squires an email headed “New Starter/Disability Issues” setting out a number of concerns. She said she had previously brought the issues raised in the email to the attention of Mr Rogers but they had not been yet resolved. She copied Mr Rogers in.

131. In her email the claimant said that in common with other new starters who started around the same time as her there was a delay in getting her ID badge and in sorting out her corporate induction. She highlighted the lack of a workstation assessment as the most concerning issue. She explained that AtW were trying to get one organised for her. The claimant raised issues about her chair being broken. She said she also required visual aids including a magnifying lamp to help her read documents. She explained she was currently using a handheld device which was not suitable and meant that she became tired and her eyes became strained. She said that other aids required had been “mentioned/promised but not yet supplied (dragon, glare reduction screen etc).”

132. The claimant’s email went on to say that although her colleagues were aware of her disability she felt they were expecting her to do the same work at the same speed as themselves despite her disability and lack of aids. She said that she had brought a bullying issue to the attention of Mr Rogers the previous week and was not sure that it had been dealt with because it continued that week. She said “most colleagues are helpful and willing to show me tasks however things have been said and done which are not acceptable to me. The colleague in question may not be aware this is causing concern for me but I would like this addressing please to stop further stress on myself.”

133. The claimant also said she would like to have some sort of training schedule rather than being trained “on the job” by other staff members. She said that was not fair on them or her. She accepted that she had had some online training with Mr. Rogers while she was working from home but said that a proper training schedule would be much better for all.

134. Mr Squires responded at 2.57 p.m. that day. He noted the claimant was on annual leave until the week of 17 October and said he would arrange a meeting then. He confirmed that in the meantime he would look into the matter and asked the claimant to confirm to whom she had reported the allegation of bullying.

135. The claimant confirmed she was next due in work on Tuesday 18 October. She explained she was then on leave again on Wednesday 19 and 20 October then back in on Friday 21 October. She said she was willing to come in on one of her days off if it was easier. She confirmed she had reported the bullying to Mr Rogers the previous week (we find that was on 26 September). She said he had said he did not believe the individual concerned (we find that was Rachael Hurst) would do that because she had been bullied herself. The claimant said she looked forward to hearing from Mr Squires about a meeting in due course. (pp.483-484).

136. However, the claimant then decided she did not want to wait until her return to work to resolve matters. She sent a follow up email on Wednesday of the following week (12 October). She asked Mr Squires to give her a ring so they could have a chat. She warned that the issues she had raised were causing her so much concern that she did not want to wait until her return from leave and was even considering whether she would be coming back to work at all. She repeated her concerns about the lack of

a work station assessment by OH and the absence of structured training. She said that there were “two individuals in particular who are behind the atmosphere and bullying - the others are just keeping their heads down out of it”. She said she felt totally unsupported and “very upset and devastated at the situation”. The claimant confirmed in her oral evidence at the Tribunal that the “two individuals” referred to were Ms Waring and Rachael Hurst.

137. Mr Squires arranged to speak with the claimant by Teams on Thursday 13 October. Mr Squires’s evidence was that the call had lasted about 90 minutes. He said that the claimant only gave him the opportunity to speak twice, the majority of the call being the claimant shouting at him. In his Formal Investigation interview in November 2023 he referred to being subject to a “tirade” of complaints including not having the correct equipment, the claimant’s chair being broken and the claimant not liking where her desk was situated. He confirmed that he had taken handwritten notes of the meeting but no longer had them.

138. The claimant did not deal with that call in her witness statement. In cross examination evidence she said she could not remember how long the call had been or whether it was by Teams or by phone. She denied that she had shouted at Mr Squires or only let him speak twice. We prefer Mr Squires’s version of events. We find his recollection of events was clearer and more reliable than the claimant’s.

139. We find that during call the claimant vented her frustrations about the way things had gone to date. We find she was angry and that led to her raising her voice to Mr Squires. We accept his cross-examination evidence that the claimant did not provide precise details of the incidents of bullying or harassment but, in Mr Squires’s words in cross-examination evidence, “downloaded a lot of information”. We find the claimant made clear she had serious issues with the behaviours of her colleagues towards her. She had already referred to those incidents as “bullying” in the subject heading of her email on 12 October.

140. After his call with the claimant on 13 October, Mr Squires decided he needed to meet the claimant with HR to decide how to deal with the issues she had raised. He discussed the situation with Mrs Waddicor. We accept her evidence that she decided the next step should be a Triage (Resolution Assessment) meeting under the respondent’s Early Resolution Policy (“the ER Policy”).

The ER Policy

141. The ER Policy (pp.1108-1120) had replaced the respondent’s Grievance Policy and Bullying and Harassment Policy. Its stated aim was that, where appropriate, issues (including alleged bullying and harassment) were resolved at the earliest opportunity without resorting to the formal process (para 1.6 at p.1111). It envisaged a “different approach to resolving workplace issues”, recognising that “conflict in the workplace is normal and, in many cases, inevitable”. It aimed to achieve early resolution of conflicts by “empowering colleagues to work together to reach resolution”. There was an expectation that employees would cooperate in exploring early resolution of disputes as an alternative to Formal Resolution (para 3.3 on p.1112). Early Resolution involved the use of facilitated conversations, informal discussions within departments, mediation and resolution meetings to resolve disputes. Coaching and facilitated moves were also options.

142. Formal Resolution was the equivalent of a formal grievance procedure (para 5.4 on p.1115). It involved a Formal Resolution meeting held by a senior manager as soon as practicable (normally within 10 working days) with the outcome being provided in writing as soon as possible, normally within 5 working days. Timescales could be extended if further fact finding was required. There was a right of appeal against the outcome of a Formal Resolution (section 5.5 at p.1115). The appeal had to be lodged within 10 working days of the outcome letter. The appeal was not a re-hearing and the appeal had to be on one or more of 4 grounds. They were that a failure to follow procedure had had an effect on the outcome; the evidence didn't support the conclusion reached; any proposed action was inappropriate; or that there was new evidence which had genuinely come to light after the hearing.

143. The process to be followed was illustrated by a flowchart in an Appendix to the ER Policy. A request for resolution could be made either verbally or in writing to a line manager or, if the employee was uncomfortable doing that, with a member of the resolution team. The Resolution Assessment/Triage meeting was the first step. That was an opportunity for the line manager or the resolution team to meet the employee to understand the issue and identify the most suitable route for resolution. Although not a formal meeting, the employee could be accompanied by a trade union representative or work colleague for support.

144. The Triage could result in agreement to enter into Early Resolution or a decision to proceed with Formal Resolution. In some cases, the Triage might decide that Early Resolution was not appropriate, e.g. because the matter was sufficiently serious to warrant a formal investigation to establish the facts and could involve disciplinary proceedings. Otherwise, Formal Resolution would happen only if Early Resolution did not resolve the matter satisfactorily and the employee requested Formal Resolution.

145. The "Principles of Good Practice" (section 4 at p.1113) included that every issue raised under the policy:

- Ensure timely, detailed, clear, sensitive and compassionate communication throughout,
- be carried out without unreasonable delay,
- seek to establish facts,
- have accurate notes captured where appropriate and
- ensure timescales were regularly reviewed and not drawn out. it also included

Events 21 October to 31 October 2022 – arranging the meeting with Mr Squires and Mrs Waddicor

146. On Friday 21 October the claimant emailed Mr Squires for an update. She had spoken to Mr Rogers who had told her Mr Squires was now dealing with matters. She wanted a response before she was due to be back in the following week with one of the persons involved in the bullying (pp.197-198).

147. Mr Squires responded the same day to apologise for the delay, explaining he had discussed with Mrs Waddicor and would feed back when they met. He explained he was on leave on Monday 24 October but would arrange to meet on Tuesday if possible. Mr Squires's P.A. and the claimant exchanged emails to try and arrange a meeting that week. Mr Squires's absence on leave and from site meant that it was not possible to have a face-to-face meeting that week. The claimant was asked whether she would be happy to meet that week by Teams. She responded to say she had wanted a face-to-face meeting and was disappointed one was not going to happen that week. We find it was difficult to find a date partly because of Mr Squires's unavailability and partly because the claimant was in effect only working 2 days a week as she used up her accrued annual leave. After further email exchanges the meeting was set for Monday 31 October, the claimant having managed to swop Monday for one of her normal working days (pp.194-198).

148. The claimant had been due to attend Corporate Induction on 31 October 2022. Mr Rogers had emailed colleagues in the recruitment team on 10 October 2022 to arrange that (p.190). However, on 25 October, Mr Rogers asked for her induction to be moved to 7 November because it clashed with her meeting with Mr Squires and Mrs Waddicor. The claimant told Mr Rogers that she hadn't had any emails about the induction (p.184).

149. In the meantime, on 18 October 2022 the claimant received the magnifying lamp which Mr Rogers had ordered for her.

The incidents on 25 October 2022 (4.7, 4.8 and 4.9 and 15.6, 15.7 and 15.8 in the List of Issues)

The incident involving Ms Musa (4.7 and 15.6)

150. Our findings about this incident are based on the claimant's evidence, the evidence to the Formal Investigation and the account of this incident in the claimant's recording of the conversation between Ms Waring and Ms Lakha later that day (relating to allegation 4.9 and 15.8).

151. We find that on that morning the claimant arrived at the Office around 7.45 a.m. When she arrived she found that her second screen wasn't working. She went to see Ms Musa who was in a different office. Ms Musa helped out with IT Issues. Ms Musa was sitting in her chair wearing slippers and eating porridge. In cross-examination the claimant asserted that Ms Musa was not on a break but was supposed to be working. She accepted, however, that she could not in fact know whether or not Ms Musa was on a break.

152. We accept Mr Webster's submission that there were inconsistencies in the claimant's versions of this incident in the Formal Investigation interview (p.884) and the witness evidence she gave at the Tribunal. That included how many times she had been in to see Ms Musa, what Ms Musa said in response and what Ms Musa did next. Doing our best with the evidence we find that Ms Musa said she was busy and would have a look when she could. We find she was having her breakfast before attending a meeting. We find that from the fact she was wearing slippers and eating porridge it would have been evident to the claimant she was having her breakfast before starting work. It seems to us plausible that Ms Musa did reply curtly because the claimant expected her help there and then whatever other demands Ms Musa had on her time.

153. We find that Ms Musa did later come into the Office and swap the monitor for another one. The claimant's evidence to the Fomal Investigation was that Ms Musa was "a little rude" to her in front of others in the Office when she did so (p.884) but she gave no specific evidence of what Ms Musa did or said. The claimant did not mention that aspect of the complaint in her Tribunal evidence. We find the claimant has not established that Ms Musa was "curt and rude in front of colleagues".

The incident involving Ms Waring (4.8 and 15.7)

154. This incident followed on from the one above. The claimant returned to the Office after asking Ms Musa for help. She still could not get her screen to work. Ms Waring suggested she call IT. The claimant asked her for the number. Ms Waring gave it to her. The claimant's case is that she did so in a "sharp and unpleasant manner".

155. Based on the recording of the conversation between Ms Waring and Ms Lakha (incident 4.9 and 15.6 below) we find that Ms Waring was frustrated by the claimant on that day. However, the recording also suggests she was more likely to vent those frustrations behind the claimant's back rather than when she was in the room. On balance, we accept that Ms Waring may have been impatient with the claimant when she asked her about the IT number because she felt the claimant should already have that number.

156. We find Ms Waring then came over and helped the claimant to get her monitor to work by plugging in a cable that appears to have been loose. The claimant said Ms Waring made her feel stupid but didn't explain how she did so. The claimant accepted in cross examination that she had no reason to believe that Ms Waring would have treated anyone without her disability differently.

The "gormless" conversation (4.9 and 15.10)

157. Later on 25 October 2022, the claimant recorded on her phone a conversation between Ms Waring and Ms Lakha when the claimant had left the room. As we have said, we found that she did so deliberately rather than accidentally. We find she did so because she believed (or at least suspected) that her colleagues were talking about her behind her back.

158. In the claimant's absence, Ms Waring and Mr Lakha talked about incidents involving the claimant. Ms Lakha mimicked the claimant in telling Ms Waring about a conversation with the claimant on a previous day. The claimant was going to be left by herself in the office so she asked what she was meant to do. Clare Hurst told her she would need to speak to Mr Rogers once she had finished her MACROs. She reported the claimant saying "well I should have brought my knitting then" and Ms Singleton said "yes you should have". Ms Waring said she would have to speak to Mr Rogers because it was not their problem that the claimant's training was being scuppered by admin and because she was on annual leave all the time. She said the claimant was "just annoying (sic) she's always got something to say".

159. In the conversation Ms Waring referred to the incident in 4.7. She mimicked the claimant saying that she was not connected to the internet and told Ms Lakha she had fixed the issue by pushing the cable in. Ms Lakha said she did not know what the claimant was doing with the cables. Ms Waring reported Ms Musa saying that the claimant kept "faffing about with the cables" and then got her in (to fix it). Ms Waring

said (referring we find to the incident that morning) that Ms Waring had had to “get off her arse” and check the cables for the claimant because the claimant was “going like that [presumably making a facial expression] and looking gormless at me”. She said that the claimant finally started work after 8 a.m. having arrived at 7.45 a.m.

160. When the claimant returned to the Office Ms Waring switched to talking about something else. We find it very evident that she did not intend the claimant to hear her talking about her behind her back.

The claimant’s meeting with Mr Squires and Mrs Waddicor on 31 October 2022

161. By 31 October 2022, when the meeting with Mr Squires and Mrs Waddicor took place, the claimant had been signed off sick with work-related stress. Her last working day before starting that absence was Tuesday 25 October 2022. She had emailed Mr Rogers on the evening of Thursday 27 October 2022 to tell him she would not be in work the next day. She reported that she had been to see her GP and that her blood pressure was dangerously high “due to the stress caused by the bullying at work and the lack of support” she had received (p.497).

162. The AtW Report (pp.202-206) was dated 1 November 2022 and neither the claimant nor the respondent had received it when the meeting took place. Although Mr Rogers’s initial cross examination evidence was that he had not seen the September 2022 OH Report, he accepted that he had misremembered. His letter refers to the report being discussed at the meeting so it is clear he had seen it.

163. At the meeting, the claimant was represented by her union representative, Michale Holt (“Mr Holt”).

164. There were no written notes of the meeting in the Bundle. Mr Squires summarised what was discussed and the action points agreed in a letter to the claimant dated 10 November 2013 (pp.213-214) which he emailed to the claimant on 18 November (p.217). Although in an email dated 25 November 2022 the claimant said she did not think the letter reflected all the points raised in the meeting and would be sending amendments, we were not taken to any such amendments in the Bundle (p.220-221). The claimant did not in her witness evidence suggest what points were missing from the letter. Based on the evidence we heard and read we find the letter did accurately reflect the salient points discussed and agreed at that meeting but accept it did not capture everything said and discussed.

165. We find that Mrs Waddicor explained her view that the meeting was a Triage meeting under the ER Policy. However, Mr Holt and the claimant made it clear that at that stage they wanted an informal chat rather than to proceed under the ER Policy.

166. We find the claimant explained that her concerns related to reasonable adjustments and feeling harassed by her colleagues. We find she was not asked to provide specific details of the incidents of bullying she referred to. We find she explained her view that there had not been sufficiently structured training in place for her when she started her new role. We find her view was that this was one cause of resentment with the other medical secretaries who had to train her up despite not knowing what they were meant to do and how. The claimant also explained she felt her colleagues had not been fully informed about the extent and impact of her visual impairment and that that had meant they were not very welcoming to her.

167. We find the claimant said that she had not had the local or corporate inductions. There was a dispute about this aspect of this meeting at the next meeting on 19 December. We find the claimant did say at the 31 October meeting that she had not had the local induction, otherwise carrying it out would not have been included as an action point.

168. We find that there was some discussion of the September 2022 OH Report but that it was agreed that the recommendations in it would be discussed at the next meeting. That meeting was to be arranged once the AtW report was received.

169. The other actions agreed were that:

- a. A DSE workstation assessment would be undertaken ASAP;
- b. Both the Trust Corporate Induction and local inductions were to be completed ASAP;
- c. The office environment would be reviewed to ascertain if the claimant's desk could be moved;
- d. Mr Squires would liaise with Mr Rogers and other appropriate colleagues to draft and implement a training plan to support the claimant and other new starters;
- e. Mr Squires would speak to the claimant's colleagues regarding the concerns she had raised about joining the team;
- f. Working from home would be explored for the claimant and others;

170. We find Mr Squires confirmed at the meeting that he was looking at the possibility of moving the line management of administrative and clerical colleagues in the near future. He also confirmed that the respondent was organising sessions regarding the respondent's Behaviour Framework to be delivered to colleagues in the Pathology Department.

171. Based on those actions, we find the claimant must at the meeting have raised concerns about the placement of her desk and raised the issue of her (continuing) to work from home some of the time. In her chasing email to Mr Squires on 14 November she confirmed that her request for "flexible/hybrid working, as a reasonable adjustment" made at the meeting was "a formal request".

172. At the meeting the claimant had asked about her sick pay entitlement. Mrs Waddicor agreed to clarify that and did so on 11 November 2022 (p.215). We find that part of the delay in sending Mr Squires's letter was due to clarifying that point. The letter confirmed that the claimant would be paid full sick pay until 14 December 2022 after which she would be paid no sick pay.

1 November to 18 December 2022 – follow up steps including the histology team meeting and the AtW report

173. By the time Mr Squires emailed the claimant his letter on 18 November, the respondent had the AtW Report. The claimant had provided it to Mr Rogers on 8 November and forwarded it to Mr Squires and Mrs Waddicor on 9 November 2022. Mr

Squires confirmed in his 18 November email that he would arrange a further meeting as soon as possible.

174. On the 1 November Mr Squires asked Mr Rogers to arrange a meeting with the other medical secretaries in the Histology team for an hour on 7 November (p.1176). When some of the secretaries queried what the meeting was about, Mr Squires emailed to explain that it was to gather information and a HR process regarding the claimant starting work in the office. He explained he would be meeting with Mr Rogers separately but that it was “important that I can speak to all as a team as part of dealing with this. It is not a formal meeting under any trust policy, but I will value your input.” (p.1176).

175. Although Mr Squires referred to the meeting as an information gathering one we find he did not have a list of allegations with specific dates or details of incidents to put to the other medical secretaries. We find the meeting was more of a generalised discussion. We accept Mr Squires’s evidence that at that 7 November 2022 meeting he explained to the other medical secretaries that the claimant had raised some issues and that he wanted the team to give their views. We accept his evidence that the unanimous view was that when the claimant started, she had immediately come in and begun complaining about the office set up. The other secretaries felt that the claimant was difficult to train, that she did not listen and that in her view, everything about the office was wrong. Her colleagues felt the claimant had a negative attitude and immediately started telling people what they should and should not be doing. We accept Mr Squires’s evidence that Ms Waring reported the claimant as saying she had been an office manager in the past and would ‘wipe the floor with the lot of them’.

176. We accept Mr Squires’s evidence that his conclusion based on what he was told was that the claimant’s conduct had been unreasonable and that he could understand why the team may not have taken well to the claimant’s behaviour. We also accept that other secretaries felt that there was a difference of opinion between them and the claimant and they were happy to have a fresh start and move forward.

177. There were no notes recording what was said at the 7 November meeting and Mr Squires did not at the time report the outcome to the claimant. We do accept that the wording of Mr Squires’s letter dated 10 November is potentially misleading because it refers to his meeting with the claimant’s colleagues as something which was going to happen when it had in fact already happened. However, we do not find that casts doubt on the meeting having taken place on 7 November as Mr Squires described. We find the likely explanation was that that part of the letter was drafted before the meeting with the secretaries on 7 November took place.

The Access to Work Report

178. The AtW Report was at pp.1058-1072 of the Bundle. The first part set out the claimant’s role and duties. The background information included a description of her disability. That focussed on the direct impact of her visual impairment but also referred to her needing to take extra breaks because she experienced headaches and blurred vision arising from that impairment. That could cause delays in her work delivery. The report noted that claimant was usually driven by her partner from home to work but that the claimant acknowledged that wasn’t sustainable. The claimant was reported as saying she would struggle to use public transport especially if it was dark when she left work. The report also noted the claimant had been experiencing numbness in her

hands and had been referred for a potential carpal tunnel diagnosis. The section on “work environment” recorded the claimant saying that she had been allocated a desk near the entrance which could be distracting. The claimant was recorded as saying that adjustments had not been made to assist her despite her requests (p.1059).

179. The next section of the report identified “Barriers and Recommendations” (pp.1060-1063). The first barrier identified was “Reading and Viewing On-Screen Material, and wrist discomfort”. The second barrier was “Awareness of issues and [the claimant’s] Mental health”.

180. The report provide an explanation of that first barrier. The central issue was the claimant’s difficulty in reading and viewing documents and accessing the correct information and documentation in meetings. She was currently magnifying text manually and was experiencing the visual strain and fatigue due to the extra exertion required to focus all day. That could significantly impair the claimant’s efficiency and productivity at work, especially when she had a large workload or when her work pressures were mounting. The report said that the claimant reported that colleagues in the past had not fully understood her visual impairment, struggles in the workplace or the routines and coping mechanisms used to manage them but “have been eager to learn and assist where possible”. The report advised a session to increase colleagues’ and managers’ awareness about the claimant’s condition and of strategies and reasonable adjustment solutions possible within the workplace. That had the potential to minimise the stress and pressure the claimant might experience at times as a result of feeling misunderstood or when a lot of pressure had been placed on her. The report also noted that the claimant described some discomfort in the hands and wrists when working. That was exacerbated when she worked for long periods without ample breaks.

181. The report set out recommendations to address that first barrier. The claimant relies on a number of those in her reasonable adjustments complaint. The number in brackets next to each below is the number in the List of Issues. The recommendations included assistive equipment or technology and related training:

- **Dolphin Supernova Magnifier & Speech ESD V21** – a screen magnifier and screen reader, enabling the claimant to use audio to “read” documents on screen (“Dolphin”) (List of Issues 10.1)
- **OrCam MyEye Pro 2** - wearable technology attaching to eyeglasses allowing printed documents to be “read” using audio (“the OrCam”) (10.2)
- **Dragon Professional Individual v15** – speech recognition software. This was to provide freedom to write and control the computer with voice commands enabling quick access to written work and easily enable professional, correctly spelt documents. (“Dragon”)(10.3)
- **USB Headset** – the claimant would need a headset with a microphone to enable her to use Dragon (“USB Headset”)(10.4)
- **2 x 3 hours of Technical Training for Dragon (face-to-face)** (“Dragon training) (10.5)

- **Goldtouch Ergonomic Keyboard** - to enable the claimant to type in a more comfortable position (“the Goldtouch Keyboard”)
- **Goldtouch Wrist Rest** - to provide more wrist support when typing (“the Wrist Rest”)
- **Evoluent Right-Hand Vertical Mouse** to provide more comfortable mouse use (“the Vertical Mouse”)

182. Those last three items were included in the List of Issues at 10.6-10.8 but the reasonable adjustment complaints relating to them were withdrawn during the hearing.

