



EMPLOYMENT TRIBUNALS

Claimant: Ms. Christina Wells

Respondent: LIFE Multi Academy Trust

Heard at: Via Cloud Video Platform (Midlands East Region)

On: 15th, 16th, 17th, 18th, 19th, 22nd, 23rd, 24th June 2026 & 24th July 2026 (in Chambers)

Before: Employment Judge Heap

Members: Mr. S Connor
Mr. A Greenland

Representation

Claimant: In person

Respondent: Ms. R Morgan - Counsel

JUDGMENT

1. The complaint of indirect disability discrimination is dismissed on withdrawal by the Claimant.
2. The Respondent did not fail in its duty to make reasonable adjustments and this part of the claim fails and is dismissed.
3. The Respondent discriminated against the Claimant for a reason relating to her disability in relation to the sending of a letter of 15th December 2022. All other complaints of discrimination arising from disability fail and are dismissed.
4. The Respondent did not harass the Claimant for a reason relating to her disability and this complaint fails and is dismissed.
5. The Respondent did not subject the Claimant to victimisation for doing a protected act and this complaint fails and is dismissed.
6. The matter of remedy in regard to the complaint which has succeeded should be capable of resolution between the parties. If that cannot be achieved within 28 days of the date of this Judgment being sent to the parties they should notify the Tribunal and a Remedy hearing will be listed.

RESERVED REASONS

BACKGROUND & THE ISSUES

1. This claim is brought by Ms. Christina Wells (hereinafter referred to as “The Claimant”) against her employer, Life Multi Academy Trust (hereinafter referred to as “The Respondent”).
2. The Claimant presented this claim to the Employment Tribunal by way of an ET1 Claim Form received on 10th April 2023 following a period of early conciliation which took place between 2nd February 2023 to 16th March 2023.
3. The complaints pursued by the Claimant before us are of discrimination arising from disability; a failure to make reasonable adjustments, victimisation and harassment. Those complaints all relied upon the protected characteristic of disability. The disabilities relied on for the purposes of the claim is anxiety and irritable bowel syndrome (“IBS”) and the question of disability has been conceded by the Respondent. That was therefore not a live matter before us.
4. The Claim Form had also set out that the Claimant was advancing a complaint of indirect disability discrimination but she confirmed that that was no longer pursued and there was no objection to that part of the claim being dismissed on withdrawal. We have accordingly done so above.
5. The Claimant’s claims were resisted in their entirety by the Respondent by way of an ET3 Response submitted and received by the Employment Tribunal on 6th June 2023.
6. We had before us an agreed list of issues which we were required to determine and which is appended to this Judgment. That list included determining matters as to jurisdiction although it was conceded by Ms. Morgan on behalf of the Respondent that there was no suggestion that any of the complaints had in fact been presented out of time. That is not therefore a matter that we need to deal with.

THE HEARING, WITNESSES & CREDIBILITY

7. The claim was listed for eight days of hearing time. The first half day was to be a reading day but we elongated that as a result of the number of documents that we had to read. The hearing therefore commenced on the second day. We had breaks where they were required to accommodate the Claimant’s disability and that included extended periods so that she was able to finalise her submissions. We should observe that she has represented herself before us extremely well and to a level which has impressed us all.
8. During the course of the hearing, we heard evidence from the Claimant and also from her daughter, Zoe Wells, on her behalf. We had not originally been provided with the statement of Zoe Wells as it had not been uploaded by the

Respondent to the document upload centre but we were able to obtain a copy during the course of the hearing and consider it during a brief adjournment.