183. The next recommendation was a Taxi Allowance (10.9). Travel to work was not specifically included in the “barriers” section but in making the recommendation the report said that having a Taxi Allowance would provide the claimant with the independence to go to and from the office when needed rather than having to rely on others. It also said the claimant’s visual impairment had progressed to the point where she was unable to correctly identify whether she was accessing the correct methods of public transport

184. The last 2 recommendations to address the first barrier were

- **Extra Time** - to complete tasks which might take her longer than colleagues (10.10)
- **Extra Breaks** – to alleviate the concentration induced headaches the claimant experienced when having to focus on her work for long periods (10.11)

185. The report explained the second barrier arose from the claimant having to manage her mental health daily so that her wellbeing fluctuated. Her condition was fluctuating and variable and could lead to problems with processing abilities, concentration, fatigue and confidence.

186. The report recommended steps to increase others’ awareness of the issues faced by the claimant and to assist the claimant to address the mental health issues linked to her impairment. They were:

- **6 x 3 hours of Coping Strategy Training Sessions (Face to Face)** – the recommendation was training for the claimant to help her manage her duties in the workplace in light of her visual impairment. The report envisaged it would address things such as organisation of time and activities, personal goal planning, proofreading techniques, memory and recall techniques, concentration, as well as confidence and motivation techniques. (“the Coping Strategy Training”)(10.12)
- **Visual Impairment Awareness Training (Virtual)** – the recommendation was training for the claimant and her colleagues and managers to raise department-wide awareness and confidence in the claimant’s condition, correcting any preconceived notions and fixing any misunderstandings among her peers. It was envisaged it would also enlighten attendees about solutions to workplace barriers that might be able to be put in place. The aim was to “increase the attendees’ confidence in supporting people with disabilities” and “minimise

stressors on [the claimant] and promote the creation of a supportive and positive working atmosphere". ("Awareness Training")(10.13).

187. The report provided general advice and guidance on workstation posture (p.1064) but did not include a recommendation of carrying out a work station/Desktop assessment (10.14). It did not address whether the claimant needed to work from home some or all of the time and made no recommendation about working from home (10.17).

188. The final section of the report (pp.1066-1071) provided quotes and suppliers for the equipment, technology and training recommended in the report. When it came to the Taxi Allowance, Extra Time and Extra Breaks that section noted these as "to be discussed with the AtW advisor" (p.1069).

189. When she received it, the claimant contacted AtW to query the reference to Carpal Tunnel Syndrome ("CTS"). She pointed out that she did not have CTS. Her unchallenged evidence was that AtW told her it had been included because it was a possibility in the future. The claimant accepted in evidence that the recommendations for the Goldtouch Keyboard, Wrist Rest and Vertical Mouse in the AtW report were not linked to her visual impairment.

190. We find that Mr Rogers also had concerns about the accuracy of the AtW Report. That was both because of the reference to CTS and because the description of the claimant's duties in its opening section wasn't accurate because it was taken from a generic job description. Some of the duties described (e.g. managing maintenance and orders, gathering statistical information and placing orders for low supplies) were not duties the claimant actually carried out. Mr Rogers also questioned the relevance of Dragon because the medical secretaries were not expected to dictate to Word but to transcribe dictation for others.

191. Mr Rogers and Mr Squires worked through the AtW report together when it was received. They discussed that the claimant would be able to access some assistive technology through Microsoft rather than having to purchase the bespoke assistive software recommended by AtW (i.e. Dolphin and Dragon).

The Meeting on 19 December 2022

192. The meeting to discuss the AtW Report took place on 19 December 2022. It was attended by the claimant, Mr Holt, Mr Squires, Mrs Waddicor and Mr Rogers. The claimant was still signed off sick when the meeting took place, having not returned to work since her absence started at the end of October.

193. When it comes to the status of the meeting we find that Mr Squires and Mrs Waddicor considered it to be a further informal meeting rather than a Triage or Formal meeting under the ER Policy. No formal minutes were drawn up. Instead, as with the previous meeting, the outcome was recorded in a follow-up letter. That was dated 20 December 2022 (pp.252-254). The claimant produced her own typed minutes of the 19 December meeting (pp.248-251). The same happened for subsequent meetings. Neither the respondent's letter nor the claimant's minutes purported to be verbatim records. The respondent's outcome letters captured the salient points only. The claimant's minutes tended to focus on those matters she was most aggrieved about rather than being an objective record. When we heard witness evidence, none of the

witnesses' recollection of the meetings was particularly good. We found the claimant's recollection of events to be poorer than that of the respondent's witnesses, particularly Mrs Waddicor and Miss Henderson. The claimant was sometimes grudging in cross examination responses and often said she could not remember events. Where there was a dispute about what happened at meetings we preferred the version of events given by the respondent's witnesses.

194. We find that the 19 December meeting was somewhat antagonistic in tone. That was because the claimant and Mr Holt took the view that the issues raised by the claimant were not being taken seriously and that things were not being done in what the claimant and her representative regarded as the proper way. They viewed the approach as too informal. The lack of minutes from the previous meeting was a bone of contention. Matters didn't start well because Mr Squires and Mr Rogers arrived late and said they would need to leave for another meeting at 3 p.m. The claimant found that disrespectful. (In the event, the claimant's minutes confirm the meeting didn't end until 3.20 p.m.) The claimant also appears to have started from the premise that everything recommended in the AtW Report should already have been ordered and was unhappy that it had not. The claimant and her representative were also unhappy about the lack of action (as they saw it) in response to the claimant's complaints about bullying and harassment. Their starting point was that there had been bullying and harassment as alleged by the claimant and that it was for the respondent to sort it out. We find their approach at the meeting was to challenge and criticise the respondent for what they perceived as its failures to date.

195. We find that the respondent had expected a different meeting. The claimant and Mr Holt had at the previous meeting confirmed they wanted matters to be dealt with informally. When it came to the bullying and harassment allegations, Mr Squires's view was that he had done what he understood the claimant had asked, i.e. spoken informally to her colleagues. When it came to the AtW Report, the respondent's position was that the report provided recommendations for discussion rather than a mandatory list of reasonable adjustments. Mr Rogers in particular had some reservations about it arising from the inaccuracies in its description of the claimant's duties and its reference to her having CTS. Mr Squires's view was that the claimant would not be happy unless she got exactly what she wanted, regardless of the needs of the respondent or impact on colleagues. We find Mr Rogers was somewhat defensive, feeling he was being unfairly criticised by the claimant about the way he had handled her start at work.

196. The AtW Report recommendations were discussed at some length. We find that Mr Rogers raised the possibility that existing Windows software might provide the same assistive functions as the equipment and software the report recommended. We find the claimant was not really in a position to know whether that software would work as well or better than the items recommended by AtW. Her view was that AtW were the experts so that their advice should be followed but we find she was willing to try alternatives. Mr Rogers agreed to send the claimant details of that assistive software. We find it was made clear to the claimant that the respondent would purchase the software recommended by AtW if required, i.e. if it turned out that the Windows software was not appropriate or useful. Mr Rogers did raise queries about the relevance of Dragon to the claimant's duties given that typing (rather than dictating) was central to her role. There were concerns whether (if Dragon were to be ordered) it would need to be Dragon Medical software. Mr Rogers also raised queries about the

process for recouping the cost of the equipment to be ordered. Mrs Waddicor told him the forms were attached to the ATW Report.

197. The claimant's case was that Mrs Waddicor told Mr Rogers to order all the recommended items. We accept Mrs Waddicor's evidence that it would not have been for her to tell Mr Rogers what to do. Her role was to advise the managers present. However, it is clear from the outcome letter that it was agreed that all the items recommended by AtW would be ordered with the exception of those relating to CTS, i.e. the Wrist Rest and Vertical Mouse. The other exception was that a high-contrast keyboard ("the High Visibility Keyboard") would be ordered instead of the Goldtouch Keyboard because that was more likely to help the claimant type with her visual impairment.

198. There was a dispute at the meeting about whether the claimant had said at the 31 October meeting that she had not had a local induction. We have found she did say that. We find that at the 19 December meeting Mr Rogers produced the form signed by the claimant to confirm she had completed various elements of that local induction in September 2022 (pp.1231-1234). In her minutes of the 19 December meeting the claimant explained that she had remembered after that meeting that what she had not yet had was the "local fire induction". There was no dispute that the claimant had not yet had a corporate induction.

199. We find that Mr Rogers confirmed there was no formal written training plan, but colleagues were assessed against a competency framework. Mr Rogers agreed that framework needed updating and confirmed he would develop a training plan to complement the competency framework. The Workstation Assessment had been discussed with colleagues in Worksmart and it was felt that the claimant needed to be present when it took place. The same was true for the proposed move of the claimant's desk. We find Mr Squires confirmed that the desk could be moved but that it would be beneficial for the claimant to be present when that was being organised. It was agreed that both the assessment and desk move were to be carried out when the claimant returned to the office.

200. When it came to the bullying and harassment concerns, Mr Squires confirmed he had met with the claimant's colleagues to discuss these. Mr Holt raised the apparent inconsistency about the date of the meeting arising from the wording of the 10 November letter.. We find Mr Squires could not at the meeting remember the exact date when the histology team meeting had taken place and was not willing to discuss the details of the meeting. We find he said that having talked to the claimant's colleagues the view was that there had been a "difference of opinion" but that the claimant's colleagues wanted for them all to be able to work together.

201. Mr Holt said that the issue was not being seen as a priority by the respondent. We find that Mr Squires reminded him that it had been agreed the matter would be dealt with informally. That led, we find, to a discussion about the options the claimant could now take under the ER Policy. It was agreed that Mrs Waddicor would forward the claimant that policy. The outcome letter asked the claimant to "inform us of the option you feel you would like us to follow, as soon as possible, so that we can set things in motion".

202. There was discussion about the Behavioural Framework training. We find that the claimant and Mr Holt had understood that the intention was that this training would

be delivered to the claimant's histology colleagues. Mrs Waddicor clarified that the discussion at the previous meeting was about that training being delivered to all colleagues in the Lab not just the histology administrative team. We do find this was a genuine misunderstanding rather than the respondent "moving the goalposts" in this regard.

203. In response to Mr Holt's question, Mr Squires confirmed that the change of line management was part of a wider piece of work to help support all laboratory managers. He hoped it would be implemented by April 2023. The claimant and Mr Holt expressed disappointment about this as they saw it as a key to facilitating the claimant's return to work.

204. There was a fairly extensive discussion about working from home. As we have said, this was not something included in the AtW recommendations. We find the claimant indicated she would ideally like to work 3 days from home and 1 on site, preferably Friday. We find her view was that that is what she had agreed with Mr Rogers. Mr Rogers's view was that he had agreed working from home for the initial period of the claimant's employment while she was phasing back into work.

205. Mr Squires confirmed that some aspects of the claimant's role could be done remotely, provided the right technology was in place. He indicated that the issue would need to be discussed in more detail including with the claimant's colleagues, some of whom had also indicated they would like to work from home. We find that both Mr Rogers and Mr Squires said that any working from home needed to be fair to everyone. Mr Rogers made the point that the claimant was recruited specifically to support the office at times when there weren't many colleagues in, including to answer the phones. There was a discussion about possible solutions to that, with Mrs Waddicor raising the possibility of the "Jabba" system being available to colleagues allowing them to transfer calls.

206. We find the respondent approached the issue of working from home as one of flexible working, potentially applicable to the whole team. We find that is why they placed an emphasis on any arrangements being fair to the whole team. We find Mr Holt raised the issue of the claimant working from home being a reasonable adjustment because of her disability. There is no suggestion in the evidence (including the claimant's own notes of the meeting) that he or the claimant explained in detail why working from home would be a reasonable adjustment. Mr Squires made the point that the AtW report did not make a recommendation of home working. It was acknowledged, however, that a quieter environment was needed when using Dragon. It was agreed that Mr Rogers and Mrs Waddicor would meet separately to look at the roles and duties of medical secretaries and put together a possible plan relating to working from home.

207. When it came to the claimant returning to work, her position was that she did not currently feel able to return to work in what she viewed as a "hostile" environment. It was agreed that there would be a further meeting in the New Year. That meeting was set for 12 January 2023. That was confirmed in Mr Squires's outcome letter dated 20 December.

Action following the 19 December Meeting

208. The claimant had asked for an extension of sick pay, which had expired on 14 December. On 20 December Mrs Waddicor confirmed with HR that full sick pay would be paid until 31 January 2023. That was confirmed in Mr Squires's 20 December outcome letter.

209. Mr Rogers worked with the respondent's procurement team to raise requisitions for the AtW recommended equipment. There were delays in the process because the AtW recommended suppliers were not on the respondent's preferred suppliers list and because of absences over Christmas and New Year. By 10 January 2023 requisitions had been raised for a High Visibility Keyboard and the OrCam Eye (page 260). Mr Rogers submitted the requisitions to Mr Squires for approval on 10 January.

210. Mr Rogers explained in his email to Mr Squires and Mrs Waddicor on 10 January 2023 (p.268) that at that point they did not need Dragon (and associated training) or the Dolphin screen magnifier. He said that was because he thought the Windows equivalent would be quicker and do the same job. The claimant would also be able to use Windows on any device. There was no suggestion that Mr Rogers had discussed that issue with the claimant or Mr Holt since the 19 December meeting before reaching that conclusion. We find that he had not sent the claimant the list of Windows assistive software as had been agreed at the December meeting.

211. By 10 January 2023 the procurement team had contacted Ability Smart (one of the providers suggested by AtW) to get quotes for the Coping Strategy Training and Awareness Training. The procurement team provided the quotes to Mr Rogers on 10 January 2023 (p.260). He sent those to Mr Squires for approval, but they decided to delay booking the courses until they had a date for the claimant's return to work. The rationale for that was that it was not appropriate for the claimant to do the training but then be off for a substantial period of time.

212. The claimant continued to be signed off sick. On 10 January 2023, Mr Rogers made an OH referral (p.269). That led to an OH appointment on 1 February 2023.

213. Early that morning Mr Rogers also sent a group email to the medical secretaries explaining that they would be revisiting the option of home working now that IT were able to install the relevant software. (It appears that previous discussions about this had stalled because only one person had been able to install the software and they had moved). He asked the recipients (which included the claimant) to email him to say whether they were interested and which potential days they would want to work from home. They would then look at how things might work. He stressed that "as before office hours will need to be covered and staff will need to be competent in the duties required" (p.270).

214. Neither the claimant nor Mr Holt had responded to Mr Squires's request in his 20 December letter that they confirm the option they wanted to follow under the ER Policy in relation to the bullying and harassment allegations.

The Meeting on 12 January 2023

215. The meeting on 12 January 2023 was attended by the claimant and Mr Holt, Mr Squires, Mr Rogers and Mrs Waddicor. We find it was a challenging meeting with, at times, voices raised on both sides. Matters were not helped by Mr Rogers and Mr

Squires arriving late and being called away to another meeting before discussions were concluded. By the point that happened, the meeting had already overrun its allotted time slot. The claimant and Mr Holt were critical of a lack of progress. They felt that the claimant's concerns were not being taken seriously. Mr Squires and Mr Rogers thought the claimant and was being unnecessarily antagonistic and difficult and was going over ground already agreed at the December meeting.

216. At the start of the January meeting the claimant provided copies of her minutes of the previous meeting. Mr Squires confirmed they would be placed on file. He also confirmed that as the January meeting was an informal one, the respondent would not be preparing minutes but that the claimant was entitled to prepare her own.

217. There was then a discussion about progress in ordering the items and training recommended by AtW. Mr Rogers confirmed that the OrCam and High Visibility Keyboard had been ordered and were expected to arrive in a few weeks. He confirmed that procuring the Coping Strategy Training and Awareness Training was underway and agreed to update the claimant about the timeline for that.

218. The claimant queried why Dragon and other assistive equipment recommended by AtW hadn't been ordered. Mr Rogers was surprised because he understood the claimant had agreed at the previous meeting to trial the Windows alternatives. He was also doubtful that Dragon would work in the noisy environment of the office. He accepted, however, that he had not sent through the promised list of Windows assistive software to enable the claimant to trial them. He agreed (again) to send the list. However, we find the claimant agreed to try the software on the list Mr Rogers was to provide. It was agreed that if they didn't work for her the respondent would order Dolphin and the medical version of Dragon for the claimant. We find the claimant was understandably confused and frustrated at the lack of progress, particularly given that Mr Squires's December outcome letter had said that all the items would be ordered. Mrs Waddicor confirmed in evidence that having heard Mr Rogers explain what the Windows assistive software could do she had changed her view and accepted it was not necessary to order Dragon and Dolphin (at least until the claimant had tried the Windows alternatives).

219. It was again confirmed that workstation assessments, risk assessment and any remaining induction training (including the corporate induction) would be completed on the claimant's return to work. Mr Rogers was working on the Training Plan and confirmed that would also be completed in time for the claimant's return to work.

220. There was then a discussion about the placement of the claimant's desk. The claimant asked for an update. Mr Squires pointed out that it had already been agreed this would be done when the claimant returned to work. The discussion became heated when Mr Squires said he didn't understand why the claimant wanted the desk moved when others had been happy with it where it was. The claimant said she had already explained it was linked to the bullying and harassment. She said the current layout meant people could lurk behind her pretending to get coats or use the copier when they were actually watching what she was doing. She regarded Mr Squires's approach to the issue as dismissive. The claimant also (for the first time) said that she wanted an automatic door closer fitted to reduce the noise and draught from the door being left open by people going in and out. Mr Squires agreed to look into this.

221. The claimant expressed disappointment at the lack of progress in appointing a new line manager. Mr Squires explained (as he had done at the previous meeting) that this was a lab-wide reorganisation and was still under review.

222. The lack of progress in resolving the bullying and harassment allegations was discussed. The claimant and Mr Holt asked for details of the informal meeting Mr Squires had had with the medical secretaries. He was unable to confirm the date and did not provide details of the meeting. (He confirmed the date as the 7 November in his subsequent outcome letter). Mr Squires pointed out that the claimant had not yet lodged a resolution request under the ER policy or indicated how she wanted to proceed. Mrs Waddicor suggested a mediation meeting but the claimant was clear that she would not attend a meeting with Ms Waring, who she viewed as the main perpetrator. Mrs Waddicor explained the process under the ER Policy and it was agreed that Mr Holt would complete a written "Request for Resolution" on behalf of the claimant. A triage meeting under the ER Policy would be arranged after that was received. The claimant DF confirmed that she was intending to "go all the way" with this issue because, in her view, it was clearly not being taken seriously and the current approach was getting them nowhere.

223. A significant part of the meeting was spent discussing the claimant's request to work from home. She wanted to work from home 3 days a week, coming into the office only on Fridays. Mr Rogers confirmed he had not had a response from any of the medical secretaries to his 10 January email about that. He agreed to ask for responses by 20 January.

224. The claimant and Mr Holt were adamant that the request to work from home should be treated as a reasonable adjustment rather than a request for flexible working. The respondent's position was that neither the AtW Report nor the September 2022 OH Report had recommended working from home as a reasonable adjustment. As a result, it took the view that the request should be considered as a flexible working request.

225. Mr Squires confirmed that although home working was possible, the respondent needed to review the claimant's request against any other requests received and ensure the needs of the service were met. There would be a need for flexibility in terms of agreeing to work on site if needed. The claimant agreed that she could be flexible. However, she was unhappy about the suggestion that the respondent would need to be satisfied of an employee's "competence" before they were allowed to work from home. She was particularly concerned that competence would be assessed by senior members of the medical secretaries team and the relevant manager. That would mean that her competence would be assessed by those who she alleged had bullied and harassed her.

226. The proposal to include other staff in the discussion about home working was also a significant bone of contention. We find the claimant was concerned that if other people got to work from home, it might negatively impact her ability to do so. The claimant suggested in evidence that she was told at the meeting that it was an all or nothing situation, i.e. either everyone could work from home or no-one could. We found Mrs Waddicor's evidence on this point more reliable. We accept the claimant was not told it was an "all or nothing" situation. Although the respondent had decided it was fair

to offer home working to the claimant's colleagues, one potential outcome was only the claimant working from home.

227. The claimant was also unhappy about the respondent's unwillingness to accept that working from home was a reasonable adjustment. She argued that working from home was necessary to alleviate and avoid the bullying and harassment she had experienced. She also said that requiring her to work from the office more than one day a week meant she was dependent on others (specifically her husband) to get to work. That undermined her as an independent person. As at the previous meeting, she asserted that Mr Rogers had agreed that she could work from home 3 days a week whereas Mr Rogers's position was that he had only agreed to 3 days working from home for the initial period of the claimant's employment.

228. The parties did not reach any agreement on the home working issue. Instead it was agreed that Mr Rogers would update the claimant about her working from home request as soon as he could after 20 January.

229. The meeting had started to move on to discussing the claimant's return to work when Mr Rogers and Mr Squires had to leave. Mrs Waddicor continued discussions with the claimant and Mr Holt until around 5.15 p.m. The claimant made it clear she would not return to work until the bullying and harassment issues had been "sorted out" by the respondent. They discussed the claimant's entitlement to full sick pay, which was due to end on 31 January. Mrs Waddicor pointed out that the claimant had accrued annual leave which she needed to take before the end of the financial year (carry-over being limited to one week). They also discussed the imminent 13 week deadline for the AtW funding. Mrs Waddicor agreed to look into those issues.

230. Mr Squires sent an outcome letter to the claimant on 13 January 2023 (pp.276-278). It confirmed the action points the respondent understood to be agreed. Mr Holt responded on 22 January (pp.499-500) to make it clear there had been no agreement when it came to the issue of home working and that the claimant awaited the respondent's proposals in that regard. Mr Holt's letter did not include a resolution request or otherwise say what option the claimant wanted to pursue in relation to the bullying and harassment allegations. It did not refer to those allegations at all.

Events from 13 January 2023 to 22 February 2023 – the accessibility document, claimant's Resolution Request and further sick pay extension

231. On 17 January Mr Rogers emailed the claimant an "Accessibility Document" (pp.279-286). It set out in table form the accessibility features in Windows, search engines (Chrome and Microsoft Edge) and Microsoft apps including Word and Excel. The table gave brief descriptions of what the feature did. It set out the equivalent software or equipment from the AtW Report in a separate column. The features included ways of magnifying screen texts, changing to a high contrast screen, reading text from a screen and dictating directly into Word. The documents included brief instructions on how to find the on-screen "buttons" to access those features with screenshots of the relevant buttons. Mr Rogers's covering email was brief. He said the document was "hopefully...self explanatory" and that the claimant "could trial some of this on [her] own laptop".

232. The claimant continued to be signed off work with work-related stress. Her extended entitlement to full sick pay was due to expire at the end of January 2023. On

27 January she applied to the respondent's HR team for a further extension of pay (pp.289-290). She did so on the basis that her request for workplace and reasonable adjustments had "yet to be satisfied". She said that very little or no progress had been made despite meetings with management and that she had received no updates or explanation for delays.

233. The 13 January 2023 outcome letter confirmed a further meeting would be arranged ideally in the week of 6 February 2023. The intention was that part of the meeting would discuss the claimant's Resolution Request and the other part would be a LTSR meeting. The LTSR meeting would be with Mr Rogers and Mrs Waddicor. The attendees at the triage meeting would need to be decided when the Resolution Request was received.

234. Mrs Waddicor was in touch with the claimant from late January to try and agree the meeting date. It proved difficult to find a date which worked for all the attendees but was eventually fixed for 23 February, a date proposed by the claimant and Mr Holt.