9. We also heard evidence from the following individuals on behalf of the Respondent:
 - a. Catherine Aitcheson – the Headteacher of Countesthorpe Academy where the Claimant is employed;
 - b. Gareth Williams – Executive Headteacher at Countesthorpe Academy who initially dealt with a grievance that had been raised by the Claimant;
 - c. John Taylor – then Governor of Countesthorpe Academy who dealt with an appeal against the outcome of the Claimant’s grievance; and
 - d. Amanda Scott – the then Trust Human Resources (“HR”) Business Partner who advised the second level appeal panel in connection with the next stage grievance appeal.
10. We make our observations in relation to matters of credibility in relation to the witnesses from whom we have heard below.
11. In addition to the witness evidence that we have heard, we have also paid reference to the documentation to which we have been taken during the course of the proceedings and also to the helpful oral and written submissions made by both the Claimant and Ms. Morgan on behalf of the Respondent.
12. We were able to conclude the evidence, submissions and our deliberations within the eight days allocated to hear the claim. However, there was insufficient time to deliver our Judgment and accordingly it was reserved. We reserved our decision and allocated a further half day of hearing time for the non-legal members to review a draft Judgment. That date had to be postponed and relisted because of the ill health of the Employment Judge. Thereafter, a revised Judgment was produced to take into account comments made by the non-legal members. There was a delay in that regard as a result of leave of the Employment Judge for which she apologises to the parties and their patience in awaiting the Judgment has been much appreciated.
13. We now say a word about the credibility of the witnesses from whom we have heard. We did not find there to be any issue in respect of the Claimant or Zoe Wells. We considered the Claimant’s account to be honest and reliable although it had to be viewed through the prism of deep mistrust that she has for the Respondent and almost everyone connected with the organisation which taints her view of matters. That is not a criticism of her, it is often a natural by product of things having gone wrong in an employment relationship and we hope that after these proceedings are concluded that relationship can begin to be restored.
14. We also considered Zoe Wells to be a credible witness. We did take into account the fact that her evidence was not partisan in that she has a close relationship with her mother and a clear desire to protect her. Nonetheless,

we considered her evidence to be an honest observation of what she had seen and been told and did not consider her to be exaggerating. We did have to take into account, however, the fact that she had not directly witnessed any of the matters that we needed to determine and was reliant in that regard on what she had been told later by the Claimant.

15. We considered the Respondent's witnesses to be largely credible albeit with that was tempered by the degree of hesitation that each of them had in accepting that the way in which the Claimant was dealt with had not been as it should have and was significantly wanting in some areas. Particularly, there was a reluctance to accept the shortcomings of Ms. Aitcheson in respect of what was a clear and obvious failure to comply with the Attendance Management Policy which gave the impression that in that regard especially that there was something of a towing of the party line.
16. We should observe that we did not consider Mr. Taylor to be a particularly reliable witness. For the most part he could not recollect the events that he was being asked about and his evidence did not assist us with regard to the matters that we were required to determine. This is not intended as a criticism of him as we appreciate that he was being asked about matters in which he was involved a number of years earlier by the time of this hearing and which would not have been uppermost in his mind given the involvement that he had. However, as a result of the lack of recall we were only able to attach limited weight to his evidence.

THE LAW

17. It is necessary before turning to our findings of fact, as set out below, to say a little about the law to be applied to claims of this nature.

Equality Act 2010

18. The remaining complaints brought by the Claimant are of discrimination arising from disability, harassment, victimisation and a failure to make reasonable adjustments. The relevant statutory provisions dealing with those complaints are contained within Sections 15, 20, 21, 26, 27 and 39 Equality Act 2010 (EqA 2010).

EHCR Code

19. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.
20. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

(1) An employer (A) must not discriminate against a person (B)—
(a) in the arrangements A makes for deciding to whom to offer employment;
(b) as to the terms on which A offers B employment;

(c)by not offering B employment.

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

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(3)An employer (A) must not victimise a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(4)An employer (A) must not victimise an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(5)A duty to make reasonable adjustments applies to an employer.

(6)Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a)unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b)if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7)In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a)by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b)by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8)Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

Discrimination arising from Disability

21. Section 15 deals with the question of discrimination arising from disability and provides as follows:-

“(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."*

22. There is no requirement in a Section 15 complaint for there to be identification of a comparator. All that is required is that the Claimant is able to show unfavourable treatment, in that regard some detriment, and further that there are facts from which it can again be established that that unfavourable treatment was in consequence of something arising from disability. The Code assists in the interpretation of the term "unfavourable" treatment and provides that it requires the employee to have been "put at a disadvantage" (paragraph 5.7 of The Code).
23. It is not sufficient, however, to simply show that a person is disabled and receives unfavourable treatment, that unfavourable treatment must be in consequence of something arising from the disability.
24. Equally, the unfavourable treatment in question is not the disability itself but must arise in consequence of the employee's disability – such as disability related sickness absence. This means that there must be a connection between whatever led to the unfavourable treatment and the disability (paragraph 5.8 of The Code) and which can be referred to as the "causation" question.
25. The Employment Appeal Tribunal provided a useful analysis with regard to the causation question in the context of a Section 15 EqA 2010 claim in **Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305. Weerasinghe** which sets out a two-stage approach and that, firstly, there must be something arising in consequence of the disability and secondly, the unfavourable treatment must be "because of" that "something".

Failure to make reasonable adjustments

26. Section 20 EqA 2010 provides that:

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

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in

relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

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

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

(6)Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7)A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8)A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9)In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a)removing the physical feature in question,

(b)altering it, or

(c)providing a reasonable means of avoiding it.