235. Through email exchanges with the claimant on 30 January (pp.512-513) Mrs Waddicor confirmed she had spoken to AtW who had clarified that the deadline for claiming payment had been extended from 13 weeks to 9 months. She also confirmed that she was liaising with colleagues about the claimant's sick pay. The claimant was understandably anxious about that because her pay was due come to an end the following day. Mrs Waddicor pointed out that the claimant had accrued annual leave which she needed to take before the end of the financial year, reminding her that she could apply to carry over one week of leave.

236. On 31 January 2023 the claimant submitted her Resolution Request ("the 1st ER Request") (pp.299-300). In it she alleged that the respondent had breached the Equality Act 2010 by failing to make reasonable adjustments. She also alleged it was in breach of s.15, s.19 of the Equality Act 2010 and the EHRC Code of Practice. She said the department was made known of her request on 31 October 2022 with a further deadline offered of 20 January 2023. No response was given by that date nor for a further 13 days.

237. In response to the question in the form about outcomes sought the claimant said:

- "1. For the department to meet its legal obligations in relation to the EA 2010.
2. The department refrains from making assumptions about my disability.
3. That my characteristics are respected by the department.
4. That meaningful and committed consultations, on my request for reasonable adjustments take place.
5. That the departments PCP's do not place myself at disadvantage and or detriment.
6. That the rationale given by the department for a new PCP when seeking staff preferences on "working from home" is now acknowledged by the department as incorrect (section 13 (3) EA 2010) and therefore has resulted in an unnecessary delay in responding to my request for reasonable adjustment

7. That I do not experience detriment as a result of any of the above.”

238. The form did not specify what reasonable adjustments the claimant was referring. We find, however, that the focus was on the claimant's request to work from home. The form did not refer to the bullying and harassment allegations or failure to deal with them.

239. On 3 February 2023 Mr Rogers contacted Vision Aid to chase up the OrCam training. He asked whether they could do training at home and they confirmed they could (p.316). It appears to us Mr Rogers must have told the claimant that was the case because in her email to him on 7 February 2023 she asked whether that meant there had been a decision about her home working request. The claimant in that email also confirmed she had looked at the Accessibility Document Mr Rogers had sent her but needed to go over it again.

240. The claimant had not heard back about her sick pay extension request. She chased the respondent's HR team about this on 7 and 15 February. On 17 February Mrs Waddicor emailed the respondent's payroll manager to confirm that it had been agreed to extend the claimant's full sick pay until 23 February, i.e. the day of the next meeting. She explained that what would happen from that date depended on the outcome of the meeting. Sick pay might be extended again if the claimant was not well enough to return or the claimant might decide to return to work and use her accrued annual leave.

The Resolution Request and LTSR meetings on 23 February 2023

241. On 23 February 2023 the claimant and Mr Holt met with Mr Rogers and Mrs Waddicor. Mr Rogers chaired the meeting. The claimant typed up her version of events in her minutes of the meeting (pp.320-323) which referred to the meeting as a “Formal Resolution Meeting” (pp.320-323). As previously, the respondent recorded what happened in an outcome letter. In this case that letter was dated 13 March 2023 (pp.330-332). As discussed below, we find it was not sent to the claimant until after that date. It referred to the resolution request meeting (“the ER meeting”) as an informal “Early Resolution” meeting under 5.3 of the ER Policy rather than a Formal Resolution under 5.4.

242. We find the claimant's attitude during the meeting was combative. Mr Rogers apologised for leaving the previous meeting early but pointed out that he had told the claimant at the start he had another meeting he would need to attend. The claimant disputed that (her note of the previous meeting records Mr Squires saying he had to leave early but not specifically Mr Rogers doing so). In her minutes the claimant says she “bluntly rejected this” and made absolutely clear the “absolutely unacceptable appalling behaviour and manner” in which Mr Rogers and Mr Squires had left the previous meeting.

243. Working from home was discussed. Mr Holt pointed out the agreed deadline for Mr Rogers providing an update on 20 January had long passed. Mr Rogers explained the impact of dealing with an UKAS inspection had in January and February. Mr Holt acknowledged that but still said it had taken too long for Mr Rogers to consult with a small number of team members.

244. The discussion went over the same ground as previously. Mr Rogers confirmed that the claimant would be able to work from home but that he needed to liaise with the other secretaries to make sure there was no impact on the service. Mr Holt reiterated that as a reasonable adjustment there was no requirement for flexible working to be offered or discussed with others in the team. In the words of Mr Rogers's outcome letter, they "agreed to disagree" about this. They discussed the degree of "flexibility" which would be required of the claimant. She appears to have been suspicious that she could be called in on a whim. Mr Rogers made it clear that the claimant would only be called in if there was a need for cover, e.g. if someone was off sick. It was agreed there would need to be enough notice for the claimant to be able to organise transport to the office.

245. There was a discussion about the training the claimant would need to have undertaken to be able to work from home. Mr Rogers confirmed the training plan was not yet complete but would be by the claimant's return to work. Mrs Waddicor confirmed the training would need to be on site. The claimant made it clear she would not be happy to be trained or have her competence assessed by Ms Waring.

246. Mr Rogers confirmed the OrCam and high-visibility keyboard had been received. The claimant agreed that he could share her contact details with Vision-Aid, the OrCam supplier, so they could arrange a training session at home direct with her.

247. The claimant confirmed she had tried the Windows assistive software suggested by Mr Rogers. She said she could not get it to work with the Telepath software used by the team. Mr Rogers agreed to provide a software package to assist with that. Mr Rogers again confirmed that if the software he had suggested did not work they would revisit the software suggested in the AtW report.

248. It was confirmed again that the Awareness Training would be organised when the claimant had returned to work. That was likely to be online training, though the claimant would have preferred for it to be face to face which she believed would have more impact.

249. There was also a discussion about the Coping Strategy Training. There was a dispute about what the claimant said about this at the meeting. The claimant's case was that it was agreed the training would be arranged on a face-to-face basis. Mr Rogers's and Mrs Waddicor's evidence was that the claimant said she didn't need it. On balance, we find that the claimant did question the value of the training and say she did not need it at that point. Her view was that the problem was others' behaviours not her ability to cope. We find that is why the outcome of the discussion was that Mr Rogers would go back to Vision-Aid to find out more about what that training could deliver.

250. The claimant and Mr Holt raised the bullying and harassment allegations, which they felt had not been addressed. Mr Rogers acknowledged that all parties felt there should have been more support for everyone concerned when the claimant started work and apologised for his part in not ensuring that support was in place. The agreed outcome recorded in his letter was that he would liaise with colleagues to ensure that all parties knew the behaviours expected of them. He also confirmed that the Behavioural Framework referred to in previous meetings would be implemented as soon as possible.

251. Not all the recommendations in the AtW Report were discussed at the meeting but Mr Rogers's outcome letter also confirmed that the claimant would be allowed extra breaks and extra time to undertake tasks. He reiterated that inductions, DSE assessment and office environment would be actioned when the claimant returned to work. His letter also confirmed that AtW would fund one day a week taxi allowance. On any additional days the claimant would travel in with her husband with the claimant's working hours being amended to support that.

252. We find Mr Rogers confirmed that there was in principle no issue with the claimant working from home, subject to Mr Rogers needed to liaise with others to ensure there would be no impact on the service. In his outcome letter Mr Rogers "confirmed that [he] did not envisage any barriers" to the claimant working the requested pattern of 3 days at home and referred to the claimant being pleased to have the working from home arrangements "confirmed".

253. The second part of the meeting on 23 February was the LTSR meeting. The claimant's latest fit note signed her off work until 6 March 2023. The meeting considered the OH Report from 1 February 2023. That advised the claimant was not fit to return to work until there had been further discussion of workplace issues with the aim of resolving them. The claimant confirmed in the LTSR that she may be able to return to work if the reasonable adjustments discussed in the ER Meeting were put in place and the workplace issues discussed in that meeting were addressed.

254. It was agreed that the claimant would begin a phased return to work in the week beginning 3 April 2023. The suggestion was that the phased return would follow the same pattern as when she started in August/September 2022, increasing from 1 day per week to the full 4 days over a 4 week period. However, Mr Rogers was to liaise with the claimant to finalise that return to work. The claimant was to carry 11.6 of her 32.6 days accrued leave over into the next holiday year and use the rest to take leave from 24 February 2023 and her return to work. The claimant was not entirely happy about that but Mrs Waddicor indicated that the alternative was for her to be on no pay since she had exhausted her sick pay entitlement.

Events from the 23 February 2023 to 19 March 2023 – Miss Henderson taking over line management, the claimant's Stress Risk Assessment

255. On 10 March 2023, having received nothing from Mr Rogers, the claimant chased for a written outcome from the meetings on 23 February. She said that as far as she was concerned "until I have received in writing what was agreed at the meeting then NOTHING is agreed. I accept nothing as agreed until it has been received in writing."

256. On 10 March Mr Rogers contacted VisionAid to pass on the claimant's contact details as she had authorised him to do so the OrCam training from home could be arranged. The trainer, Mr Potts, emailed the claimant the same day to suggest that the training take place on 21 or 22 March. The claimant responded the following day to say the training would have to be after 3 April because she was on leave until then (pp.313-314).

257. Mr Rogers had prepared outcome letters from the ER Meeting and the LTSR Meeting (pp.1177-1178). Both were dated 13 March 2023 but were not sent to the claimant until 22 March 2023. In the meantime, on 16 March, the claimant had

submitted a completed Stress Risk Assessment form ("the SRA")(pp.343-348). It appears she was given the SRA at the LTSR meeting. She had received no response to her 10 March email.

258. The SRA was completed in handwriting and included frequent and emphatic use of exclamation marks. In summary, it repeated the allegations of bullying, being the subject of nasty comment "all the time", lack of equipment and training and a failure to resolve matters by management. It said that her manager preferred to ignore issues which is why she had had to raise the matter under the ER Policy. In her covering email to Mr Rogers and Mrs Waddicor (p.342), the claimant said it was "mainly the bullying from colleagues and lack of equipment and support from management" which were her main issues.

259. On 17 March 2023 Mr Rogers went off sick, informing the department he could not deal with the situation any longer.

Events from 20 March to 13 April 2023 – the Formal ER Request and Miss Henderson's involvement

260. On 20 March the claimant submitted a second Resolution Request ("the Formal ER Request") to the respondent's resolution email address. That was not forwarded to Mrs Waddicor until 24 March so she did not see it until she had returned from leave on 3 April.

261. On 22 March (before she went on leave) Mrs Waddicor replied to the claimant's 16 March email sending the SRA (p.342). Mrs Waddicor attached Mr Rogers's ER Meeting and LTSR outcome letters dated 13 March. The ER Letter (pp.330-332) was headed "Informal Early Resolution" and said that if the claimant's request for resolution had not been satisfactorily resolved, she could request formal resolution in writing.

262. Mrs Waddicor apologised for the delay in sending the letters. She confirmed that Mr Rogers was not in work and that Miss Henderson would be supporting the claimant back to work in his absence. She proposed a meeting to go over the matters discussed at the previous meeting, plan the claimant's phased return, discuss the SRA and feed back about the discussions on behaviours with other team members. She proposed 2 dates in the week of 3 April because the claimant, she and Miss Henderson were all on leave until that week.

263. Mr Rogers had been due to meet the other histology medical secretaries on 22 March 2023. Miss Henderson met with them in his absence (pp.1236-1237). We had her handwritten notes of the meeting and found her a credible witness who gave reliable evidence to the best of her recollection.

264. We find Rachael Hurst could not attend because she was off sick. At the meeting the team confirmed (as they had done on 7 November) that they would like to resolve the issues with the claimant informally. They explained the confusion on the claimant's first day in the office and their feeling that they did not have enough information about the claimant's disability and how to help. They confirmed that the claimant had been given the same training as others with no time pressure.

265. Their view was that the claimant was unhappy with the training provided. She also didn't like the lights, desk, seat, keyboard, door or being asked about her

disability. The team felt they had come in for a lot of criticism from the claimant and were reluctant to get involved in training her further. They asked for clarity about who would provide further training for the claimant.

266. Working from home was discussed and the team expressed concern about there being enough work which could be done from home. It had not been tried before but there seems to have been an acceptance that developments in technology might enable more work to be done from home.

267. Miss Henderson discussed the respondent's Behavioural Framework with the team. They confirmed they were happy to provide support for the claimant but felt they needed more help in understanding what her needs and capabilities were. It was agreed that the Awareness Training would take place to assist with that. Miss Henderson accepted she did not put the specifics of any bullying or harassment allegations made by the claimant to the team or use the meeting as a fact-finding meeting about those allegations. She had not yet met or spoken to the claimant. As at 22 March 2023 the claimant had not set out the specifics of her allegations in writing so Miss Henderson would not be in a position to know what they were.

268. The claimant's formal ER Request (pp.350-354) was filed before she had been sent the ER Meeting and LTSR outcome letters. It said that despite the claimant's Resolution Request having been "upheld", she and Mr Holt were still awaiting not only written confirmation but "also the agreed steps taken from the upheld resolution itself". It then set out 14 "agreed steps". They included matters which had been agreed at the ER Meeting such as confirmation of the claimant's working from home pattern, the agreement to carry over 11.6 days of holiday, arranging her phased return to work and training on the OrCam. They also included steps which it had previously been agreed would be done when the claimant had returned to work, e.g. the training plan, induction, workstation assessment, desk move and door closure fittings. On the OrCam training, the claimant complained that having asked Mr Potts to provide dates after 3 April because she was on leave until then, he had not yet come back to her with fresh dates. The other steps included arranging the Awareness training and the Coping Strategy Training.

269. Steps 13 and 14 related to bullying and harassment. They were

- a. to "address/sort bullying and harassment issues as yet not done. Right to be treated with respect by colleagues as per ELHT policy, disability laws and ELHT behavioural framework" and
- b. to "arrange a strict process and procedures policy to be made in case of any possible future issues raised in respect of bullying/harassment. Confirmation that it would be dealt with quickly, respectfully and to reassure DF that this will be done. The department should exercise its duty of care towards [the claimant] to ensure [she was] protected."

270. The outcomes the claimant said she was seeking (at 4-10) were the same as the 7 set out in the 1st ER Request but with the addition at 1-3 of the respondent doing what it agreed to do and accepting that the inaction since the ER Meeting demonstrated a lack of duty of care which was foreseeable, dealing with outstanding matters in a timely manner and providing written confirmation of the matters "upheld" at the ER Meeting before the claimant's return to work.

271. The claimant was unhappy that Mr Rogers's outcome letter referred to the 23 February ER Meeting as "an Informal Early Resolution". She asked Mrs Waddicor to explain why it was referred to in that way when to her mind her 1st ER Request was a formal one. On 24 March she emailed the respondent's resolution team to say her 20 March 2023 request was a "FORMAL request NOT an informal one" (p.383). She confirmed that she was happy for Mrs Waddicor and Miss Henderson to deal with the Formal ER Request

272. On her return from leave on 3 April, Mrs Waddicor liaised with the claimant to confirm the dates of the meeting with her and Miss Henderson. That meeting would now consider the Formal ER Request. She had suggested the 4 and 6 April to the claimant in her email of 22 March. The claimant could not meet then because Mr Holt was not available so the meeting was agreed for the 13 April.

273. During that email exchange Mrs Waddicor explained why the respondent regarded the ER Meeting as an "informal" ER Meeting, i.e. an Early Resolution meeting under 5.3 of the ER Policy. The claimant did not accept that and accused the respondent of changing things to "drag things out and not get anything made official" (p.336).

274. We find the claimant had been due to start her phased return to work in the week of 3 April by working 1 day. Mrs Waddicor suggested that since the claimant was unable to attend that week due to Mr Holt's unavailability she could take that week as annual leave. The other alternative was for the claimant to undertake the OrCam training. The claimant was unhappy about that. She thought it was the respondent's fault that she was not able to start work in the week of 3 April and did not see why she should have to take leave.

275. When it came to the OrCam training, the claimant confirmed Mr Potts had not got back to her with more proposed training dates. She criticised Mr Potts for failing to do so and made it clear in an email on 4 April that she did not see it as her position to chase her own training (p.336). She asked that someone please chase that up and get VisionAid to contact her with more dates. Although she suggested in evidence she had continued to chase Mr Potts for new dates we find that inconsistent with the documentary evidence which shows she had put chasing Mr Potts back in the respondent's court.

276. On 13 April Mrs Waddicor arranged for the claimant to be booked on to the iteration of the Corporate Induction on 18 April 2023. She contacted the Core Skills Team to check what reasonable adjustments they might need to make claimant for the day. Mrs Waddicor also contacted the respondent's procurement team to establish what had happened about the quotes for the Awareness Training and Coping Strategy Training.

The 13 April Formal ER meeting

277. The meeting to consider the claimant's Formal ER Request took place on 13 April. It was attended by the claimant, Mr Holt, Miss Henderson and Mrs Waddicor. In making our findings about that meeting we have taken into account in particular the evidence we heard, Miss Henderson's outcome letter dated 26 April 2023 (pp.388-392) and the claimant's comments on that letter (p.499-524).

278. The references in our findings to “steps” are to the 14 “steps” set out in the Formal ER Request in turn. In summary we find:

- a. Miss Henderson confirmed that the claimant's request to work from home 3 days a week and in the office on Fridays had already been agreed in the ER Meeting outcome letter from 23 February (Step1). The claimant argued that Mr Rogers's letter did not unequivocally confirm that agreement, referring only to Mr Rogers not envisaging any barriers to it. The claimant and Mr Holt were unhappy about how the decision had been reached. They felt it was fundamentally wrong that it should have been actioned as a reasonable adjustment and not as a flexible working request. They criticised the delay arising from the unnecessary consultation with the claimant's colleagues. At the end of the discussion Miss Henderson confirmed that it had been agreed that the claimant could work from home (with one day on site) starting after the claimant had completed all relevant training.
- b. The LTSR Meeting outcome letter also confirmed that the claimant could carry over 11.6 days annual leave (Step 2). The claimant remained unhappy that she had been “made” to take annual leave from 24 February because she felt her absence was not her fault. Mrs Waddicor confirmed that the alternative would have been unpaid leave. Miss Henderson noted the claimant's comments and requested that they draw a line under that issue. The claimant objected to that because to her mind she was forced to take leave because of the inactions of management.
- c. It had been agreed that the claimant's phased return to work would start from 3 April (Step 3). The claimant and Mr Holt argued that the claimant should not have to take annual leave for the week of 3 April because she had not in fact been able to start her return on 3 April as planned. They said that the phased return should be extended as a reasonable adjustment. It was agreed they would leave open for now how any extension to the phased return would be recorded if it happened. Miss Henderson suggested that working half days might be better for the claimant but she was not keen to come in on more than one day a week. She wanted to reduce time spent in the Office with colleagues she regarded as being responsible for bullying and harassment. A telephone call was arranged for 10am on Monday, 17 April 2023 when the claimant and Miss Henderson would discuss and agree the phased return. The claimant would complete any outstanding core skills training.
- d. There was discussion about provision of further training for the claimant on her role. When it came to who would provide it (Step 4), the claimant made it clear she was not keen on any of her colleagues providing it but she did not want Ms Waring involved at all. Miss Henderson agreed to consider that so they could discuss next time they met. When it came to how long the training would take and who would assess the claimant's competence (Step 5), Miss Henderson did not want to put a specific timeframe on that because she wanted to avoid putting pressure on the claimant. She confirmed the claimant's competence would be assessed

by Mr Rogers or someone in a senior position he chose to delegate to. The claimant was not happy about that and wanted to know who specifically Mr Rogers could delegate to. Miss Henderson also confirmed that Mr Rogers had completed the competency framework and that she would review that and, if not already done, develop a Training Plan (Step10).

- e. Step 6 was "To arrange agreed terms of flexibility regarding home working and set criteria for this – under what basis and so it does not impact on my needs as a disabled person." The claimant was not satisfied that the ER Meeting outcome letter provided enough clarity on this. Miss Henderson confirmed that any request for flexibility on you attending the site would be in respect of "unplanned situations/exceptional circumstances". It was agreed that Mrs Waddicor would liaise with AtW to check whether the claimant could be allocated more days of taxi allowance so that that travelling in would not be a concern for her when she needed to come on site more than one day a week.
- f. It was confirmed again that the workstation assessment would be carried out when the claimant physically returned to work. Miss Henderson provided the paperwork for the claimant to complete for a home risk assessment. Miss Henderson reported that moving the claimant's current desk was not possible because it would create a health and safety risk. The desk could be changed but would potentially mean the claimant facing the wall. The claimant was not happy with that because sitting with her back to the office would potentially allow for bullying and harassment behind her back. After discussion, it was agreed that when the claimant returned to work she and Miss Henderson between them would look at the different options. Miss Henderson confirmed she would also apply for the changes to the door closure fittings, something Mr Squires had previously agreed to (Step 7).
- g. The Corporate Induction Training had been arranged for 18 April (Step 8) and the OrCam training for 25 April (Step 9).
- h. Mrs Waddicor was chasing procurement for an update on Coping Strategy Training (step11) and the Awareness Training (step 12).
- i. When it came to steps 13 and 14, they discussed the relevant paragraphs in Mr Rogers's ER Request outcome letter. Miss Henderson confirmed she had already met with the rest of the team (i.e. on 22 March 2023) and that all colleagues wanted to work together and ensure everyone was treated with dignity and respect. Miss Henderson proposed to meet the claimant and her colleagues together to discuss any concerns and for all to agree, as a Team, acceptable behaviours. The claimant had reservations about that approach but Mr Holt was in favour of it as a way forward. Miss Henderson discussed the need for all parties to try and be positive when coming to that session. (As we explain below, on 24 April the claimant's concerns about this approach lead to a change of plan). Miss Henderson agreed that the respondent

had a duty of care to all colleagues and tried to reassure the claimant that the respondent would address any concerns raised as soon as possible. She advised the claimant to liaise with either herself or Mr Rogers (if he had returned to work).

279. Miss Henderson went through the outcomes in the Formal ER Request. In summary we find that the claimant and Mr Holt accepted that they had been provided with the reassurances that they were seeking. However, they said, the “proof was in the eating”. Miss Henderson acknowledged that there was still a difference in opinion as to whether the claimant’s request for home working was a reasonable adjustment or a flexible working request. Miss Henderson also said (para 10 on p.392) that “it was acknowledged though that there had been delays in implementing the reasonable adjustments”. She did not specify which.

280. Miss Henderson’s outcome letter confirmed that the claimant could appeal if dissatisfied with the outcome of the formal resolution. That appeal had to be lodged within 10 days of receiving the outcome letter.

Events from 14 April to the May 2023 – further sickness absence and appeal against the Formal ER Request outcome

281. We find that Miss Henderson felt the meeting had provided a clear way forward. Although there was a delay in finalising the outcome letter because Mrs Waddicor was on leave, Miss Henderson and the claimant communicated regularly over the following weeks or so. They spoke on Monday 17 April as agreed to discuss what the claimant would be doing in her 2 days working that week. On 18 April the claimant attended the Corporate Induction. She confirmed on 19 April that had all gone well. She undertook core skills training online on Thursday 20 April.