(10)A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a)a feature arising from the design or construction of a building,

(b)a feature of an approach to, exit from or access to a building,

(c)a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

27. Section 21 provides that:

“A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

28. It will therefore amount to discrimination for an employer to fail to comply with a duty to make reasonable adjustments imposed upon them in relation to that disabled person (paragraph 6.4 of The Code).

29. However, the duty to make reasonable adjustments will only arise where a disabled person is placed at a substantial disadvantage by:

- An employer's provision, criterion or practice (“PCP”).
- A physical feature of the employer's premises.
- An employer's failure to provide an auxiliary aid.

30. Where the claim relates to a PCP, this "should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions" imposed by the employer (paragraph 6.10 of The Code).

31. Matters resulting from ineptitude or oversight on the part of the employer will not, however, amount to a PCP (see **Newcastle Upon Tyne Hospitals NHS Foundation Trust v Bagley UK EAT 0417/11**).

32. The duty to make reasonable adjustments only arises insofar as an employer is required to take such steps as it is reasonable to take (our emphasis) in order to avoid the substantial disadvantage to the disabled person. A Tribunal is required to take into account matters such as whether the adjustment would have ameliorated the disabled person's disadvantage, the cost of the adjustment in the light of the employer's financial resources, and the disruption that the adjustment would have had on the employer's activities.

Harassment

33. Harassment is prohibited by virtue of Section 26 EqA 2010 which provides as follows:

- (1) A person (A) harasses another (B) if-*
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) The conduct has the purpose or effect of –
i. Violating B's dignity, or
ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

34. The conduct complained of, in order to constitute harassment under Section 26, must relate to the protected characteristic relied upon by the complainant.

35. As set out by the Employment Appeal Tribunal in **Nazir & Anor v Aslam [2010] UK EAT/0332/09** the questions for a Tribunal dealing with a claim of this nature are therefore the following:

- a) What was the conduct in question?
- b) Was it unwanted?
- c) Did it have the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant?
- d) Did it have the effect of doing so having regard to an objective, reasonable standard and the perception of the complainant?
- e) Was the conduct on the grounds of the protected characteristic relied upon?

Victimisation

36. Section 27 EqA 2010 provides that:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.
(2) Each of the following is a protected act—

- (a) bringing proceedings under this Act;*
 - (b) giving evidence or information in connection with proceedings under this Act;*
 - (c) doing any other thing for the purposes of or in connection with this Act;*
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.*
 - (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
 - (4) This section applies only where the person subjected to a detriment is an individual.*
 - (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*
37. It will not be sufficient for a Claimant to simply use words such as “discrimination” for that to amount to a protected act within the meaning of Section 27 EqA 2010. The complaint must be of conduct which interferes with a characteristic protected by the EqA. There need not be explicit reference to the protected characteristic itself but there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the EqA 2010 applies (see **Durrani v London Borough of Ealing UKEAT/0454/2012**).
38. In dealing with a complaint of victimisation under Section 27 EqA 2010, Tribunal will need to consider whether:
- (a) The alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010 (which are set out above);
 - (b) If so, was the Claimant subjected to a detriment; and
 - (c) If so, was the Claimant subjected to that detriment because he or she had done a protected act.
39. In respect of the question of whether an individual has been subjected to a detriment, the Tribunal will need to consider the guidance provided by the EHRC Code (as referred to further below) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (paragraphs 9.8 and 9.9 of the EHRC Code).
40. If detriment is established, then in order for a complaint to succeed, that detriment must also have been “because of” the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit,

nor even conscious, and subconscious motivation will be sufficient to satisfy the “because of” test.

41. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a “significant influence” on the employer’s decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material influence of factor – and thus is only a trivial influence - it will not satisfy the “significant influence” test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).
42. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had performed a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination

FINDINGS OF FACT

43. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of this claim. We have inevitably, therefore, not made findings on each and every area where the parties are in dispute with each other or which was covered in the evidence if that is not necessary for the proper determination of the remaining complaints before us.

Commencement of the Claimant’s employment

44. The Claimant commenced employment with the Respondent on 1st September 2004. She was employed at what was originally called Countesthorpe Community College and which later became Countesthorpe Academy.
45. At the time with which we are concerned she was employed as a Departmental Administrative Assistant (“DA”) and she had been appointed to that position on 1st September 2011 (page 65 of the hearing bundle). The Claimant worked and always has done in this role solely on work for the Science department. There were three other DA’s engaged by the Respondent at the material time who were also assigned to different departments, although as we understand it following changes introduced by the Respondent now work collaboratively for more than one department or faculty. The Claimant does not and remains solely under the auspices of the Science Department.
46. The Claimant’s role is administrative in nature and involved duties necessary to support the science department such as preparing and sending out communications.
47. It is not in dispute that the Claimant is disabled by virtue of anxiety and irritable bowel syndrome (“IBS”).