282. The OrCam training was due to take place at her home on Tuesday 25 so on 20 April the claimant asked Miss Henderson to confirm the OrCam equipment was available and would be passed to her husband to bring home so she could charge it before the training. She asked that it be checked before being handed to her husband. The OrCam had been locked in a cupboard for safe keeping and Miss Henderson confirmed that it would be available for the claimant’s husband to take home by Monday 24 April at the latest. That all went as planned as did the OrCam training itself on 25 April.

283. In the meantime, however, an issue had arisen about the work plan for the week of 24 April. That would have been the claimant’s third week into her phased return so she would have been due to work 3 days. The claimant was due to attend on site on Thursday 27 April so that she and Miss Henderson could carry out the workstation assessment and other steps which could only be carried out on site. However, on 20 April the claimant emailed Miss Henderson to say that she would have to leave at 2 p.m. on Thursday to get a lift back from her husband. He was leaving work early because of a medical appointment. Miss Henderson was concerned they would not get everything done in half a day and suggested that the claimant also come in on Wednesday 26 April, something she had previously proposed. That would give them a day and a half to get everything done. She pointed out that the claimant “really should be working 3 days” the week of 24 April. The claimant had suggested working on reports from home, but Miss Henderson had checked and since those reports were

now automated the claimant would need further training before being able to work on them from home.

284. The claimant reported Miss Henderson's email to Mr Holt. He wrote to Miss Henderson on 21 April to say that the reference to "really should be working 3 days" was not in accordance with the ER Policy which required "sensitive communication throughout". He also noted the outcome letter from the Formal ER Meeting was still awaited and asked that it be provided by 26 April. He raised again the claimant's concerns about who would be assessing the claimant's competence. He said that the claimant had genuine reservation that "members of the admin team involved in the allegations of bullying and harassment" would be involved in assessing her giving rise to the "potential on all sides to settle scores" (p.377).

285. On the morning of Monday 24 April Miss Henderson emailed the claimant details of the OrCam, which had been given to Mr Flynn to take home. The claimant thanked her and asked for details of the plan for Wednesday and Thursday. She also chased for the written outcome of the Formal ER meeting. Miss Henderson called her in response. It is that phonecall which gives rise to the allegation of disability-related harassment at 15.11 of the List of Issues.

286. We base our findings about that call on the claimant's note of it (pp.384-385), the email exchange between the claimant and Miss Henderson following the meeting (pp.1180-1181) and the live witness evidence we heard. Based on that, we prefer Miss Henderson's version of events. We found her evidence clear and reliable whereas the claimant's evidence was vague, grudging and unreliable.

287. We find that Miss Henderson had prepared a draft email setting out an "agenda" of the tasks to be completed when the claimant attended on site on Wednesday and Thursday that week. They included completing the return-to-work paperwork, reviewing the phased return and carrying out risk assessments. They discussed the placement of the claimant's desk and Miss Henderson explained it could not be placed the way the claimant wanted because of the need to maintain enough clearance to allow people to move around it.

288. We find that the proposed tasks for Thursday included a group discussion with the team about the behavioural framework. We find that Miss Henderson's understanding was that the claimant, though reluctant, had agreed at the 13 April meeting to take part in a group discussion around the framework. We find that it was when that was discussed that the meeting became heated. The claimant made it very clear that she was not happy to take part in a group meeting. She asked why she would sit down in a room with all the people who had been bullying her and slagging her off. We accept Miss Henderson's evidence that the claimant at that point of the call raised her voice to the point where she was shouting at Miss Henderson and being aggressive towards her.

289. We find Miss Henderson was exasperated and did ask the claimant how she would feel if she was a manager doing her best and someone was shouting at her. We find that Miss Henderson confirmed the claimant did not have to attend the proposed meeting with colleagues if she did not want to and they could meet 1:1 to discuss the framework. We find Miss Henderson tried to de-escalate matters by explaining that she was simply trying to help resolve matters and the claimant was upsetting her by the way she was shouting at her. We do not accept that Miss

Henderson shouted at the claimant or said the claimant was being “unreasonable” or “uncooperative”. We do find that Miss Henderson asked the claimant to meet her half-way and did say that she would need to let HR know if the claimant wasn’t willing to attend the proposed meeting. We also find that Miss Henderson said that if the claimant was more comfortable with a different manager, she would ask HR to allocate someone else to deal with the claimant. We do not find either of those was said in a threatening, hostile or intimidating manner.

290. Miss Henderson emailed the claimant after the meeting, confirming the work plan for the week. That included confirmation that rather than attending a group discussion of the behavioural framework on Thursday, she and the claimant would meet on a 1:1 basis to discuss it. She also explained how upset she had been by the tone of voice the claimant used on occasions during the meeting. She hoped they could move past that. The claimant responded to say how unhappy she was with the call but that she agreed to the proposed 1:1 meeting. That meant that the claimant was due to attend the office on Wednesday 26 April. She undertook the OrCam training at home on 25 April. However, she emailed Miss Henderson early on the morning of 26 April to say that she would not be coming into work because of the stress and anxiety levels she was experiencing (p.386).

Events in May and June 2023 – long term sick review meeting, sick pay extension request and ER Formal Request Appeal

291. The claimant received the Formal ER Request outcome letter from Miss Henderson on 28 April. She lodged an appeal against it on 5 May, with grounds to follow (p.401). Those grounds were sent on 30 May 2023 (pp.412-413). They confirmed the matters recorded in the outcome letter at steps 7-12 (workstation and risk assessment, Corporate Induction, OrCam eye training, progressing the training plan, Coping Strategy Training and Awareness Training) and outcome 3 (written confirmation from the 23 February meeting) were agreed. The grounds for appealing the other steps or outcomes were said to be either (or in some cases a combination of) “Failure to follow procedure had an effect on the outcomes”, “Action was inappropriate given the circumstances of the case” and “The evidence did not support the outcome reached”, i.e. those set out at 5.5 of the ER Policy. The claimant’s grounds gave no further explanation. They did not, for example, identify what procedural failures there were and their effect, what evidence did not support which outcomes or why a particular action was inappropriate.

292. On 2 May the claimant confirmed to Miss Henderson that she had been signed off by her GP for another month. She agreed to an OH referral and an LTSR meeting was set up for 24 May.

293. On 18 May 2023 Miss Henderson wrote to confirm the granting of the claimant’s request of 17 April 2023 to reduce her working hours to 18.75 hours with effect from Monday 29 May 2023. We find the claimant had agreed to that during a call on 2 May 2023, her original request having been for it to take effect from 1 June 2023, which would have been mid-week (p.1159). The new working pattern was half a day Wednesday and full days Thursday and Friday. Wednesday and Thursday were to be home working days, subject to completion of sufficient training to be competent in her duties (p.407).

294. That outcome letter was superseded by one dated 26 May 2023 in identical terms except for removal of references to it being a flexible working request (p.411). That was done because the claimant at the LTSR meeting on 24 May 2023 objected to the request being treated as one under the flexible working policy rather than as a reasonable adjustment. The new outcome letter referred to a “Change of hours Request”. That LTSR meeting took place by Teams. It was attended by the claimant, Miss Henderson, Mrs Waddicor and Imran Akram (“Mr Akram”) who had taken over from Mr Holt as the claimant’s union representative.

295. At that LTSR meeting the claimant said she would not be well enough to return to work until “everything” was sorted. Miss Henderson went through those matters already implemented or agreed. That included confirmation that the claimant could work from home 2 days a week once her training was completed. Mrs Waddicor confirmed that AtW had said there was no issue in the taxi allowance covering more than one day a week. She also confirmed she was liaising with suppliers about the Coping Strategy Training and Awareness Training.

296. The claimant’s bullying and harassment were discussed again. Miss Henderson reminded the claimant they had previously agreed to try and resolve that matter informally. The claimant felt nothing had been done. Miss Henderson suggested the only other option was to commission a formal investigation. The claimant and Mr Akram agreed that they would formally submit the claimant’s allegations and Mrs Waddicor would talk to colleagues to identify an independent investigator.

297. At the LTSR meeting Miss Henderson confirmed that the claimant’s entitlement to half sick pay would expire on 26 June 2023. The claimant applied for an extension of sick pay on 26 May. That application was refused. That decision is the basis for the complaints at 4.14 and 10.18 in the List of Issues. The decision was made by Kate Quinn (“Ms Quinn”), Director of People and Culture and Michelle Brown, Director of Finance. In her decision letter dated 8 June 2023 emailed to the claimant on 9 June (p.417) Ms Quinn explained the reasons were that:

- a. the respondent had made all reasonable adjustments as recommended by AtW and that her outstanding issue was about a flexible working request; and
- b. that there appeared to be no sickness reason for the claimant to continue to be off work and this was more about relationship issues which Ms Quinn understood had been dealt with as part of the ER process which the claimant had appealed but which the respondent was awaiting further information from the claimant (i.e. the details of the allegations which Mr Akram and the claimant had agreed to provide).

298. The claimant wrote to appeal/ask for a reconsideration of the decision on 9 June on the basis that the reasons given for the decision were “grossly inaccurate and misleading”. She did not provide details of what that meant but asserted that the decision was an act of victimisation for her having raised a grievance (p.421). The respondent replied on 12 June to say that the extension of sick pay was a discretionary, rather than contractual matter, so the decision could not be appealed. It was, however, considered as part of the Formal Investigation carried out by Ms Rose.

299. On 18 June the claimant started ACAS early conciliation.

Events in July 2023 – the formal bullying and harassment complaint, LTSR meeting, and the start of the formal investigation process

300. By the end of June neither the claimant nor her representative had sent her specific allegations of bullying and harassment to the respondent as agreed at the 24 May LTSR meeting. Mrs Waddicor pointed this out to her when the claimant chased for progress on the investigation in late June. The claimant had expressed dissatisfaction at having to submit the allegations to Miss Henderson and Mrs Waddicor. By this point she was referring to Mrs Waddicor and Miss Henderson in her emails to Mr Holt and Mr Akram as an “useless shower” (p.441). Mrs Waddicor confirmed that if the claimant preferred she could send the allegations to Neil Fletcher (“Mr Fletcher”) the respondent’s Deputy Director of Operations. She chased Mr Akram again on 4 July 2023 for the allegations because neither he nor the claimant had sent them to her,

301. On 6 July 2023 the claimant did so. She sent Mr Fletcher an email headed “Bullying and Harassment” (pp.446-447) (“the Formal Complaint”). She said she was submitting her claim to him so he could appoint an independent investigator from the department with no connection or dealings with the alleged perpetrators. She gave a brief narrative explaining her situation but did not give details of specific acts of bullying or harassment, other than Ms Waring asking her age when she first started. She alleged she had been “constantly bullied and made to feel stupid and a nuisance by all the staff in the office every day I was in there”. She reported being spoken to in a derogatory manner, being deliberately excluded from the group and overhearing the medical secretaries calling her all sorts and being extremely rude and nasty about her behind her back. She said the main perpetrators were Ms Waring, Rachael Hurst and Ms Lakha, but the others joined in or did not question their actions.

302. The claimant also said she had been “bullied, threatened and harassed by Management and HR over the last 9 months”. She reported her disgust at the lack of help and support given to her by them and their failure to address the issues. She named Mr Squires, Mr Rogers, Miss Henderson, Mrs Waddicor and Ms Quinn as those she was accusing of bullying and harassment from management and HR. She said that they had “refused to implement reasonable adjustments that had been requested”. She explained that she was on zero pay. She said she would continue to take the matter all the way to the bitter end whatever that would be and confirmed she had contacted ACAS.

303. The Early Conciliation certificate was issued on 11 July 2023.

304. On 11 July Ms Quinn sent the claimant a formal letter of invitation to the Formal ER Request Appeal hearing on 29 August 2023 (“pp.449-450”). She confirmed the appeal panel would consist of Ms Quinn, Jane Wilkinson, Head of HR (“Ms Wilkinson”) and Julie Rigby from Unison (“Ms Rigby”). Ms Quinn said she would chair the panel and management statement of case would be presented by Miss Henderson assisted by Mrs Waddicor. In the event, due to availability issues, the appeal hearing was chaired by Mr McDonald rather than Ms Quinn.

305. An LTSR meeting was due to be held by Teams on 18 July 2023. It had to be re-arranged for 20 July because of sound issues and because Mr Holt could not log in. It was attended by the claimant, Mr Holt, Miss Henderson and Mrs Waddicor. The claimant had filed a fit note signing her off for a further 8 weeks due to work related

stress. The Bundle included the claimant's minutes of that meeting (pp.725-727), Miss Henderson's outcome letter dated 31 July 2023 (pp.679-671) and the claimant's comments on that letter disputing certain aspects of it (pp.719-724). Our findings about the meeting are based on those and the evidence we heard.

306. We find the 3 July OH Report (pp.434-438) was considered. It advised the claimant was not fit for duty but that the issues were not primarily medical. Instead, they turned on resolving the workplace issues. It recommended the development of a wellness action plan, carrying out a stress risk assessment and regular meetings with management to review them. It also recommended agile working and consideration of the claimant's request to work from home 1.5 days per week. (We find that had in fact already been agreed in principle by the respondent). It also recommended discussion regarding where training and competency assessment would take place with the caveat that it would not be appropriate to do that in the main office with other staff in light of the bullying and harassment allegations. The claimant was said to have reported that one of her colleagues had said she would be able to support her on her return but they would not be in the office on Fridays when the claimant would be. In response to a question about alternative employment the report advised that the claimant would be able to fulfil an alternative secretarial or reception role if support were offered and appropriate equipment provided.

307. In light of the OH advice, Miss Henderson asked the claimant whether moving to another role was an option she wanted to pursue. The claimant said she would consider that but both she and Mr Holt were concerned it was a way of the respondent avoiding having to deal with the problems in the medical secretaries' team. There was a discussion of the outstanding steps including the Coping Strategy and Awareness Training, Wellness Plan, risk assessment and behavioural framework. The claimant expressed her disappointment that matters had not been sorted. Miss Henderson pointed out they were all steps which it had been agreed would happen when the claimant was back at work. She asked whether the claimant would prefer to complete those which could be before she returned to work. The claimant agreed to consider that. The claimant was angry that Miss Henderson had not completed the training plan and, to her mind, had misled her by initially suggesting it had been done. She was also angry that Miss Henderson suggested she could take annual leave so that she would not be on nil pay. The claimant's view was that she was off sick through no fault of her own and that she was not going to be "forced" into using up her holiday.

308. There was also a discussion about the reduction in the claimant's hours to 18.75. The claimant had not returned her letter confirming the change. That was because she was not happy that she was required to be "flexible" when it came to attending on site. She wanted certainty about when that could happen. We find the discussion went over the same ground as previously, with Miss Henderson and Mrs Waddicor confirming (as they had done previously) that the requirement to work on-site would only arise if someone was off-sick or on holiday. Mr Holt asked for figures for sickness absence in the team so he could assess how likely that was to happen. The claimant also remained unhappy that the change in hours was treated as flexible working rather than a reasonable adjustment. Miss Henderson indicated these issues would be dealt with by the ER Formal Request appeal on 29 August.

309. The claimant also asked for clarity about who would train her and assess her competence. Miss Henderson said that could not be decided until the outcome of the

Formal Investigation was known. It was agreed a further LTSR meeting would be arranged in early September after the appeal hearing (pp.679-681).

310. In the meantime, Mr Fletcher had acknowledged the Formal Complaint and commissioned the Formal Investigation into the allegations raised in it. He appointed Ms Rose to as investigator. The claimant initially raised concerns about her independence but confirmed in her email of 24 July 2023 that she would accept her as the investigator (p.443).

August 2023 - the Formal ER Request Appeal and the Formal Investigation

311. The Terms of Reference ("ToR") (pp.667-671) defined the scope of the Formal Investigation. It identified 6 allegations based on the Formal Complaint. Other than Ms Waring asking her age and colleagues not making her welcome on the first day, they were in general terms, e.g. "constantly bullied" or "failing to act" on her complaints. At the second Formal Investigation interview with the claimant on 13 October 2023 it was agreed that the issue of the sick pay extension refusal by Ms Quinn also fell within the scope of the Formal Investigation (p.891).

312. The ToR recognised the first step was to meet with the claimant to clarify the details of her allegations including which allegations were against whom. That first meeting took place on 4 August 2023. Mr Rose interviewed the claimant from 9-11:25 a.m. Mr Holt also participated. Ms Woods-Beradi took full (but not verbatim) notes in a question-and-answer format (pp.689-703). The claimant was sent the notes so she could amend or correct them and answer any points which were unclear. A further interview was arranged for 13 October 2023 because there had not been enough time to cover everything with the claimant.

313. On 11 August 2023 the claimant issued her Tribunal claim.

314. When the Claimant provided her comments and additions to the notes of the 4 August she complained that Mr Holt had not been granted facility time to help her with that or preparing the ER Appeal bundle. Mr Akram raised that issue with Ms Quinn and Ashley Dearden from HR by email on 14 August 2023. Ms Quinn agreed by return to extend time by a week for both the bundle for the appeal and the response date on the Formal Investigation (p.714).

The ER Formal Resolution Appeal

315. The ER Formal Request appeal was heard on 29 August 2023. The claimant was represented by Mr Holt. Miss Henderson and Mrs Waddicor had prepared a Management Statement of Case setting out the background to events and the rationale for the decisions made at the Formal ER Request meeting on 13 April 2023 which the claimant was appealing against. We accept Mr McDonald's unchallenged evidence that during the meeting the claimant got up and shouted at the management team and wagged her finger in their faces.

316. Mr McDonald's outcome letter was dated 30 August (pp.751-753) but it was not completed and sent to the claimant until 2 October 2023. Some of that delay was due to his absence on leave for 2 weeks.

317. Mr McDonald's outcome letter acknowledged that "not all of the adjustments to enable the claimant to return to work were currently in place" and apologised that had not happened to date. It also "unreservedly apologised" for delays in "this process". We understand that to refer to the appeal process and outcome letter. The letter also confirmed that 11.6 days leave had been carried over (confirming the position previously stated). It also confirmed the claimant would be paid for any time she spent undertaking training and completing the Wellness Action Plan and SRA with Miss Henderson prior to the claimant's return to work in April.

318. The outcome letter also recorded that the claimant confirmed that she was happy to remain on 18.75 hours. The letter recognised the importance of the Awareness Training to the claimant's effective return to work and rebuilding trust within the team and said that training would be a priority for managers and colleagues in the claimant's area of work.

319. We find there was a discussion at the meeting about the claimant's working pattern, specifically about when the claimant could be asked to come into the office on days other than Friday. It was agreed that would only occur while initial training was being completed (to enable the claimant to work from home) and with a minimum 48 hours' notice where specific training was needed on site or where there was no other person available in the team. Mr McDonald confirmed in his letter that had not happened at all in the preceding 6 months.

320. The letter said an action plan had been put together to address some of the issues and assign responsibility and timescales, but that was not included with the letter. It was provided on 3 October at the claimant's request. It was one page of A4 and, as the claimant pointed out in her response to the outcome letter, had no timescales (p.1179). It did confirm that all AtW equipment was to be ordered.

321. The claimant responded to the outcome letter on 23 October (pp.771-774). She noted the apology about reasonable adjustments but asserted that "all outstanding actions and adjustments are still outstanding to date therefore I am still unable to return to work". She also said that since the respondent had "admitted" in its letter that it had not put in place all adjustments to enable her return to work, it should exercise its discretion to pay her in full for her period of absence. She also asserted she had only ever agreed to her hours being reduced to 18.75 from the point where the reasonable adjustments were made and she returned to work. (We do not find that assertion consistent with the evidence we saw and accept Mr McDonald's evidence that this was not raised at the hearing). The claimant was critical of the lack of timescales on the action plan and voiced her opinion that the action plan was drawn up after the hearing since it was not produced at the hearing. She was also critical of the refusal to produce sickness absence details for the department which Mr Holt had requested at the meeting. She queried why Miss Henderson was still managing her given that Mr Rogers had returned to work

The Formal Investigation

322. The claimant was interviewed by Ms Rose for a second time on 13 October 2023 (pp.889-894) On 27 October Ms Rose interviewed Miss Henderson, Mrs Waddicor and Ms Quinn. On 30 October she interviewed Rachael Hurst. On 31 October she interviewed Ms Waring and Ms Potts. On 1 November she interviewed Mr Rogers, Ms Anderson and Mr Squires. On 30 November she interviewed Ms Claire

Hurst and Ms Singleton. On 1 December 2023 she interviewed Ms Lakha (who was on maternity leave). All interviews were by Teams apart from the first interview with the claimant on 4 August which was face to face. The notes of those interviews were included in the bundle as annexes to the Formal Investigation Report (between pp.889-948). They were sent to each interviewee who were given an opportunity to agree or correct them. A number also provided additional documents such as copies of emails. The documents provided by the claimant included her minutes of the meetings. She did not, however, provide the timeline of events which she referred to at the 4 August meeting. At the Tribunal hearing she explained that was because they were her notes and it was not for her to do the respondent's job for them.

323. Ms Rose completed her Formal Investigation report on 11 January 2024 (pp.790-811). Mr Fletcher fed back the outcome of the Formal Investigation at a meeting with the claimant and Mr Akram on 22 February 2024. He confirmed the outcome in a letter on 23 February 2024.

324. The Formal Investigation found that on the balance of probability Ms Waring did ask the claimant her age on her first day at work. It also found on the balance of probability that some of her colleagues did express frustration about the claimant's behaviour (e.g. how she was booking annual leave) which the claimant overheard but that those conversations were never intended to be overheard by the claimant.

325. The report defined bullying as unwanted behaviour from a person or group that is either offensive, intimidating, malicious, insulting or an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone. The report found no evidence of conduct by the claimant's colleagues or management amounting to bullying as so defined. It also found no action by colleagues or management meeting the definition of harassment. It used the definition of harassment in the Equality Act 2010.

326. The report also rejected the allegation that management had failed to act on the claimant's complaint. It did acknowledge, however, that there appeared to have been some confusion about the difference between a formal and informal approach to resolution. It also acknowledged that things could have been done better to support the claimant. Specifically, it was accepted that the claimant's starting date could have been delayed until OH and AtW reports had been obtained and the necessary equipment put in place. Set against that was the claimant's understandable desire to start at work. The outcome letter noted evidence that the claimant's colleagues had made considerable efforts to include and support her. The Formal Investigation report noted evidence that meetings with the claimant could be challenging and that management's frustration with the claimant may have been evident to her at times. It noted Ms Quinn recognised in hindsight that her decision letter dated 8 June 2023 referring to "No sickness reason" for the claimant's absence could have caused the claimant upset.

327. The outcome letter noted that it was unclear what outcome the claimant wanted from the Formal Investigation, other than a finding that bullying and harassment had occurred, which it was unable to give. Mr Fletcher said there was a need to agree what happened next and suggested one way forward could be a facilitated conversation between all parties. He noted the claimant said she felt not all reasonable adjustments

had been made to facilitate a return to work. Ms Wilkinson (Head of HR) agreed to review the Action Plan and address any outstanding points.

328. On 19 March 2024 the claimant lodged an appeal against the outcome of the Formal Investigation. The grounds of appeal were brief, with details to follow. They said the definition of bullying had been ignored, breaches of GDPR, contradictory statements from management and decisions being based on false information. The grounds also alleged the claimant's line manager was not aware of proper procedures regarding disabilities despite being supported by HR (pp.1005-1006).

329. The claimant's appeal against the Formal Investigation outcome was heard by on 23 September 2024 by a panel chaired by Jawad Hussein, Executive Medical Director. The appeal was not upheld. The outcome letter (dated 21 October 2024) noted that issues around equipment "continued longer than it should have" but that that was not in any way deliberate.

330. The panel dealt specifically with the accusation that Ms Quinn's decision not to extend sick leave on 8 June 2023 was based on misleading information. It found that although some of the adjustments recommended by AtW had not been made, those required the claimant to be "in situ". It agreed the decision not to extend sick pay was correct.

Events in 2024

331. On 16 January 2024 Miss Henderson and Mrs Waddicor held a LTSR meeting with the claimant and Mr Akram. The claimant continued to be signed off sick due to stress. The Action Plan was discussed and updated (pp.987-988). Dragon, Dolphin and the USB Headset had been ordered and were available. It was agreed Miss Henderson would order a monitor of the claimant for home working (at that point the claimant did not feel she needed a second monitor at home). The claimant's desk and chair were also discussed. They discussed the Coping Strategy Training. The supplier did not provide it at home. The claimant agreed she could attend at Burnley General Hospital (i.e. not the Office) to undertake that training if it was available online. Mrs Waddicor confirmed that the time spent undertaking the training would be paid. Miss Henderson confirmed again that the claimant would be given extra breaks and additional time as needed. Miss Henderson also agreed to ensure other staff were aware of the claimant's entitlement to extra breaks. The Training Plan was discussed. The claimant was critical of it but agreed to review it.

332. On 23 February 2024 (pp.995-997) Mrs Waddicor confirmed that the Coping Strategy Training could be provided online. The claimant confirmed she was happy to undertake the training while signed off sick. Mrs Waddicor confirmed that, as previously agreed, the claimant would be paid for the time spent undertaking the training.

333. The Action Plan was updated again on 27 February when Miss Henderson, Mrs Waddicor, the claimant and Mr Akram resumed the discussion from 16 January. The claimant continued to maintain that no adjustments had been put in place and that things were "still the same". The Dragon licence had been transferred into the claimant's name, she had received the email about Dolphin and the wrist rest and headset had been received and were available for use. The progress on Coping Strategy Training was noted and it was agreed there was still a need to agree and

appropriate time for Awareness Training. There was a further discussion about desk placement and the claimant's chair. We find the meeting went over the same ground regarding breaks and additional time as the previous meeting. The claimant had not had a chance to review the Training Plan. The claimant confirmed that she did not feel able to complete the Wellness Action Plan or SRA at that point. She confirmed she would be appealing against the outcome of the Formal Investigation and would not be returning to work until everything was sorted out to her satisfaction.

334. The claimant had supplied a fit note signing her off until 8 April 2024. A further OH assessment was arranged and took place on 10 April 2024 (pp.1007-1010). The OH Report advised the claimant was not fit to return to her substantive post because of the unresolved workplace issues as perceived by the claimant. It advised the claimant was fit to engage in training such as that recommended by AtW. The claimant confirmed that assessing the suitability of the wrist rest was something which was best done when she was in the Office (p.1011).

335. The claimant continued to be signed off with stress. A further LTSR meeting took place on 30 May 2024 attended by Miss Henderson, Mrs Waddicor, the claimant and Mr Akram. The Action Plan was discussed and updated (pp.1017-1022). In terms of outstanding actions, the claimant confirmed she had not tried Dolphin since her laptop had been updated. The claimant reported that she had not been contacted by Ability Smart about the Coping Strategy Training and Mrs Waddicor agreed to chase that. An appropriate time for the Awareness Training was still to be. The claimant had not yet reviewed the Training Plan.

336. On 15 August there was another LTSR with the same attendees. By then the claimant had had sessions of the Coping Strategy Training. Awareness Training was to be arranged "at an appropriate time". The risk assessment and training plan were to be reviewed when the claimant returned to work.

337. On 27 August the claimant's agreed a facilitated move to Community and Intermediate Care as a Band 4 Business Support Administrator. The trial was to start on 4 September and the evidence is that it was a successful move for the claimant

Discussion and Conclusions

338. In this section of our judgment we have set out our conclusions on each of the complaints which were still live at the end of the case. We have not followed the order of the List of Issues. We have dealt with the Time Limit issue (Issue 1 in the List of Issues) at the end of this section. Where a complaint of harassment is based on the same facts as an allegation under s.15 of the Equality Act 2010 we have dealt with the 2 complaints about the incident together. Given the potential relevance of a failure to make reasonable adjustments to deciding the complaints under s.15 we have dealt with those complaints before the s.15 complaints.

Disability, knowledge and "somethings arising" (Issues 2 and 5)

339. The respondent accepted that the claimant was a disabled person at all relevant times and that it had knowledge of her disability at all relevant times.

340. The respondent also accepted that the claimant's inability to work with the same speed and/or accuracy of the other medical secretaries (5.1) was something arising in consequence of her disability.

341. The respondent also accepted that the claimant's inability to work without assistance (5.2) was something arising in consequence of her disability. The caveat was that that acceptance was on the assumption that "assistance" meant provision of certain equipment, as opposed to having some form of assistant which the respondent pointed out the claimant had never suggested. We do find that 5.2 is too broadly worded. Having considered the evidence we saw and heard (particularly the claimant's evidence and the OH and AtW reports) we accept that the claimant needed assistance in the form of equipment/software to assist in reading documents, typing those documents and coping with the effects of her disability. She also needed assistance with getting to work because she could no longer drive herself. We do not accept that she was "unable to work without assistance" in the sense that she needed someone with her to enable her to work on a day to day basis. There was no evidence that her ability to learn her new role was impacted by her disability except to the extent that she might need magnification of text or more breaks or extra time. Of relevance to incidents 4.7-4.9/15.6-15.8 there was no evidence that the claimant's visual impairment meant she could not set up or operate IT equipment without assistance except to the extent she might need magnification to do so. She successfully worked online from home, for example.

342. Something arising 5.3 was the claimant's need for reasonable adjustments in the form of provision of equipment and/or working from home. The respondent accepted that in consequence of her disability the claimant needed certain equipment. It submitted that this something arising overlapped with 5.2 and added nothing to it. We accept that submission.

The reasonable adjustment complaints (Issues 7-14)

343. The claimant's reasonable adjustment case was based on both the first and third requirements in s.20 Equality Act 2010. Mr Flood repeated his submissions in relation to the first requirement in relation to the third requirement.

Did the respondent apply the PCPs (Issue 7)

344. The starting point for the first requirement complaints is whether the respondent applied the PCPs at 7.1 and 7.2. If so, whether they placed the claimant at a substantial disadvantage compared to a person not sharing her disability (issue 8) and whether the respondent knew about that substantial disadvantage.

Did the respondent apply PCP1?

345. PCP1 as set out in the list of issues was "a requirement for the claimant to carry out the same duties as the other medical secretaries using the same equipment as them".

346. For the respondent, Mr Webster submitted (at paragraph 21 of his submissions) that the PCP 1 was more accurately put as being a requirement "to carry out the ordinary duties of a medical secretary in Histology with the equipment provided". He

made the point that in the material period for the purposes of the claim the claimant in fact undertook a narrower range of duties than would be expected of a fully trained medical secretary (and which were actually carried out by her more experienced colleagues). Specifically, the claimant was only required to type up notes from hard copy documents during the material period. We did find that (as with other new medical secretaries) the claimant's duties in the initial period were more limited than they would have been when she was fully trained. We do not understand the respondent to be arguing that it did not apply a PCP of requiring the claimant to carry out the ordinary duties of a Medical Secretary of equivalent experience and training to that which she had. The claimant was, for example, required to carry out the same duties as Ms Lakha was during her initial period of employment.

347. We find that the respondent applied PCP 1. We prefer Mr Webster's formulation of that PCP. We find it more accurately reflects the requirement applied by the respondent.

Did the respondent apply PCP2

348. PCP2 as set out in the List of Issues was "a requirement for the claimant to travel to the office to work". The respondent accepted that it applied PCP 2. Mr Webster submitted that the correct formulation of that PCP was "a requirement to work from the office". We do not see that that is a different in substance from PCP2 in the list of issues.

Did the PCPs place the claimant under a substantial disadvantage and, if so, did the respondent know (or could reasonably have been expected to know) about that disadvantage (issues 8 and 13).

In relation to PCP1?

349. The respondent accepted that PCP1 placed the claimant under the substantial disadvantage at 8.1, i.e. the claimant's inability to read some documents and the difficulty she had in reading other documents, which process would take substantial additional time. It also accepted it had knowledge of that substantial disadvantage.

In relation to PCP2?

350. The claimant relied on 2 substantial disadvantages. The first (8.2.1) was that travelling by car caused the claimant to become disorientated because due to her visual impairment she could not see things around her as she travelled as things moved past her too quickly causing excessive anxiety.

351. Mr Flood submitted that the claimant gave evidence about this issue. However, we find that evidence was very limited. The claimant did not deal with this issue in her witness statement. In cross-examination evidence she asserted that it was a fact that travelling by car caused her to become disorientated and that travel was difficult for her. Other than that, we heard no evidence to support the specific substantial disadvantage relied on. We accept Mr Webster's submission that there was no medical evidence provided to support the asserted disorientation and associated anxiety. In fact, the claimant was able to travel to the office by car (getting a lift from

Mr Flynn) and did so without complaint. The claimant requested to work 3 days at home and 1 in the office and had not suggested she could never come into the Office because of difficulties in travelling in a car. The claimant also asked AtW to support her with a taxi allowance to enable her to travel by car to the office if Mr Flynn could not give her a lift. The AtW report makes no mention of disorientation or excessive anxiety, focussing instead on the taxi allowance being a means to provide the claimant with independence to go to and from when needed (p.1062).

352. We accept Mr Webster's submission that in cross examination, the claimant accepted that she had never told the respondent that travelling by car caused her excessive anxiety as a result of becoming disorientated. The reason put forward in the AtW report for giving a taxi allowance (limiting dependence on others) was also put forward by the claimant when discussing working from home on 12 January 2023 (along with the need to alleviate the effect of bullying on her).

353. The claimant has not provided sufficient evidence to satisfy us that substantial disadvantage 8.2.1. is made out. Even if it were, we accept Mr Webster's further submission (page 31 sub para 2 of his submissions) that on the claimant's own evidence the respondent did not have actual or constructive knowledge of that substantial disadvantage.

354. The second substantial disadvantage relied on (8.2.2) was that travelling by public transport caused the claimant discomfort and anxiety due to a general lack of awareness, empathy and consideration towards the visually impaired and over crowding on public transport which caused the claimant difficulties as people would often stand on or collide with the claimant's white cane.

355. There was some evidence to support the claimant's case that travelling on public transport would have placed her under a substantial disadvantage. The AtW report recorded that the claimant's visual impairment had progressed to the point where she was unable to correctly identify whether she was accessing the correct method of public transport. That was one of the reasons for granting the taxi allowance. However, we accept Mr Webster's submission that the claimant was never in fact placed under this substantial disadvantage because she never did (and was never expected to) travel to work by public transport. The AtW taxi allowance applied to the 1 day the claimant was required to attend the Office and when there was discussion of the claimant coming into work on additional days the respondent confirmed (at the 24 May 2023 LTSR meeting) that AtW would extend the taxi allowance to cover those additional days.

356. We find the claimant was not placed under substantial disadvantage 8.2.2. Mr Webster submitted that even she were, the respondent had no knowledge of whether the use of public transport might cause the claimant anxiety or discomfort. Given the respondent had the AtW report, we do not accept that submission. That report spelt out the disadvantage to the claimant of using public transport. Had we found that the claimant was placed under substantial disadvantage 8.2.2 we would have found the claimant had the required knowledge of that.

357. For the reasons given above, the claimant has not satisfied us that PCP2 did place her under either of the substantial disadvantages put forward at 8.2.1 and 8.2.2.

In those circumstances, the duty to make reasonable adjustments under the first requirement did not arise in relation to PCP2.

Substantial disadvantage in relation to the third requirement (s.20(5))(Issue 7.3)?

358. Mr Flood submitted that the third requirement arose in relation to the equipment recommended by AtW in relation to the relevant matter of the claimant's vision. We understand that reference to "equipment" to exclude from the scope of the auxiliary aid claim the taxi allowance (10.9), Coping Strategy Training (10.12), Awareness Training (10.13), Work Station/Desk Assessment (10.14), working from home (10.17) and the payment of sick pay (10.18). For the avoidance of doubt, we find that none of those would amount to "auxiliary aids" for the purposes of the third requirement. They do not seem to us to fall within the definition of auxiliary aids as defined by s.20(11) and explained at para 6.13 of the EHRC Code.

359. We have accepted in relation to PCP1 that the claimant was put to a substantial disadvantage in that the claimant's inability to read some documents and the difficulty she had in reading other documents, which process would take substantial additional time because of her visual impairment. We accept Mr Webster's submission that the question of whether, but for the provision of the auxiliary aid, that substantial disadvantage arose is one best considered in relation to each auxiliary aid in turn.

Were the adjustments relied on by the Claimant reasonable in all of the circumstances (Issue 11)?

360. We deal with this issue in relation to each proposed adjustment and auxiliary aid below. In his written submissions, Mr Flood made a general point about this issue. He contended that Mr McDonald's Formal ER Appeal outcome letter dated 30 August 2023 and the respondent's agreement in the Action Plan (p.1179) to provide everything on the AtW list amounted to express acceptance that the adjustments on that list were reasonable. By denying the adjustments were reasonable, he submitted, they were going against their own appeal panel outcome.

361. For the respondent, Mr Webster submitted that although Mr McDonald's letter referred to "not all adjustments currently being in place" he did not identify which were not. He pointed out that Mr McDonald's unchallenged evidence was that he was not suggesting in his letter that adjustments had not been put in place but that the panel "could not determine this from the documents". (That distinction is not at all clear from the wording of his letter). His evidence was also that having reviewed the action plan after the appeal, he felt a lot of the adjustments required by the claimant were in place and that those that were not in place could not be done until she returned to work.

362. Mr Webster also submitted that the fact that the respondent did ultimately order everything on the AtW list did not mean that, for example, Mr Rogers and Mr Squires were wrong about whether the items on that list were required as reasonable adjustments.

363. We remind ourselves that whether or not an adjustment is reasonable is an objective question for us to determine. The words and action of the parties can be relevant in deciding that issue, e.g. a decision to order a piece of equipment may

indicate that the costs of doing so is not a barrier to making that adjustment/acquiring the auxiliary aid.

364. In this case, we do not find the wording of Mr McDonald's appeal outcome letter specific enough to amount to an "express acceptance" by the respondent that the adjustments sought in section 10 were reasonable. That seems to us to hang too much on a loosely worded letter seemingly written before Mr McDonald and/or the panel had undertaken a full review of whether in fact there were any outstanding adjustments. The word "reasonable" is not used in the letter. It is also not clear to which "adjustments" it refers.

365. When it comes to the decision ultimately to agree to order everything recommended by AtW, we prefer Mr Webster's submissions. There was no suggestion in the appeal outcome letter that that decision was because the respondent had changed its position and now accepted, e.g. that Mr Rogers and Mr Squires were wrong that Dolphin and Dragon were not required. The notes of the meeting (pp.1187-1888) suggest the contrary. They record the appeal panel being told that the view remained that neither Dolphin nor Dragon were required. There is no suggestion from the notes that the panel decided that was wrong. Given that, on balance it seems to us that the respondent's decision to order everything from the AtW was a decision based in expediency rather than on a decision that the recommendations it set out amounted to reasonable adjustments for the purposes of Equality Act 2010.

366. We do not accept the submission that the respondent had effectively conceded that the AtW recommendations were reasonable adjustments. That means we need to decide that question in relation to each adjustment/auxiliary aid in turn.

367. At para 10.1 of his written submissions Mr Flood made a further submission which applies to all the adjustments, so it is convenient to deal with it here. He said there was an unreasonable delay between Mr Rogers's receipt of the AtW report on 8 November 2022 and consideration of the recommendations in it on 19 December 2022. Mr Webster submitted that delay was not unreasonable. The respondent was sticking to what it had agreed with the claimant at the meeting on 31 October 2022, i.e. to discuss the AtW Report at the next meeting. We prefer Mr Webster's submissions. We find it entirely reasonable for the respondent to discuss the AtW Report with the claimant before deciding whether to implement its recommendations. The claimant herself had agreed to that as the way forward. She had raised concerns about the accuracy of the report. Mr Rogers also had concerns about AtW's understanding of the claimant's duties. He and Mr Squires had suggestions about other assistive technology which the respondent already had (e.g. Microsoft Software or WORD functionality) which could address some of the barriers highlighted in the AtW Report. Simply buying everything off the AtW list without discussion would have led to the respondent potentially spending on unnecessary equipment (such as those recommended because of the CTS which the claimant agreed she did not have) or delay in procuring items for which the respondent might already have suitable alternatives. We do not find that initial delay was unreasonable or find it in itself rendered the respondent in breach of its duty to make reasonable adjustments.

Whether the adjustments relied on by the Claimant were supported by Access to Work and/or Occupational Health (Issue 12)

368. Of the complaints which remained live it was not disputed that the reasonable adjustments at section 10 were recommended by AtW save for the Work Station/Desktop Assessment (10.14) working from home (10.17) and the extension of sick pay (10.18). The DSE assessment was recommended in the September 2022 OH report.

369. At various points in her evidence and during the events giving rise to her claim the claimant's position appeared to be that since AtW were "the experts", a failure to implement their recommendations was of necessity a failure to make reasonable adjustments. We did not understand Mr Flood to put the case on that basis. For the avoidance of doubt, however, we find that while AtW's recommendations are clearly relevant in deciding what adjustments may be reasonable, they are not definitive. As the EHRC Code explains, AtW provides advice (not mandatory requirements). It seems to us that is particularly the case where, as here, there were concerns about the extent to which AtW had understood the scope of the claimant's role. That means a failure to provide the specific equipment recommended by AtW is not necessarily a failure to make a reasonable adjustment. That seems to us consistent not only with the EHRC Code but with what was said in **Linsley** about the requirement being to make a reasonable adjustment, not to make the "best or most reasonable" adjustment.

The specific reasonable adjustments/auxiliary aids contended for (L of I section 10)

10.1 Dolphin Supernova Magnifier and Speech ESD V21;

370. The relevant substantial disadvantage is 8.1, i.e. an inability to read some documents and difficulty in reading other documents.

371. The AtW Report explained that Dolphin provides screen magnification, screen reading and Braille support enabling documents, emails and web pages to be read aloud. Mr Webster submitted that at this point the "documents" the claimant was primarily required to read were hard copy lab reports for typing. However, the claimant would, we find, also have to read documents on screen including those reports she had typed up. The substantial disadvantage would apply to those "on-screen" documents so we accept that a means of magnifying screen content or screen reading would be a reasonable step.

372. It was not disputed that Dolphin was not acquired until January 2024. The respondent's case was that providing it was not a reasonable step because equivalent features could already be accessed through Windows and Microsoft software already installed on the claimant's laptop. Mr Rogers provided details of those alternatives in his "Accessibility Document" (pp.279-286). We find that those suggested alternatives included software and features to enable screen magnification and screen reading. There was no evidence about whether those provided braille support provided by Dolphin but it was not suggested that was a feature which the claimant required to avoid the relevant substantial disadvantage.

373. The accuracy of that Accessibility Document was not challenged by the claimant. She did not suggest that the alternatives in it did not avoid the substantial disadvantage or address the barrier identified by AtW equally as well as Dolphin. In any event, the respondent's position throughout was that if the software Mr Rogers had suggested did not work they would revisit the software suggested in the AtW Report.

374. On 7 February 2023 the claimant confirmed she had looked at the Accessibility Document Mr Rogers had sent her but needed to go over it again. On 23 February 2023 the claimant confirmed she had tried the Windows assistive software but could not get it to work with the Telepath software. Mr Rogers agreed to provide a software patch to assist with that. The claimant did not report back after that that the assistive software was not working for her.

375. As was said in **Linsley**, for any disadvantage there may be a number of adjustments made and employers are not required to select the best or most reasonable adjustment so long as the adjustment selected is reasonable. We find that selecting the software and features in the Accessibility Document as alternatives to Dolphin was a reasonable step, particularly given the proviso that Dolphin would be purchased if that did not work.

376. Mr Flood submitted there had been unreasonable delay. Although that submission was made primarily in relation to not providing Dolphin until January 2024, he also referred to the delay in Mr Rogers providing the Accessibility Document. That was promised at the 19 December 2022 meeting but not provided until 17 January 2023. We have considered whether that delay renders the step taken unreasonable. Taking into account absences due to the Christmas and New Year break we do not find that delay was unreasonable.

377. Mr Flood also highlighted the inconsistency in Mr Rogers's decision not to order Dolphin or Dragon despite it having ultimately been agreed at the 19 December 2022 meeting that everything recommended by AtW (other than those items related to CTS) would be ordered. Mr Webster submitted that the test we needed to apply was not whether it was a "misstep" to indicate that something would be purchased only for it not to be but whether objectively the respondent took such steps as it was reasonable to take.

378. We accept that submission. We fully accept it would be frustrating and confusing for the claimant to be told in one meeting that something would be done only for the respondent to change its mind by the next meeting. However, we do not think that "misstep" is sufficient to render an otherwise reasonable step unreasonable.

379. The respondent did not breach the first requirement by not providing the claimant with Dolphin. It took other reasonable steps to avoid the disadvantage Dolphin was intended to address.

380. When it comes to the third requirement, we do not accept that but for provision of Dolphin the claimant was put at the substantial disadvantage at 8.1. That is because that disadvantage was avoided by the provision of the alternative assistive software and features.

10.2 OrCam My Eye Pro 2:

381. The relevant substantial disadvantage is 8.1.

382. The AtW Report explained that OrCam is a wearable assistive device mounted on the wearer's eyeglasses which helped "read" hard copy documents using text-to-speech functioning.

383. There is no dispute that the OrCam was acquired and provided to the claimant.

384. Mr Flood submitted that there was an unreasonable delay in doing so. We disagree. It was requisitioned in January 2023 and delivered in early February 2023. At the meeting on 23 February 2023 Mr Rogers confirmed the OrCam had been received. The claimant was at that point on sick leave but agreed her contact details could be shared so the supplier could arrange a training session at home direct with her. When the trainer contacted her in March to suggest training dates in March, it was the claimant's position that the training would have to be after 3 April because she was on leave until then. We found she then put the ball back in the respondent's court but without really telling them that she had done so. Miss Henderson arranged for the OrCam to be delivered to the claimant at home so she could undertake the training. In light of those findings we accept Mr Webster's submission that there was no unreasonable delay on the respondent's part in providing the OrCam or setting up training. The primary reason for delay from March to April was the claimant's being on leave. She was obviously entitled not to undertake the training while on leave but that delay cannot be attributed to the respondent.

385. The respondent did not breach the first requirement in relation to the OrCam. It took reasonable steps to avoid the substantial disadvantage at 8.1 by providing the OrCam without unreasonable delay.