48. At the commencement of her employment the Claimant was provided with a contract of employment, albeit the one that we have before us relates to Leicestershire County Council who was responsible for operation of the setting before it was transferred to hold academy status. The contract set out that the Claimant's duties were set out within a separate job description which we come to further below.
49. The Claimant worked 24 hours per week, having reduced the number of hours that she had initially worked from 28 hour per week (see page 68 of the hearing bundle).
50. The job description which we have seen at pages 300 and 301 of the hearing bundle does not appear to be the original one provided to the Claimant (and oddly we were not provided with the original) but it is not suggested by her that it was not in keeping with the main duties and responsibilities of DA's. The job description sets out a not unusual catch all of a requirement to undertake any other duties which are reasonably required and to provide cover for absent support staff colleagues. In practice, however, the Claimant had only undertaken work for the Science Department and had never been required to provide cover in the main office until that was raised with her by the headteacher, Catherine Aitcheson, in circumstances that we come to below.

Joining the Respondent

51. In March 2020 the academy joined the Respondent Trust and became one of the settings that they managed.
52. In April 2021 the Respondent proposed a restructure of the academy 021 which largely appeared to be for costs saving measures. We accept the evidence of Mr. Williams that at the time when the academy became part of the Respondent it had not been particularly well managed in respect of finances.
53. The effect on DA's was a reduction of four hours across the board but a maintaining of 25 hours for each faculty.

Discussion about work in the main office

54. One of the other results of the restructure was that the administrative staff in the main office were moved out of the academy. Mrs. Aitcheson therefore determined that she wanted the DA's to cover some work that needed to be undertaken in the main office which was initially to be approximately 20 minutes per day dealing with students at the hatch. That had not previously been the work of any of the DA's but as a result of the removal of the administrative staff from the main office the provision of people to undertake those tasks was no longer there. The main office was situated within the entrance to the academy and there was no way to enter it without going into the main building, which the Claimant could not do because of her anxiety. It would also have resulted in the Claimant coming into contact with others, both in the main office itself and in assisting the students at the hatch, which

she also could not do because of her anxiety, particularly around catching Covid-19.

2020 occupational health referral

55. In early 2020 the Covid-19 pandemic occurred. This increased the Claimant's already longstanding anxiety to the extent that she found it difficult to attend the school. The Claimant therefore did not attend and was placed on what was termed unauthorised and unpaid leave.

56. As a result of her anxiety the Claimant was referred to occupational health.

57. The report generated after that referral noted that the Claimant was anxious about catching Covid 19 and had not left the house as a result since March 2020. The recommendations in the report said this:

"In my clinical opinion Mrs Wells is temporarily unfit to be at work. Her likely date of returning to work is unidentifiable. An early return is expected if consideration was made for her to work from home if practicable. This could be a short term adjustment. I would further suggest that a reduction of her working hours would be helpful and I understand that this is known to management. It would also be useful to provide her with well-ventilated office with limited access by people and where she feels safe. In my opinion she is fit to continue in her current post. She feels able to attend a disciplinary hearing remotely if that could be practicable".

58. As a result of the report, the Claimant was permitted to reduce her hours to ten hours per week and to work from home (page 71 of the hearing bundle). Those arrangements were put in place with effect from 17th December 2020 and, as we come to below, continued until May 2021.

59. Prior to the pandemic, the Claimant had worked in the main science office. Upon her return after the period of unauthorised leave and home working her line manager, Mrs. Fox, arranged for the Claimant to use a separate office off to the side of the main office (S39). S39 was a classroom which was not in use and became a dedicated office for the Claimant to use and had no one else in it. It also had good ventilation and could be accessed through a door directly onto the outside of the building so that the Claimant did not need to walk through reception or the main school building to enter or exit it. Although the Claimant told us in evidence that other people could access S39 to make drinks or toast, there has been no suggestion that that office was not suitable for her or that it did not meet her needs.

60. The position from that time to the point of the hearing before us is that the Claimant has continued to have use of S39 to undertake her work although that arrangement may at some stage have to be revisited if S39 is required by the Respondent for teaching purposes. That is not anticipated in the short to medium term.