386. For the same reasons we find that the respondent complied with the third requirement by taking reasonable steps to provide this relevant auxiliary aid.

10.3 Dragon Professional Individual v15:

387. The relevant substantial disadvantage relied on was 8.1. i.e. an inability to read some documents and difficulty in reading other documents.

388. The AtW Report explained that Dragon is speech recognition software which "will provide the freedom to write and control the computer with voice commands" and enable the production of professional, correctly spelt documents.

389. It was not disputed that Dragon was not acquired until January 2024. Mr Flood repeated his submissions in relation to Dolphin.

390. In summary, Mr Webster's submissions were three-fold. First, the claimant's duties did not include dictating documents so it was not clear why Dragon was required, particularly given she was a touch-typist. Second, dictation software would not address the relevant substantial disadvantage, which related to "reading" documents. Third, in any event, equivalent features could already be accessed through alternatives in Mr Rogers's "Accessibility Document".

391. We accept those submissions. Our primary finding is that the provision of Dragon would not address the substantial disadvantage relied on. It is not clear to us how dictation software would assist in reading documents. On that basis, we do not find that providing Dragon was a reasonable step for the purposes of the first requirement.

392. In case we are wrong about that, we also find that the respondent did take reasonable steps to avoid the disadvantage through the alternative software and features set out in Mr Rogers's Accessibility Document, specifically the dictation feature in Microsoft Word. We find that selecting the software and features in the Accessibility Document as alternatives to Dragon was a reasonable step, particularly given the proviso that Dragon would be purchased if that did not work. The claimant never indicated that the alternative did not work to alleviate the disadvantage.

393. Our conclusions on Mr Flood's submissions on delay and the "misstep" after the 19 December 2022 meeting in relation to Dolphin also apply to Dragon.

394. We find the respondent did not breach the first requirement by not providing the claimant with Dragon. It would not have avoided the relevant substantial disadvantage. If we are wrong about that and provision of dictation features would have avoided that disadvantage we find the respondent took other reasonable steps to avoid the disadvantage Dragon was intended to address by the provision of the alternative assistive software and features.

395. When it comes to the third requirement, we do not accept that but for provision of Dragon the claimant was put at the substantial disadvantage at 8.1. We do not find that Dragon would have assisted the claimant with reading documents. If we are wrong about that we would have found no breach of the third requirement because any such disadvantage was avoided by the provision of the alternative assistive software and features.

10.4 USB Headset (to be able to use dragon software);

396. The relevant substantial disadvantage relied on was 8.1.

397. It was not disputed the claimant had headphones which she used at work.

398. The AtW Report explained that the USB headset was required because the claimant would need a microphone to use Dragon. Mr Flood submitted that the recommendation was specifically for "noise cancelling" headphones but we find the report does not refer to that feature of the headphones. It is clear to us that AtW's recommendation of an USB headset with a microphone was inextricably linked with the recommendation to provide Dragon. We have found that Dragon would not avoid the substantial disadvantage relied on. The same applies to this proposed reasonable step.

399. We find the respondent did not breach the first requirement by not providing the claimant with an USB headset with a microphone. It would not have avoided the relevant substantial disadvantage.

400. When it comes to the third requirement, we do not accept that but for provision of a headset the claimant was put at the substantial disadvantage at 8.1.

10.5 2 x 3 hours of technical training for Dragon (face to face);

401. We have found that providing Dragon would not have been a reasonable step. In those circumstances, provision of training on Dragon would also not be a reasonable step.

402. We do not understand the claimant to be suggesting this training was an auxiliary aid. If she was, we would have found it did not amount to an auxiliary aid as defined in the Equality Act 2010 and the complaint under s.20(5) relating to it failed for that reason.

10.9 Taxi allowance;

403. We accept Mr Webster's submission that the complaint about this was not clear. As Mr Flood acknowledged in his submissions, the taxi allowance was provided by AtW. It was initially for 1 day a week but AtW subsequently confirmed that if required it would cover additional days.

404. Substantial disadvantage 8.1 does not appear relevant and we found substantial disadvantage 8.2.1 and 8.2.2 were not made out. For completeness, if the first and/or third requirement applied, we find the respondent took this reasonable step/provided this auxiliary service.

10.12 Coping strategy training sessions;

405. Although Mr Flood's submissions did not make that clear, we understand the substantial disadvantage relied on to be 8.1.

406. The AtW Report related this recommendation to the barrier of "Awareness of Issues and [the claimant's] Mental Health".

407. It was not in dispute that this training was not provided by the time the claimant's issued her claim. The claimant's first sessions were in 2024.

408. Mr Webster submitted that this training would not have addressed the substantial disadvantages relied on at 8.1 and 8.2.1 and 8.2.2. We have found 8.2.1 and 8.2.2 were not made out. However, we do not accept Mr Webster's submission when it comes to 8.1 Although primarily concerned with the claimant's wellbeing and coping strategies, the AtW report said the recommended training would also cover "techniques" such as "proofreading techniques" and "concentration". We find that would have the potential to assist the claimant with difficulties in reading documents even if that were not the primary focus of the training.

409. Mr Flood accepted in his submissions that there was never a refusal to provide the training. However, he submitted that the failure to provide it within "the timeframe of this case" meant there was a failure to make an adjustment.

410. We agree that the central question in relation to this complaint for the purposes of the first requirement is whether the delay in providing the training was reasonable.

411. We found that quotes for the training were obtained by 10 January 2023 but there was a decision to delay booking the courses until they had a date for the claimant's return to work. When the training was discussed at the resolution request

meeting on 23 February 2023 the claimant said she did not need it at that point. It was discussed with the claimant by Miss Henderson at the LTSR meetings in May and July 2023. Mrs Waddicor was in touch with providers about lead-in times. At the 20 July 2023 meeting the claimant was asked to consider whether she would be willing to undertake the training before she returned to work. The claimant had not confirmed her view on this when the appeal meeting took place on 29 August 2023. We accept Mr Webster's submission that the position was that the claimant was unwilling to undertake training while she was on sick leave because that meant she would not be paid for undertaking it. That position changed when Mr McDonald's appeal outcome letter confirmed that training accessed prior to her return to work would be paid.

412. We find the position was that until July 2023 the position of the claimant and the respondent was that the Coping Strategy Training would take place when the claimant returned to work. We find the claimant did not view the training as one of her central concerns. She did not raise it, for example, in her appeal against the ER Formal Request Outcome. Although we have found it had the potential to help avoid the substantial disadvantage, we find that any such potential was much more limited than the steps addressing that issue much more directly, e.g. the OrCam and the software providing magnification and screen reading in Mr Rogers's Accessibility Document. We find it was reasonable for the respondent to prioritise those steps. We also find it was reasonable to take the view that the training was best provided when the claimant had returned to work, particularly when that was also the claimant's position. In those circumstances, we do not find the delay in the training taking place amounted to a failure to make reasonable adjustments.

413. We do not understand the claimant to be suggesting this training was an auxiliary aid. If she was, we would have found it did not amount to an auxiliary aid as defined in the Equality Act 2010 and the complaint under s.20(5) relating to it failed for that reason.

10.13 Visual impairment awareness training:

414. Although Mr Flood's submissions did not make that clear, we understand the substantial disadvantage relied on to be 8.1.

415. The AtW Report related this recommendation to the barrier of "Awareness of Issues and [the claimant's] Mental Health". It explained the aim as being to boost workplace awareness in the claimant's condition and increase attendees' confidence in the support of people with disability. The desired outcome was minimising the stressors on the claimant and promoting the creation of a supportive and positive working atmosphere.

416. It was not in dispute that this training was not provided by the time the claimant issued her claim.

417. Mr Flood's submissions did not explain how this step would address substantial disadvantage 8.1. Mr Webster submitted that it would not. We accept that submission. The complaint under the first requirement fails for that reason.

418. We do not understand the claimant to be suggesting this training was an auxiliary aid. If she was, we would have found it did not amount to an auxiliary aid as

defined in the Equality Act 2010 and the complaint under s.20(5) relating to it failed for that reason.

10.14 Work station/desk assessment;

419. Although Mr Flood's submissions did not make that clear, we understand the substantial disadvantage relied on to be 8.1.

420. This was not something recommended by AtW. Instead, it was recommended by the September 2022 OH Report.

421. Mr Webster submitted that (following **Tarbuck**) a failure to carry out an assessment cannot amount to a failure to make a reasonable adjustment. In his submissions Mr Flood sought to distinguish **Tarbuck**. He submitted that this was "not a failure to make an assessment when it was not known what the assessment would have said but a failure to obtain the September 2022 report in August and act on it quickly before the claimant returned to work". We do not see how that gets around the **Tarbuck** point. We find this complaint fails because it is a complaint about a failure to carry out an assessment which cannot be a reasonable adjustment.

10.17 Working from home;

422. For the reasons given above, the claimant did not satisfy us that PCP2 did place her under either of the substantial disadvantages put forward at 8.2.1 and 8.2.2. In those circumstances, the duty to make reasonable adjustments under the first requirement did not arise in relation to PCP2. The complaint relating to working from home fails on that basis.

423. We do not understand the claimant to be suggesting working from home was an auxiliary aid. If she was, we would have found it did not amount to an auxiliary aid as defined in the Equality Act 2010 and the complaint under s.20(5) relating to it failed for that reason.

424. For completeness, we have gone on to consider the position if we are wrong and the duty to make reasonable adjustments arose in relation to PCP2.

425. We do not accept the claimant's submission that there was a "tacit acceptance" by AtW that there was a requirement for the claimant to work from home as a reasonable adjustment because it only provided a taxi allowance for 1 day a week. The AtW report never recommended working from home. The provision of the taxi allowance was a recognition of a different issue, namely that the claimant could no longer drive. When AtW was asked whether it would pay the allowance for more days if the claimant were required to attend the Office more than 1 day a week, it confirmed it would. That seems to us to contradict the suggestion that AtW thought the claimant should work from home as a reasonable adjustment.

426. In any event, as Mr Webster submitted, the claimant was allowed to work from home. She did so during her initial period of working and the claimant's subsequent request to work from home three days a week and one day from the office was granted. The only outstanding point from the respondent's side was a requirement that the claimant be sufficiently trained before she started working from home. That seems to us to be eminently reasonable.

427. For the claimant, Mr Flood submitted that the refusal to treat the request as a reasonable adjustment and implement it quickly, the imposition of contingencies and then the delay in recognising it as a reasonable adjustment amounted to a failure to provide it.

428. We accept Mr Webster's submission that the claimant appeared to object to the arrangement allowing her to predominantly work from home being referred to as a flexible working request rather than as a reasonable adjustment.

429. The claimant did not explain satisfactorily to us what difference that made in practice. There was a suggestion that a reasonable adjustment would be a more permanent change than a flexible working request. We find that in determining whether a step is reasonable, the focus is on the substance not the label put on it. Had the claimant established the substantial disadvantage at 8.2.1 and/or 8.2.2 we would have found the respondent did take reasonable steps to avoid that disadvantage because it did agree to her request to work from home 3 days a week and in the Office 1 day a week (subject to limited exceptions where the needs of the respondent's service required the claimant to attend on Office on additional days).

430. We find the contingencies attached were reasonable. It was reasonable for the respondent to build in flexibility so that the claimant would attend the Office in the event of on site training and where the needs of the service demanded because of others' absence. That seems to us consistent with the need emphasised in **Weaver** to take into account all the circumstances, including matters from the employer's point of view. We also find it was reasonable for the respondent to require the claimant to undertake training to enable her to work from home.

431. When it comes to any delay in enabling the claimant to work from home, we accept Mr Webster's submission that the respondent repeatedly confirmed that the claimant could work from home and in fact allowed her to work partially from home from the start of her employment. The claimant never requested that she work entirely from home. The intention was that the claimant would be trained. However, she never returned to the Office after October 27th so it was not possible to train her. As we have made clear above, we do not accept that was because the respondent had failed to make reasonable adjustments to enable her to do so.

10.18 Payment of sick pay in circumstances where the Claimant says that reasonable adjustments had not been made to enable her to return to work. Also put as a breach of s.15 (List of Issues 4.14)

432. Mr Flood's submissions did not explain how this reasonable adjustment would avoid the substantial disadvantages at 8.1, 8.2.1 or 8.2.2. Mr Webster submitted that it did not. We agree. This complaint fails for that reason.

433. In any event, as we explain in relation to 4.14 below, we find that the reasonable adjustments which could have been made before the claimant returned to work at the Office had been made at the point Ms Quinn's decision was made. Had we been required to decide the issue, we would have found that in those circumstances, extending the claimant's sick pay was not a reasonable step.

The complaints of Discrimination arising from disability (s.15 Equality Act 2010) and Disability-related harassment (s.26)

4.1 and 15.1: On 23 September 2022, the Claimant was supposed to work from home but had to come into the office as no work was provided to the Claimant to work from home. The Respondent's Ms Hurst approached the Claimant and spoke to her in an unpleasant manner, implying that the Claimant was working too slowly. The Respondent's Ms Lakha, Ms C Hurst, Ms Singleton, Ms Anderson and Ms R Hurst then bombarded the Claimant with questions regarding why she had been permitted to work from home and begrudging that she was able to do so;

The incident involving Rachael Hurst – s.15 complaint (4.1)

434. 4.1 and 15.1 incorporates 2 incidents. The first is that involving Rachael Hurst. We found that she did make the alleged comments but not in an “unpleasant manner” and not in front of the other secretaries.

435. Dealing first with the s.15 complaint (4.1) in relation to that first incident. We do find the phrase “This all” implicitly criticised the claimant, rather than being a “neutral” enquiry as to her progress. Taken with the second comment made by Rachael Hurst, we find that it amounted to unfavourable treatment.

436. Mr Webster submitted that the claimant had not established a prima facie case that the unfavourable treatment was a consequence of something arising from the claimant’s disability. We disagree. We find that the claimant’s slowness in carrying out the work allocated to her by Rachael Hurst was an effective cause of Ms Hurst’s comments. That’s reflected in the remarks themselves, which are about the claimant needing to work more quickly. We find the “something arising” at 5.1 of the List of Issues (the claimant’s inability to work with the same speed and accuracy as other medical secretaries) was an effective cause of the unfavourable treatment. The respondent did not dispute that was something arising from the claimant ‘s disability.

437. That means that the complaint about the first incident in 4.1 will succeed unless the respondent can satisfy us that it was objectively justified (Issue 6). We accept that the aim of fairly and effectively managing the claimant’s capability is a legitimate one. The claimant did not dispute that was the case in relation to 4.1 to 4.10.

438. However, we do not accept that the remarks made by Rachael Hurst were a proportionate means of achieving that aim. We accept that the respondent needed reports to be completed efficiently. We accept that the claimant was not at that stage working to the speed that would be expected of an experienced secretary. It was a pressurised environment and we accept that it was appropriate for Ms Hurst to monitor the extent of work the claimant had done. Had she done so by asking a neutral question about progress in a way which recognised the claimant was a new starter and a disabled person we would have found her actions proportionate. The respondent has not satisfied us that the remarks she actually made, which were critical of the claimant without seeming to acknowledge the learning curve she was on, were proportionate in the circumstances. The justification defence fails and the claimant’s complaint that the Rachael Hurst incident was a breach of s.15 succeeds.

The incident involving Rachael Hurst – harassment complaint (15.1)

439. We find that Rachael Hurst’s remarks did amount to “unwanted conduct”.

440. We also find the conduct was related to the claimant's disability (issue 17). We accept that the remarks made did not explicitly reference the claimant's disability. However, we have found that something arising from that disability was an effective cause of the remarks, i.e. the speed at which the claimant was working. Given the broad nature of "related to" in s.26 of the Equality Act 2010 we find that is sufficient to make the conduct disability-related.

441. We do not find that Rachael Hurst had a harassing purpose in making the remarks. We were not satisfied she made the remarks in an "unpleasant manner" as the claimant alleged. Although the claimant asserted she was "singled out" in front of others we found as a fact that that was not the case. She has not proven facts from which we could conclude that that Ms Hurst's conduct had a harassing purpose. We find our conclusion on that is supported by the claimant's own email of 6 October to Mr Squires (p.176-177) in which she said that "the colleague in questions may not be aware that this is causing concern".

442. The next issue is whether (regardless of its purpose) Ms Hurst's conduct had a harassing effect. We accept that the conduct upset the claimant to the extent that she complained to Mr Rogers about it and referred to it as "bullying". We found that the claimant did not react well to criticism. We can understand that she may have felt it unfair to be criticised for the speed of her work given the impact of her disability and the absence at that point of assistive equipment. However, a harassing effect requires "violation of dignity" or the creation of "a harassing environment" as defined by s.26(4)(b)(ii) of the Equality Act 2010. The case-law stresses the need for conduct to have a "serious" or "marked" effect. "Offending" or "hurting" someone's dignity is not sufficient. Ms Hurst's conduct consisted of a one-off comment. There was no complaint in this claim about any preceding harassing conduct by her or her colleagues. Although somewhat sharply worded, it was not intended to harass the claimant. Even taking into account the claimant's circumstances when the conduct occurred, we do not find that it was reasonable for it to have had a harassing effect meeting the threshold required by s.26. We also find that this was a one-off incident which was not by itself sufficient to create the state of affairs or "environment" required by s.26(1)(b)(ii).

443. We found that the remarks were not made in front of anyone else. For completeness, had we accepted the claimant's case that they were made in front of her colleagues our decision would have been the same. While accepting that being criticised (even briefly) in front of others would add to the upset felt by the claimant, we would not have found it sufficient to meet the threshold required for a harassing effect.

444. The harassment complaint based on Rachael's Hurst's conduct in 15.1 fails.

The second incident in 4.1 and 15.1 - "bombarding" questions about working from home

445. We found this incident did not happen as alleged so these complaints both fail.

4.2: On 26 September 2022, the Claimant met with her manager Mr Rogers to inform him that she was subject to bullying, harassment and negative treatment but he failed to take prompt action;

446. Mr Flood accepted in submissions that Mr Rogers did take prompt action. We find he did so and this complaint fails.

447. As Mr Webster submitted, the complaint as pleaded did not rely on Mr Rogers failing to report back to the claimant about the action he had taken. Had it done so, we would not have found that his failure was in consequence of something arising from the claimant's disability. We have found that the remarks the claimant complained about to Mr Rogers were because of "something arising" from her disability. However, it seems to us to add too many links to the chain (**Pnaiser**) to find say that because of that any of the somethings arising at 5.1-5.3 of the List of Issues were an effective cause of Mr Rogers not reporting back.

4.3 and 15.2: On 27 September 2022, the Respondent' staff including Ms Waring spoke critically and in an unpleasant manner about the Claimant's holiday request;

The s.15 complaint (Issue 4.3)

448. We found the alleged conduct did happen. We also find it was unfavourable treatment. We accept that the claimant was not intended to overhear what was said about her. The respondent accepted (para 42 of its submissions) that an event can amount to unwanted conduct for the purposes of harassment even if accidentally overheard. It seems to us the same is true of "unfavourable treatment" for the purposes of s.15.

449. For the respondent, Mr Webster submitted that the unfavourable treatment was not because of any of the "somethings arising" at 5.1-5.3 of the List of Issues. He pointed out that when he put to the claimant in cross examination that this incident had nothing to do with her visual impairment, she had accepted that it was "possibly not". She had instead characterised it as part of the "bullying" she experienced.

450. Mr Flood in his submissions accepted that this incident was one of a series of the "bullying and harassment" incidents which were not, on their face, related to the claimant's disability. However, he submitted that there was evidence that matters arising from the claimant's disability were a source of friction and frustration between her and her colleagues. At p.11 of his submissions, he set out 4 examples he relied on. The first 2 were from the interviews with Ms Waring and Rachael Hurst as part of the Formal Investigation. We find the extracts referred to focus on the claimant's frustrations with the situation when she started work and the difficulty that caused all concerned. They do not, on our reading, refer to frustration on the claimant's colleagues' part because of the speed at which she was working or her need for reasonable adjustments or assistance arising from her disability. We find that on a fair reading, the evidence in those interviews point to the source of friction being the claimant's attitude which her colleagues described as negative, complaining about everything, demanding and abrupt. The third example (para 7.1 of Ms Rose's report at p.808) refers to the claimant's negative perception of the first day but found "no evidence that her colleagues did not welcome [the claimant] appropriately". The fourth example was the claimant's email to Mr Squires on 6 October. That referred to the claimant "feeling that" her colleagues expected her to work at the same pace but also confirms that most colleagues were helpful.

451. We do not find the examples establish what Mr Flood submitted. We do accept that Rachael Hurst's comments on 23 September did point to her being frustrated with the claimant's pace of work on that day. However, the evidence was that when it came to the speed of the claimant's work that was a one-off incident which was not repeated. Ms Hurst in her conversation with Mr Rogers accepted it should not have happened. The claimant has not established that there was ongoing frustration with the claimant because of the pace of her work, the claimant's inability to work without assistance or her need for reasonable adjustments.

452. We are very conscious that someone can be labelled as "demanding" by colleagues because they are insisting on reasonable adjustments being made. We are satisfied that this is not the case here. We find that the claimant was viewed as demanding in the sense that she had fixed ideas of how things should properly be done, expected things done when she wanted it done and was willing to complain if they were not. We have also found that she did not react well to her work being criticised or to behaviour which she viewed as unacceptable. Specifically, when it comes to this incident, we find the claimant's approach to booking her holidays did not endear her to the rest of the team. We find that they viewed her as prioritising her needs before those of the team. We also find there was an element of resentment at the claimant doing things her own way rather than fitting in with the ways a well-established team had "always done it".

453. While we accept Mr Webster's submission that employees do "sound off" about colleagues, we are not condoning the claimant's colleagues for talking about her behind her back in the way that they did. The question for us is whether any of the "somethings arising" at 5.1-5.3 were an effective cause of their conduct. For the reasons given above, we are not satisfied that any of them were.

454. This complaint fails for that reason. Had we been required to decide the issue, we would not have found the objective justification defence made out. We cannot see how talking about someone behind their back can be a proportionate way of effectively managing the claimant's capability and absence (issue 6).

The harassment complaint (15.2)

455. The respondent accepted that accidentally overhearing a conversation could amount to harassment. We find that the claimant's colleagues talking about her annual leave in a critical way was unwanted conduct once the claimant overheard it.

456. The claimant has not satisfied us that there is a prima facie case that the unwanted conduct was related to disability. There is nothing in the conduct itself which explicitly links it to the claimant's disability. We have explained above why we found that the "somethings arising" at 5.1-5.3 were not an effective cause of the conduct. Mr Flood submitted (para 4.3 of his submissions at p.11) that the other link to disability was that the claimant was having to take a lot of holiday because she had accrued it while off sick because of her disability. He submitted that para 7.4 of Ms Rose's Formal Investigation report supported that submission. However, para 7.4 refers to "how [the claimant] was booking her annual leave" not to the extent of it. The claimant has not satisfied us that there is a prima facie case that the conduct was related to disability. This complaint fails for that reason.

457. For completeness, we do not find the conduct had a harassing purpose. The claimant accidentally overheard what was being said rather than it being addressed to her. It seems clear to us that this incident was an example (like incident 4.9/15.8) of the claimant's colleagues talking about her behind her back. In that incident they stopped criticising her when she came back into the Office. There was no evidence to suggest that their approach on this occasion would be any different. We find there was no intention that the claimant overhear what was being said about her and there was no harassing purpose.

458. Had we been required to do so, we would have found that the conduct did not have a harassing effect. We accept the claimant was sufficiently upset by the comments to raise them with Mr Rogers. Mr Webster submitted that the fact that the comments were not intended to be overheard should be a factor counting against it being reasonable for them to have a harassing effect. We accept that the comments were not directed at the claimant or intended to be overheard. However, it seems to us that aspect of the conduct cuts both ways. Finding out that colleagues are criticising you behind your back is likely to be upsetting and could change an employee's perception of the environment in which they are working. It would naturally, it seems to us, lead them to wonder what else was being said when their back was turned. It would certainly be upsetting. However, the claimant, as an experienced employee and manager, would be aware that colleagues do "sound off" about each other. She herself referred to her managers in an email to Mr Holt as an "useless shower". On balance, we find that it would not be reasonable for the conduct complained of to have a harassing effect meeting the threshold required by s.26, particularly given the comments were about the claimant's behaviour (i.e. her booking lots of annual leave) rather than comments about her explicitly related to her disability.

4.4 and 15.3: On 04 October 2022, the Respondent's Barbara Waring attempted to embarrass and humiliate the Claimant when the Claimant asked her to read a word in a report. Ms Waring held the report at arm's length and read it aloud in front of other staff if in the office;

The s.15 complaint (4.4)

459. The first issue is whether Ms Waring's conduct amounted to unfavourable treatment. The claimant's case is that it was because Ms Waring deliberately read out the whole of the document in front of the whole office to embarrass and humiliate her.

460. We accept Mr Webster's submission that Ms Waring's actions were what would plausibly be expected of someone asked for help to decipher an illegible word in a handwritten document. That includes reading the document out loud to get the context for the word in question and holding the document at arm's length to try and decipher it. Reading the document aloud also allowed the claimant to check whether the rest of the document she had typed matched Ms Waring's reading. We also accept Mr Webster's submission that it was inevitable that something read aloud would be in "front of the rest of the office" given the size of the Office. We find it far more plausible that Ms Waring was trying to give the claimant the help she had asked for rather than seeking to humiliate or embarrass her. That also seems to us consistent with the evidence that the secretaries would help each other out with difficult words.

461. We accept that by this point the claimant might well be suspicious of her colleagues given the overheard remarks on 27 September. However, there was no evidence that she raised a complaint about this incident at the time. Given she had previously complained to Mr Rogers about other incidents, it seems to us surprising that she did not complain about this incident if she genuinely found it to be unfavourable treatment. However, even if the claimant experienced what happened as humiliating and embarrassing at the time, we do not accept that Ms Waring's behaviour amounted to conduct which a reasonable employee might see as a disadvantage. She was responding to a request for help in an entirely reasonable way.

462. This complaint fails because there was no "unfavourable treatment".

463. Given we found the incident did not happen as alleged by the claimant, it is somewhat artificial to go and consider the other elements of s.15. For completeness, however, had we accepted that Ms Waring had set out to humiliate and embarrass the claimant as she alleged, we would have found that that unfavourable treatment was not because of any of the "somethings arising" at 5.1-5.3 of the List of Issues. It was because Ms Waring and others did not get on with the claimant. We have explained in relation to issue 4.3 why we did not accept Mr Flood's submission that the source of that was itself rooted in something arising in consequence of the claimant's disability.

The harassment complaint (15.3)

464. Based on our findings about this incident above, we find there was no unwanted conduct. The claimant asked Ms Waring for help and she gave it. The complaint fails for that reason.

465. We have gone on to consider the position if we are wrong about that, and the conduct was "unwanted" because the way Ms Waring helped was unwanted, even if reasonable. Based on our findings, we do not accept that Ms Waring had a harassing purpose. We also do not accept that the conduct had a harassing effect. On the evidence we heard we do not accept that the claimant perceived it at the time as having a harassing effect meeting the threshold required for s.26. She did not raise it with Mr Rogers or in her email to Mr Squires. If we are wrong about that, we do not find it was reasonable for Ms Waring's conduct to have that effect. She was responding to a colleague's request for help in a reasonable manner. It was something the secretaries did as a matter of course.

466. We also would have found the conduct was not related to disability. We have explained above why we did not accept that the claimant's disability was the source of the friction with her colleagues. We do not find that the position in relation to this incident is changed by it being about an illegible word in a document. We have found that the secretaries did on occasion have to ask each other to decipher illegible handwriting. The claimant's own evidence in this case is that her issue was with one particular word rather than, e.g. a document being illegible or difficult to read because of her visual impairment. The claimant has not satisfied us that there are facts from which we could conclude that Ms Waring's conduct was related to her disability.

4.5 and 15.4: On 05 October 2022, the Respondent's Rachael Hurst accused the Claimant of making mistakes in her work that the Claimant says she had not made;

The s.15 complaint (4.5)

467. We found that Ms Hurst did point out what she genuinely believed were mistakes in the claimant's work. We did not accept the manner in which she did so was inappropriate. We do not find that a reasonable worker might view a colleague who was supervising their work pointing out what they thought to be a genuine error as a disadvantage. There was no unfavourable treatment so this complaint fails.

468. If we are wrong about that, and Ms Hurst pointing out what she thought were genuine errors in a reasonable way amounted to unfavourable treatment, we would have had to go on to consider whether that treatment was because of something arising in consequence of the claimant's disability. We found that it was standard practice for the more experienced staff to supervise and review new colleagues' work. Even taking into account our findings about 4.1, we find the claimant has not proven facts from which we could conclude that the claimant's work was being checked more regularly or more thoroughly by Ms Hurst because of any of the somethings arising at 5.1-5.3.

469. If we are wrong about that we would have accepted Mr Webster's submission that Ms Hurst's conduct on this occasion was a proportionate way of managing the claimant's capability.

The harassment complaint (15.4)

470. We accept that Ms Hurst's conduct was unwanted. We have found the claimant did not like her work being criticised or corrected. We do not accept that Ms Hurst had a harassing purpose. She was simply carrying out her supervisory role in an appropriate way as she did with other new starters.

471. We do not find the conduct had a harassing effect. We found the claimant did not like her work being criticised. Her reaction to Ms Hurst doing so was to challenge that criticism rather than accepting the guidance given. We accept that, following the incident with Ms Hurst on 23 September and having overheard Ms Waring making comments behind her back on 27 September, the claimant may have been prone to view their conduct towards her in a negative light. However, there was no evidence that she viewed this incident as sufficiently serious to raise it with Mr Rogers at the time nor with anyone else until 4 August 2023. Viewed objectively, we do not find it was reasonable for Ms Hurst's conduct to have a harassing effect.

472. For the reasons already given in relation to 15.2-15.3, had we been required to we would also have found that any conduct was not disability related.

4.6 and 15.5: On 06 October 2022, Ms Hurst criticised the Claimant for missing a line out of a report which the Claimant says she did not do;

473. We found this incident did not happen as alleged. The complaints relating to it fail for that reason.

474. If we are wrong about that and the incident happened our conclusions on the s.15 and harassment complaints would have been the same as those in relation to 4.5 and 15.4.above.

4.7 and 15.6: On 25 October 2022, the Respondent's Ms Musa was curt and rude with the Claimant in front of colleagues. The Claimant asked for assistance with her second computer screen. Ms Musa told the Claimant she was busy despite being at her desk eating porridge.

475. This complaint involves 2 closely related incidents. The first in time is Ms Musa's response to the claimant's request for help. The second is the allegation that Ms Musa was curt and rude with the claimant in front of colleagues.

Ms Musa's initial response - s.15 complaint

476. We found that it would have been evident to the claimant given the time of day and the fact Ms Musa was in her slippers and eating porridge that she was having breakfast before starting work. We find that in those circumstances no reasonable worker would have viewed it as a disadvantage to be told by Ms Musa that she was busy, had a meeting to attend and would sort out her second monitor later (which she did). That is the case even if she did so somewhat curtly, being evidently in the middle of her breakfast. We find there was no unfavourable treatment and the s.15 complaint fails for that reason.

477. If we are wrong about that, we would have found the unfavourable treatment was not because of something arising in consequence of the claimant's disability. Mr Flood submitted that a second monitor was a piece of equipment which the claimant required because of her disability and that, but for that, the conversation and request would not have occurred. We do not accept that submission. The primary reason for that is that neither the AtW report nor the September 2022 OH report suggested a second screen as a reasonable adjustment so the link to the claimant's disability is not made out. The secondary reason is that a "but for" connection is too remote. The question is whether "something arising" was an effective cause of Ms Musa's conduct. The claimant has not satisfied us that there are facts from which we could conclude that any of the matters at 5.1-5.3 were an effective cause. Rather, we find, Ms Musa was irritated by the claimant demanding she sort out her IT issue there and then when she was trying to finish her breakfast and prepare for her meeting.

478. In deciding this issue we also considered that part of the conversation recorded by the claimant (incident 4.9/15.8) which relates to Ms Musa. She is reported as saying that the claimant kept "faffing with the cables" and getting her in to help. We have considered whether that supports a finding that something arising 5.2 ("inability to work without assistance") was an effective cause of Ms Musa's behaviour. We have decided it does not. As we explain above, we were not satisfied on the evidence before us that all difficulties the claimant had in setting up or operating IT equipment arose in consequence of her disability. We accept Mr Webster's submission (p.21 of his submissions at sub para 3) about the need for evidence to justify a finding that the claimant's "faffing with cables" was anything to do with her visual impairment. The claimant has not satisfied us that it was. We accept that non-disabled person might also "faff" about in that way or need help from a colleague who gets on better with IT. We cannot assume that the claimant's difficulties arose in consequence of her disability. The claimant has not satisfied us that the unfavourable treatment was because of any of the "somethings arising" in this case.

Ms Musa's initial response – harassment complaint

479. We accept that Ms Musa's response to the claimant's initial request was unwanted conduct. We do not accept that she had a harassing purpose. There was no evidence to support that. We also don't accept that her conduct had a harassing effect. At most she was curt. We accept the claimant found her response rude. We do not find the claimant found it violated her dignity or created a harassing environment. We find it would not have been reasonable for it to do so. The claimant clearly expected her IT issue to be sorted out straight away. Ms Musa's response was she could not do so immediately but would later (which she did). That does not seem to us to come close to meeting the threshold of conduct having a harassing effect in s.26. That is particularly given that the claimant gave no evidence that Ms Musa was involved in any of the other incidents we have already dealt with.

480. For completeness, the claimant did not prove facts from which we could conclude that any conduct meeting the s.26 definition was disability-related.

"Curt and rude in front of colleagues"

481. We did not accept this element of the allegation happened. The complaint fails for that reason.

4.8 and 15.7: On 25 October 2022, Ms Waring was also rude and impatient with the Claimant regarding IT issues she was having. The Claimant asked Ms Waring for the phone number for IT after Ms Waring told her to ring IT. Ms Waring was very sharp and unpleasant when answering the Claimant.

The s.15 complaint (4.8)

482. We find there was no unfavourable treatment in this case. The claimant asked Ms Waring for IT's number and she gave it to her. Even though we found Ms Waring may have been a little impatient with her we do not accept that a reasonable worker would have viewed that as a disadvantage. Not every incident of shortness from a colleague amounts to unfavourable treatment. This complaint fails for that reason.

483. If we are wrong about that, and Ms Waring's manner was sufficient to amount to unfavourable treatment, we would have found that it did not arise in consequence of any of the something's arising from the claimant's disability at 5.1-5.3. In reaching that conclusion we have taken into account the evidence from the recorded conversation between Ms Waring and Ms Lakha in incident 4.9. That refers to them finding the claimant "annoyable (sic) and always having something to say". We have already explained (in relating to 4.3 and 15.2) that the claimant's colleagues found her demanding for reasons unrelated to her disability. Had we found there was unfavourable treatment this complaint would have failed because it did not arise in consequence of something arising from the claimant's disability.

The harassment complaint (15.7)

484. We accept that Ms Waring's manner in providing the IT number was unwanted in that the claimant found her rude. We do not accept that Ms Waring's conduct had a harassing purpose. The claimant has not proved facts from which we could conclude that was the case.

485. We also don't accept that her conduct had a harassing effect. At most she was curt. We accept the claimant found her response rude. We do not find the claimant found it violated her dignity or created a harassing environment. We find it would not have been reasonable for it to do so. The claimant asked for help and was given it, albeit in a way which she experienced as rude. Even if Ms Waring was somewhat impatient with her that does not seem to us to come close to meeting the threshold of conduct having a harassing effect in s.26, whether taken in isolation or with the other incidents.

486. If we are wrong about that, we have already explained why we found that Ms Waring and other colleagues' conduct towards the claimant was not disability-related. Those reasons apply equally here. We find this conduct was not disability-related.

4.9 and 15.8 On 25 October 2022, the Claimant overheard a conversation between Ms Waring and Ms Lakha where the Claimant was accused of messing with computer wires and looking "gormless":

The s.15 complaint (4.9)

487. As with incident 4.3, we find this "overheard" conversation did amount to unfavourable treatment.

488. We do not find the unfavourable treatment was because of any of the "somethings arising" at 5.1-5.3. This complaint fails for that reason. We accept that, as with incident 4.7/15.6, frustration at the claimant's "faffing about" and inability to sort her issues with her second screen played a part in Ms Waring's frustration with the claimant as reported to Ms Lakha. However, for the reasons we gave in relation 4.7, the claimant has not satisfied us that her "faffing about" was because of "somethings arising" in consequence of her disability. We have considered whether the "gormless" comment points to such a link. We note that what Ms Waring said was that the claimant sat there "looking gormless", i.e. waiting for Ms Waring to sort matters out for her rather than referring to her as "gormless". We find the cause of Ms Waring's frustration was that the claimant expected Ms Waring to do something to sort out her issue rather than doing so herself. As we have said, this was not in relation to something where the claimant has satisfied us she needed assistance because of her visual impairment. Instead, it was another instance of the claimant being seen as demanding of others. We find that is what the reference to the claimant being "annoyable" and always having something to say means in the conversation. We explained in relation to 4.3 why we do not accept that being demanding is the same as "requiring assistance" in something arising 5.2.

The harassment complaint (15.8)

489. The respondent conceded that the "gormless" comment was unwanted conduct. We find that is also true of the reference to the claimant "faffing about" with her computer cables.

490. The claimant has not satisfied us that there is a prima facie case that the unwanted conduct was related to disability. There is nothing in the conduct itself which explicitly links it to the claimant's disability. We accept Mr Webster's submission that that the phrase "looking gormless" could equally be applied to someone who was non-disabled who her colleagues thought had been faffing about with cables and IT

equipment. We have explained above why we found that the “somethings arising” at 5.1-5.3 were not an effective cause of the conduct. This complaint fails because the conduct was not disability-related.

491. We do not find the conduct had a harassing purpose. The claimant was not meant to overhear it. We have also decided it did not have a harassing effect. Our reasons are in essence the same as those for incident 4.3/15.2. We accept the claimant was upset by the comments. The comments were not directed at the claimant nor intended to be overheard. We do think the fact that the claimant had in a sense actively sought them out by (we found) deliberately setting the recording is a relevant circumstance in assessing whether it is reasonable for them to have a harassing effect. We accept that the comments on this occasion were more personal (“looking gormless”) than on 23 September. Even taking that into account however, we find that it would not be reasonable for the conduct complained of to have a harassing effect meeting the threshold required by s.26 given the case-law about what is needed to meet that threshold.

4.10 and 15.9: On or around 06 October 2022, Ms Waring belittled, humiliated and upset the Claimant when she tried to join in a conversation. Ms Waring sat with her arms crossed and stared at the Claimant until she finished speaking;

492. We did not accept the claimant’s evidence that this incident happened on 6 October. She did not in evidence suggest another date when it happened. We find the incident did not happen as alleged and this complaint fails.

493. If we had accepted the claimant’s evidence that the incident happened on another date around 6 October then it amounted to Ms Waring sitting with crossed arms staring at the claimant until she finished speaking. The claimant did not suggest that Ms Waring interrupted her or prevented her from speaking in the conversation. Her case that Ms Waring “belittled, humiliated and upset” the claimant turns on the claimant’s interpretation of Ms Waring’s body language. We have already referred to the claimant’s tendency to interpret her colleagues’ actions negatively. By October that extended to being suspicious when her colleagues were nice to her. In her Formal Investigation interview (p.698) the claimant referred to being uneasy about Ms Waring being “super-nice” to her on 18 October (her next working day after annual leave).

The s.15 complaint (4.10)

494. Had we been required to decide the issue, we would not have accepted that this amounted to unfavourable treatment for the purposes of s.15. We do not find that a reasonable worker would have found the conduct to be a disadvantage. If we are wrong about that, we would have found it was not conduct because of any of the somethings arising at 5.1-5.3. Even if we had accepted the claimant’s case that Ms Waring was deliberately trying to put her off from continuing in the conversation by her body language, we would have found that was because she and the claimant did not get on. We have already explained above why we do not accept that that was because of any of the “somethings arising”. The claimant herself in cross examination characterised this as “bullying” and not anything to do with her visual impairment.

The harassment complaint (15.9)

495. Even if we had accepted the conduct happened and was unwanted, we would have found that the harassment complaint in relation to this allegation failed. The claimant did not prove facts from which we could conclude that Ms Waring had a harassing purpose in the sense required by s.26. We also find the conduct (if it happened as described) did not have a harassing effect. In terms of the claimant's perception of it, she did not feel strongly enough about it to report it either at the time or during the Formal Investigation. We are mindful that there was a context to the incident, with Ms Waring being the person the claimant had heard talking about her behind her back on 27 September. On the other hand, we are mindful of the guidance in the case-law not to "cheapen" the significance of the words in s.26 or encourage a culture of hypersensitivity. We find that it was not reasonable for Ms Waring's conduct to have the harassing effect in s.26 even accepting the claimant felt uncomfortable because of it.

496. We would also, if required, have found that the conduct was not disability-related. The claimant accepted that in cross examination. We have already explained that we do not accept Mr Flood's submission that her disability and matters arising from it were at the root of her not getting on with some of the other medical secretaries.

4.12 From 26 September 2022 to 22 February 2024, the Respondent failed to deal with the Claimant's complaints about bullying, disability discrimination and harassment in accordance with the grievance process and procedure, in particular not dealing with the investigation within one month; inadequate investigation into bullying allegations; inconsistencies/ contradictions about when colleagues were spoken to. The Claimant says that Dayle Squires advised in a letter dated 10 November 2022 that he would speak to colleagues but later indicated he had spoken with them on 07 November 2022; late receipt of the formal appeal outcome letter; labelling the Claimant's formal resolution as informal in spite of the Claimant's objections; preventing the Claimant's trade union representative from supporting her by failing to permit him the necessary leave; delays in providing meeting minutes; meeting minutes not accurately reflecting what had been discussed and agreed; late receipt of the final outcome on 22 February 2024;

497. Although the List of Issues refers to incidents up to 22 February 2024, we accept Mr Webster's submission that there was no application to amend made or granted to add events after 11 August 2023 when the claimant's claim was lodged. Our decision relates to events up to that date but for completeness we have set out below what our view would have been if we are wrong and events up to 22 February 2024 were included.

498. This complaint is that the respondent failed to deal with the claimant's complaints in accordance with its "grievance process and procedure". We found that the relevant policy by the time of the events in this case was the ER Policy. We have set out its requirements in our findings of fact. The stated aim of the policy was that, where appropriate, issues (including alleged bullying and harassment) were resolved at the earliest opportunity without resorting to the formal process (para 1.6 at p.1111).

499. Based on the parties' submissions, we understand this issue to related to the alleged failure by the respondent to deal with the claimant's allegations of bullying and harassment. It was not disputed that those allegations were not investigated until the Formal Investigation commissioned by Mr Fletcher on 18 July 2023.

500. Mr Flood's central submission was that the respondent's managers had at various points failed to make what he referred to as a "list of [the claimant's] complaints" despite her raising allegations of bullying and harassment from (at least) October. In short, the claimant's argument was that once she had flagged the issue of bullying and harassment the onus was on the respondent to proactively investigate matters rather than for her to lodge a request for resolution (the equivalent of a grievance under the ER Policy).

501. For the respondent, Mr Webster submitted that it was the claimant who was responsible for any delay in investigating the allegations. In his words she "consistently failed to formalise her complaints" and even when she did so, "failed to provide specifics". When asked to provide material (such as the timeline referred to in her Formal Investigation interview) she elected not to do so as she did not want to do the respondent's job for it. He submitted that the claimant actively obstructed the investigation and then complained matters were not investigated to her satisfaction.

502. On this central issue, we prefer the respondent's case. We found that the respondent's approach to dealing with the allegations was in accordance with its ER Policy. That policy placed the focus on seeking to resolve matters informally by way of early resolution. Matters would proceed to a formal process if the Triage meeting found the early resolution approach was not appropriate or if a written request for formal resolution as made (5.4 of the ER Policy).

503. We have already found that Mr Rogers acted promptly in dealing with the incident involving Rachael Hurst on 23 September. We found that at the meeting on 31 October 2022 Mrs Waddicor explained her view that the meeting was a Triage meeting under the ER Policy and that it was Mr Holt and the claimant who made it clear that at that stage they wanted an informal chat rather than to proceed under the ER Policy.

504. That led to Mr Squires's meeting with the other secretaries on 7 November. They indicated a willingness to move forward with a fresh start. When Mr Squires reported that back on 19 December 2022 the claimant and Mr Holt expressed unhappiness with the informal approach to addressing the bullying and harassment allegations even though they had proposed that at the 31 October meeting. As a result, Mr Squires specifically asked them in his 20 December letter to confirm as soon as possible which option they would like the respondent to follow under the ER Policy so they could set things in motion.

505. Neither the claimant nor Mr Holt had clarified the position by the 12 January meeting so it was agreed that Mr Holt would complete a written "Request for Resolution" on behalf of the claimant so that a Triage meeting under the ER Policy could be arranged. The 1st ER Request was submitted on 31 January 2023 (pp.299-300). The form did not refer to the bullying and harassment allegations or failure to deal with them.

506. We accept the respondent's case that the claimant continued to complain that nothing was done about the bullying and harassment complaints but also continued not to raise a Request for Resolution relating to it. We find that at that point the ball was in the claimant's court if she wanted to proceed down the formal route. That seems to us consistent with the ER Policy.

507. The claimant did include “Addressing/sorting” bullying and harassment in her Formal ER Request on 20 March 2023 (p.349). The outcome agreed was to seek to resolve matters by a meeting with her colleagues to discuss the behavioural framework. The claimant then told Miss Henderson on 24 April 2023 she did not want to meet with her colleagues but agreed to meet with Miss Henderson to discuss the framework 1:1. That did not happen because the claimant began a further period of sickness absence.

508. By the LTSR meeting on 24 May 2023 the position was that the claimant had seemingly ruled out early resolution approaches but had not filed a written Resolution Request relating to the bullying allegations triggering a formal process. That led to Miss Henderson suggesting a formal investigation and the claimant and Mr Akram confirming they would send the specific allegations being made in writing. Nothing was put in writing until 6 July 2023, Mrs Waddicor having chased up at the end of June and on 4 July. That resulted in the Formal Investigation being commissioned. Even at that point, the claimant had not set out the specific allegations but made generalised allegations.

509. We understand that failure to investigate to be the central issue addressed in this complaint. On this central issue, we are satisfied there was no unfavourable treatment. The respondent acted in accordance with the ER Policy and it was the claimant’s delay in progressing matters formally which led to the delay in instigating the Formal Investigation. We do not find a reasonable worker would view the failure to investigate to be a disadvantage when they had repeatedly been given the opportunity to formalise matters or in the alternative agree to an early resolution approach but had done neither.

510. This general issue contained a number of specific complaints. Of those listed, we accept there were delays in providing some outcome letters, e.g. those from the 31 October 2022 and 23 February 2023 meetings. We did not accept that the outcome letters were inaccurate. We do not find there was a failure to provide “minutes” because the ER Policy did not require that. The good practice principles required “accurate notes captured where appropriate” but we find the outcome letters complied with that requirement. We do not accept that the respondent “prevented” Mr Holt from assisting her. When an issue was raised about Mr Holt not getting facility time, Ms Quinn extended the relevant deadlines to give more time to comply.

511. We do accept that the Formal Investigation was not completed within one month. Mr Fletcher’s commissioning document gave an “estimated time for completion” of 31 August 2023. The Formal Investigation Report was not finalised until 11 January 2024. Even allowing for the fact the original one month was an “estimate” we do find that a reasonable worker might view that delay as a disadvantage. We also find that Ms Rose’s Formal Investigation was “inadequate” to the extent that it failed to put the specific allegations made by the claimant at her interview on 4 August 2023 (and follow up communications with Ms Rose) to the relevant witnesses.

512. We do accept that there was unfavourable treatment to the extent of the delays in outcomes letter and the Formal Investigation and in the inadequacies in the Formal Investigation.

513. We accept Mr Webster’s submissions that it was not clear on what basis any unfavourable treatment was said to be because of the “somethings arising” from the

claimant's disability. The initial onus is on the claimant. It seems to us the highest the claimant's case can be put is that the alleged bullying and harassment was because of something arising from her disability so any investigation of (or failure to investigate) those allegations is also because of that. That seems to us to stretch the causal link too thin. It is essentially a "but for" argument which is not the test we need to apply. The claimant has not proved facts from which we could infer that the unfavourable treatment we found in relation to this complaint was "because of" any of the somethings arising at 5.1-5.3 so this complaint fails.

4.14 On 08 June 2023, the Respondent's Ms Quinn informed the Claimant, in response to her emails of 26 May 2023 and 08 June 2023 that it had been decided to reject her request to be paid sick pay.4.14 heading

514. The respondent accepted that this amounted to unfavourable treatment for the purposes of s.15.

515. Mr Flood submitted that the unfavourable treatment was because of the "somethings arising" at 5.2. and 5.3. The claimant's contention was that not all the reasonable adjustments required to enable the claimant to return to work had been made by the time Ms Quinn was making her decision.

516. Based on our findings in relation to the reasonable adjustment complaints we prefer Mr Webster's submission that all reasonable steps that could be taken before the claimant returned to work had been taken by the time of Ms Quinn's decision. As he pointed out, the claimant was due to return to work on 26 April 2023. Her email telling Miss Henderson that she would not coming to work referred to her health and wellbeing. She did not refer to any outstanding adjustments as being the barrier to her returning to work. We have already explained above why we do not accept that Mr McDonald's appeal outcome letter is decisive on the issue of whether adjustments had been made or were required.

517. Mr Flood submitted in the alternative that if the reason for the claimant not returning to work was found to be the outstanding bullying allegations, that was also something arising from the claimant's disability. He submitted that the bullying incidents arose out of tensions and frustrations caused by the failure of the respondent to provide the claimant with physical aids and the claimant's consequent inability to carry out her role at anything like the speed of the other secretaries.

518. As we understand it, the claimant's case is that she should not be penalised by losing sick pay where the reason she was not willing to return to work was a failure to resolve the bullying and harassment allegations. We have found that incident 4.1 was because of "something arising". However, we have already explained at 4.12 above that there was no failure to investigate those allegations arising from the "somethings arising". Mr Flood's argument seems to us to require too many links in the chain and amount to a "but for" argument which is not the relevant test. The claimant has not satisfied us on this alternative basis that there are facts from which we could infer that the somethings arising was an effective cause of Ms Quinn's decision.

The complaint of harassment under s.26 Equality Act 2010 not already dealt with above

15.11 On 24 April 2023, the Respondent's Ms Henderson shouted at the Claimant and spoke to her in a threatening, hostile and intimidating manner. Ms Henderson threatened that she would 'tell HR that she [was not co-operating and was being unreasonable by refusing to attend group mediation]' and that she 'would get someone else to deal with' the Claimant;

519. We found that Miss Henderson did not shout at the claimant nor did she speak to her in a “threatening, hostile or intimidating manner” or threaten to tell HR that she was unco-operative or unreasonable. We also found that rather than “getting someone else to deal with the claimant” she offered to ask HR to get someone who the claimant would be more comfortable dealing with to deal with her. Our primary finding is that the alleged unwanted conduct did not happen and the complaint fails on that basis.

520. In case we are wrong about that, and Miss Henderson offering to get HR to find someone else to deal or telling the claimant to “meet her half way” did amount to the unwanted conduct alleged, we would have found that conduct did not have a harassing purpose or effect. There was no evidence that Miss Henderson had a harassing purpose and neither comment comes close to meeting the threshold required of conduct having a harassing effect. Even if the claimant experienced the conduct as having that effect, it was not reasonable for it to do so. Viewed objectively, Miss Henderson was trying her best to resolve matters and find a way forward. Asking the claimant to meet her half-way was entirely reasonable as was suggesting that if the claimant was not happy with her dealing with matters, Miss Henderson could ask someone else to deal.

521. For completeness, we find that any unwanted conduct was not disability-related. The fact the claimant was a disabled person or that the call was part of an ongoing process which in part dealt with disability related issues is not sufficient we find, to make the conduct disability related. There was nothing in the conduct itself which was disability-related.

522. This allegation fails.

Time Limit (Issue 1 in the List of Issues)

Are any claims out of time? (Issue 1)

523. The only complaint which succeeds is 4.1. That incident happened on 23 September 2022. The claimant's Tribunal claim was presented on 11 August 2023 so (allowing for Early Conciliation) any incident before 19 March 2023 is out of time. incident 4.1 is nearly 6 months out of time (Issue 1.1).

Is it just and equitable to extend time (1.2)

524. In relation to the s.15 complaints Mr Flood submitted that we should take into account the fact that the claimant had consistently raised the issue of bullying and harassment, had consistently complained about the respondent's failure to deal with those complaints and that there were systemic delays and substantive failings in the respondent dealing with her complaints.

525. For the respondent, Mr Webster submitted that the claimant had provided no explanation for the delay in bringing her claims. In evidence she had merely said that she relied on the guidance of others, specifically the union who advised her from the start of events. He also submitted that the delay in bringing the claim (coupled with the claimant's delays in specifying her allegations of bullying and harassment to the respondent) led to significant forensic prejudice to the respondent's witnesses because of the passage of time since the events complained of.

526. We accept Mr Webster's submissions that the claimant provided no explanation for the delay in bringing her claim. We explained in relation to 4.12 why we do not accept Mr Flood's submissions that the delay in investigating can be attributed to the respondent (at least until the delay in concluding the Formal Investigation which was after the claim was issued). We do not accept that the respondent's actions explain the delay in presenting the claim.

527. The claimant had the benefit of union representation from at least October 2022. There was no evidence to suggest that the delay was due to lack of knowledge about the Tribunal and its time limits. We accept the claimant may not have been aware of that, but her union would have been. If not, there was no suggestion that either she or her union could not have discovered them by reasonable enquiries. The claimant made it clear at the 12 January 2023 meeting that she intended to "go all the way" so this is not the case where it had not occurred to a claimant to pursue matters further.

528. Given the nature of the bullying and harassment incidents (and the fact that she had recorded one) this was not a case where the claimant was unaware of relevant information.

529. We do find that the delay had a very real impact on the cogency of the evidence. The claimant herself struggled to recall matters clearly as, on occasion, did the respondent's witnesses. Given the nature of a number of the incidents (including 4.1), which were brief oral exchanges, the prejudice to the evidence due to the passage of time was, we find, particularly marked.

530. We have found that the complaint at incident 4.1 is well-founded. If we do not extend time, the claimant will be deprived of a remedy for an act of discrimination. That is clearly a relevant consideration, but cannot be determinative. Otherwise, a just and equitable extension would be granted whenever an out of time complaint succeeded.

531. Taking into account in particular the limited explanation for the delay and the very real prejudice to the respondent in terms of cogency of evidence, we find it would not be just and equitable to extend time in relation to allegation 4.1. Although that complaint is well-founded, it fails and is dismissed because it was brought out of time.

532. For completeness, had we found that the other incident of bullying and harassment by the medical secretaries (including Ms Musa) to be acts of discrimination to harassment, we would have accepted that they formed a continuing act up to 25 October 2022. Our decision on the just and equitable point would have been the same.

Summary of Conclusions

533. For the reasons given above all the claimant's complaints which were not withdrawn fail and are dismissed.

Approved by Employment Judge McDonald

Date: 20 August 2026

JUDGMENT AND REASONS SENT TO THE PARTIES ON
15 September 2026

FOR THE TRIBUNAL OFFICE

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Judgments and full written reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

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

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Annex – List of Issues

Jurisdiction

Time Limits

1. Are any of the Claimant's claims out of time (in that they were presented more than three months after the date of the act complained of allowing for any extension arising out of early conciliation)?

1.1 If any of the Claimant's claims are out of time by reference to paragraph 1.1, do they (or any of them) form part of or amount to conduct extending over a period, the end of that period being in time; and as result should they be deemed to have been presented in time?; and

1.2 If not, is it just and equitable to extend time in respect of any claim?

Knowledge of the Claimant's disability

2. The Respondent accepts that the Claimant was a disabled person at all material times for the purposes of Section 6 Equality Act 2010 and the Respondent had knowledge that the Claimant was a disabled person as a result of her partial blindness.

Direct Disability Discrimination

3. Did the Respondent treat the Claimant less favourably than others in any of the following ways because of her disability. The Claimant relies on all the following matters as acts of direct disability discrimination, unless otherwise stated. The Claimant relies upon a hypothetical comparator, being a person who did not have the Claimant's particular disabilities but did have the same visual impairments as the Claimant.

3.1 On 04 October 2022, the Respondent's Barbara Waring attempted to embarrass and humiliate the Claimant when the Claimant asked her to read a word in a report. Ms Waring held the report at arm's length and read it aloud in front of other staff in the office;

3.2 On 05 October 2022, the Respondent's Rachael Hurst accused the Claimant of making mistakes in her work that the Claimant says she had not made.

3.3 On 06 October 2022, Ms Hurst criticised the Claimant for missing a line out of a report which the Claimant says she did not do.

Discrimination arising from Disability

4. Did the Respondent treat the Claimant unfavourably in the following ways as a consequence of her disability. The Claimant relies on all the following matters as acts of disability discrimination, unless otherwise stated:

4.1 On 23 September 2022, the Claimant was supposed to work from home but had to come into the office as no work was provided to the Claimant to work from home. The Respondent's Ms Hurst approached the Claimant and spoke to her in an unpleasant manner, implying that the Claimant was working too slowly. The Respondent's Ms Lakha, Ms C Hurst, Ms Singleton, Ms Anderson and Ms R Hurst then bombarded the Claimant with questions regarding why she had been permitted to work from home and begrudging that she was able to do so;

4.2 On 26 September 2022, the Claimant met with her manager Mr Rogers to inform him that she was subject to bullying, harassment and negative treatment but he failed to take prompt action;

4.3 On 27 September 2022, the Respondent's staff including Ms Waring spoke critically and in an unpleasant manner about the Claimant's holiday request;

4.4 On 04 October 2022, the Respondent's Barbara Waring attempted to embarrass and humiliate the Claimant when the Claimant asked her to read a word in a report. Ms Waring held the report at arm's length and read it aloud in front of other staff in the office;

4.5 On 05 October 2022, the Respondent's Rachael Hurst accused the Claimant of making mistakes in her work that the Claimant says she had not made;

4.6 On 06 October 2022, Ms Hurst criticised the Claimant for missing a line out of a report which the Claimant says she did not do;

4.7 On 25 October 2022, the Respondent's Ms Musa was curt and rude with the Claimant in front of colleagues. The Claimant asked for assistance with her second computer screen. Ms Musa told the Claimant she was busy despite being at her desk eating porridge.

4.8 On 25 October 2022, Ms Waring was also rude and impatient with the Claimant regarding IT issues she was having. The Claimant asked Ms Waring for the phone number for IT after Ms Waring told her to ring IT. Ms Waring was very sharp and unpleasant when answering the Claimant.

4.9 On 25 October 2022, the Claimant overheard a conversation between Ms Waring and Ms Lakha where the Claimant was accused of messing with computer wires and looking "gormless";

4.10 On or around 06 October 2022, Ms Waring belittled, humiliated and upset the Claimant when she tried to join in a conversation. Ms Waring sat with her arms crossed and stared at the Claimant until she finished speaking;

4.11 On or around 06 October 2022, Ms Waring encouraged one of the secretaries, namely Caroline, from Microbiology to take time off at Christmas whilst the other secretary from Microbiology, Julie was on leave, so that she could not do anything about it when she returned. Ms Waring dismissed the Claimant's comments to Caroline about taking time off this year as Julie had taken Christmas off the year prior. Ms Waring butted in and said 'we don't do things like that here'. Ms Waring went on to tell Caroline to book the time off in Julie's absence;

4.12 From 26 September 2022 to 22 February 2024, the Respondent failed to deal with the Claimant's complaints about bullying, disability discrimination and harassment in accordance with the grievance process and procedure, in particular not dealing with the investigation within one month; inadequate investigation into bullying allegations; inconsistencies/ contradictions about when colleagues were spoken to. The Claimant says that Dayle Squires advised in a letter dated 10 November 2022 that he would speak to colleagues but later indicated he had spoken with them on 07 November 2022; late receipt of the formal appeal outcome letter; labelling the Claimant's formal resolution as informal in spite of the Claimant's objections; preventing the Claimant's trade union representative from supporting her by failing to permit him the necessary leave; delays in providing meeting minutes; meeting minutes not accurately reflecting what had been discussed and agreed; late receipt of the final outcome on 22 February 2024.;

4.13 On 21 January 2023, the Claimant received a letter from the Respondent stating that her pay would be stopped from 31 January 2023;

4.14 On 08 June 2023, the Respondent's Ms Quinn informed the Claimant, in response to her emails of 26 May 2023 and 08 June 2023 that it had been decided to reject her request to be paid sick pay.

5. The things arising out of the Claimant's disability were:-

5.1 The Claimant's inability to work with the same speed and/or accuracy of the other medical secretaries.

5.2 The Claimant's inability to work without assistance.

5.3 The Claimant's need for reasonable adjustments in the form of the provision of equipment and/or working from home.

6. If the Claimant was treated unfavourably because of something arising in consequence of her disability, was that treatment a proportionate means of achieving a legitimate aim. To the extent that any of the Respondent's acts or omissions identified are said to give rise to a claim for discrimination arising from disability, the Respondent contends that any such acts or omissions were a proportionate means of achieving the legitimate aim of fairly and efficiently managing the Claimant's capability and absence.

Failure to make reasonable adjustments

7. Did the Respondent apply a provision, criterion or practice in the form of:-

7.1 A requirement for the Claimant to carry out the same duties as the other medical secretaries using the same equipment as them.

7.2 A requirement for the Claimant to travel to the office to work.

7.3 The Claimant also relies on Section 20 (5) of the EqA 2010, in respect of the auxiliary equipment recommended by Access to Work in relation to the relevant matter of her vision.

8. If so, did the PCP place the Claimant at a substantial disadvantage compared to [non-disabled persons] a person who did not share the Claimant's disability?

8.1 In respect of paragraphs 7.1 and 7.3 the substantial disadvantage relied upon is the Claimant's inability to read some documents and the difficulty she had in reading other documents, which process would take substantial additional time.

8.2 In respect of paragraph 7.2:-

8.2.1 Travelling by car caused the Claimant to become disorientated because, due to her visual impairment, she could not see things around her as she travelled as things moved past her too quickly, causing excessive anxiety.

8.2.2 Travelling by public transport caused the Claimant discomfort and anxiety due to a general lack of awareness, empathy and consideration towards the visually impaired and overcrowding on public transport which caused the Claimant difficulties as people would often stand on, or collide with, the Claimant's White Cane.

9. If the Claimant was placed at a substantial disadvantage, did the Respondent take such steps as were reasonable to take to avoid the alleged disadvantage to the Claimant?

10. The Claimant relies on the following adjustments :

10.1 Dolphin Supernova Magnifier and Speech ESD V21;

10.2 OrCam My Eye Pro 2;

10.3 Dragon Professional Individual v15;

10.4 USB Headset (to be able to use dragon software);

10.5 2 x 3 hours of technical training for Dragon (face to face);

10.6 Goldtouch ergonomic keyboard;

10.7 Goldtouch wrist rest;

10.8 Evluent Right-hand Vertical mouse;

10.9 Taxi allowance;

10.10 Extra time;

10.11 Extra breaks;

10.12 Coping strategy training sessions;

10.13 Visual impairment awareness training;

- 10.14 Work station/desk assessment;
 - 10.15 Time off for medical appointments;
 - 10.16 Reduced working hours;
 - 10.17 Working from home;
 - 10.18 Payment of sick pay in circumstances where the Claimant says that reasonable adjustments had not been made to enable her to return to work.
- 11. Were the adjustments relied on by the Claimant reasonable in all of the circumstances?
 - 12. Whether the adjustments relied on by the Claimant were supported by Access to Work and/or Occupational Health?
 - 13. Did the Respondent know or could they have been reasonably expected to have known that the Claimant was likely to be placed at a substantial disadvantage as a result of an alleged PCP?
 - 14. Did the Respondent fail to provide an auxiliary aid or service (Section 20 (5) EA 2010)? The Claimant relies on the auxiliary aid / services set out at Paragraph 9 above.

Harassment related to Disability

- 15. Did the Respondent engage in the following conduct related to the Claimant's disability:-
 - 15.1 On 23 September 2022, the Claimant was supposed to work from home but had to come into the office as no work was provided to the Claimant to work from home. The Respondent's Ms Hurst approached the Claimant and spoke to her in an unpleasant manner, implying that the Claimant was working too slowly. The Respondent's Ms Lakha, Ms C Hurst, Ms Singleton, Ms Anderson and Ms R Hurst then bombarded the Claimant with questions regarding why she had been permitted to work from home and begrudging that she was able to do so;
 - 15.2 On 27 September 2022, the Respondent's staff including Ms Waring spoke critically and in an unpleasant manner about the Claimant's holiday request;
 - 15.3 On 04 October 2022, the Respondent's Barbara Waring attempted to embarrass and humiliate the Claimant when the Claimant asked her to read a word in a report. Ms Waring held the report at arm's length and read it aloud in front of other staff if in the office;
 - 15.4 On 05 October 2022, the Respondent's Rachael Hurst accused the Claimant of making mistakes in her work that the Claimant says she had not made;
 - 15.5 On 06 October 2022, Ms Hurst criticised the Claimant for missing a line out of a report which the Claimant says she did not do;

- 15.6 On 25 October 2022, the Respondent's Ms Musa was curt and rude with the Claimant in front of colleagues. The Claimant asked for assistance with her second computer screen. Ms Musa told the Claimant she was busy despite being at her desk eating porridge.
- 15.7 On 25 October 2022, Ms Waring was also rude and impatient with the Claimant regarding IT issues she was having. The Claimant asked Ms Waring for the phone number for IT after Ms Waring told her to ring IT. Ms Waring was very sharp and unpleasant when answering the Claimant.
- 15.8 On 25 October 2022, the Claimant overheard a conversation between Ms Waring and Ms Lakha where the Claimant was accused of messing with computer wires and looking “gormless”;
- 15.9 On or around 06 October 2022, Ms Waring belittled, humiliated and upset the Claimant when she tried to join in a conversation. Ms Waring sat with her arms crossed and stared at the Claimant until she finished speaking;
- 15.10 On or around 06 October 2022, Ms Waring encouraged one of the secretaries, namely Caroline, from Microbiology to take time off at Christmas whilst the other secretary from Microbiology, Julie was on leave, so that she could not do anything about it when she returned. Ms Waring dismissed the Claimant's comments to Caroline about taking time off this year as Julie had taken Christmas off the year prior. Ms Waring butted in and said 'we don't do things like that here'. Ms Waring went on to tell Caroline to book the time off in Julie's absence;
- 15.11 On 24 April 2023, the Respondent's Ms Henderson shouted at the Claimant and spoke to her in a threatening, hostile and intimidating manner. Ms Henderson threatened that she would 'tell HR that she [was not co-operating and was being unreasonable by refusing to attend group mediation]' and that she 'would get someone else to deal with' the Claimant;
- 15.12 In July 2023, the Respondent's Ms Henderson unilaterally reduced the Claimant's working hours in spite of her objection. The Claimant says she had requested this be done upon her return to work, when all reasonable adjustments had been implemented, but was done immediately without consultation with or approval from the Claimant;
16. If so, in respect of each conduct, was it unwanted?
17. If so, in respect of each unwanted conduct, was it related to the Claimant's disability?
18. If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
19. If any unwanted conduct had that effect, was it reasonable in all the circumstances for it to have that effect?

Victimisation

20. Did the Claimant do protected acts in complaining about discriminatory acts or omissions by the Respondent? The Claimant relies upon the submission of her Formal Resolution on the 20th of March 2023.
1. Did the Respondent subject the Claimant to either of the following detriments for the purposes of EA 2010, s.27(1)?
- 21.1 On 24 April 2023, the Respondent's Ms Henderson shouted at the Claimant and spoke to her in a threatening, hostile and intimidating manner. Ms Henderson threatened that she would 'tell HR that she [was not co-operating and was being unreasonable by refusing to attend group mediation]' and that she 'would get someone else to deal with' the Claimant;
- 21.2 In July 2023, the Respondent's Ms Henderson unilaterally reduced the Claimant's working hours in spite of her objection. The Claimant had requested this be done upon her return to work, when all adjustments had been implemented, but was done immediately without consultation with or approval from the Claimant;
22. If so, was the Claimant subjected to any detriments because the Claimant did the protected act(s) or the Respondent believed she had or may do protected act(s)?

Remedy

(i) Remedy for Discrimination

23. What financial losses has the discrimination caused the claimant?
24. What period of loss should the Claimant be compensated?
25. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

(ii) Personal Injury

26. What is the Claimant's injury? The Claimant contends that she has been diagnosed with Palma Plantus Psoriasis which occurs during periods of psychosocial stress.
27. How were the injuries caused?
28. If injury and causation are proved, how much should the Claimant be compensated?

(iii) ACAS Procedures

29. Are any uplifts to the total award appropriate on the grounds that the Respondent breached the code of practice in dealing with the Claimant's grievances

(iv) Interest

30. Should interest be awarded and if so, how much?