The further occupational health report

61. In early 2021 there was a further occupational health referral and the Claimant had a remote appointment on 25th February 2021 (page 71 of the

hearing bundle). The focus of the report was the Claimant's anxiety which it was reported had significantly heightened as a result of her fears about contracting Covid 19.

62. The report set out the current working arrangements which were working from home for 10 hours per week and that she had requested that be maintained until at least 1st May 2021. That was accommodated and as above after that point Mrs. Fox facilitated a phased return for the Claimant working in S39 which we have referred to above.

63. The other relevant parts of the report said this:

"In my clinical opinion Ms Wells is fit for her role and is fit for work in a covid secure environment. However it appears that the debilitating impact of her anxiety on her functional ability is currently a barrier to her return to the contractual workplace. She is fit to work from home with no restrictions. As this employee is in a role where some essential administration type work may be possible to complete at home, it is recommended that it is considered if any work tasks would be possible to complete from home within service and operational requirements and that this is discussed with the employee.

I am unable to predict a date when Ms Wells will be able to return to the workplace due to the unpredictable nature of anxiety and unknowns regarding environmental factors.

You should be aware that the public health advice regarding covid safety measures is the same irrespective of vaccination status at this current time.

In response to your specific questions not already addressed;

Based on the information that has been given to me today, in my opinion Ms Wells's anxiety is likely to be considered a disability under the auspices of the Equality Act (2010) because she describes a substantial and long term impact on her normal, day to day activities. You may therefore wish to consider any requirements for adjustments or support under this legislation at this time. As you will be aware this is a clinical, not a legal, opinion.

Mrs Wells anxiety is currently having a significant impact on her ability to attend the workplace and therefore on her performance in those tasks that are dependent on this. However Ms Wells reports that prior to the pandemic she was able to manage her anxiety levels in ways that did not impact on her reliability, attendance or performance at work and I anticipate that once the pandemic is over she will return to her previous levels of reliability, attendance and performance".

64. The indication at that time was that once the Covid 19 pandemic was over, the Claimant would be able to resume her duties as they were pre-pandemic – i.e. working in the main science office. Whilst it is true to say that the focus of the reports in respect of the Claimant's anxiety were the pandemic, we do not accept the Respondent's position that until they were specifically told by the Claimant that she was disabled in a later grievance they did not have knowledge of that from the point of receipt of this report. The 2021 report made it clear that the opinion of occupational health was that the Claimant

was disabled and given the length and severity of her symptoms as reported that should have been obvious to the Respondent. The fact that these symptoms might abate to some degree post pandemic was not to the point.

Discussions between the Claimant and Mrs. Aitcheson on 26th August and 12th September 2022

65. Mrs. Aitcheson telephoned the Claimant on 26th August 2022 during the school holidays regarding the discussions that they had previously had about working in the main office. During that conversation Mrs. Aitcheson referenced making a further occupational health referral. We accept the Claimant's position that that was in the context of the office work and not regarding her ill health absences.
66. There was further discussion between the Claimant and Mrs. Aitcheson about the referral on 12th September following the academy returning after the summer break. Again, we are satisfied that that discussion focused on the office duties and not ill health absences.

October 2022 occupational health report

67. Following those discussions, the Claimant was referred to occupational health again in October 2022. We accept the evidence of the Respondent that the reason for the delay was as a result of administrative issues and not any inaction on the part of Mrs. Aitcheson.
68. Whilst the reason for the referral was said to be "prolonged sickness and absence and fitness for work" that was not, as appeared to be suggested before us, sufficient to put the Claimant on notice that the Respondent had any issue over the levels of her absence or that they were considering taking action in respect of the same.
69. The report set out that the Claimant had continued anxiety, particularly in respect of the prospect of having to use communal office space, and made the following recommendations:
 - a. Provision of an alternative room;
 - b. Possible redeployment and ongoing discussions in a ventilated room about that.
 - c. Conducting a stress risk assessment; and
 - d. Time in between work to go home.
70. The latter recommendation was made in respect of the Claimant's IBS and was put in place as was the provision of an alternative room as the Claimant continued to use the separate office, S39, which is adjacent to the main science office where she worked pre-pandemic. That arrangement continues to date. It is not classed as a permanent arrangement but as touched upon above will continue to subsist so long as the room is not needed for academic purposes.

Attendance management policy

71. The Respondent has an Attendance Management Policy (“AMP”). It was approved by Mr. Taylor as Chair of Governors although from his evidence before us it appeared that he was less than familiar with it.
72. Paragraph 5 of the AMP requires attendance management to be dealt with on a day to day basis before any formal route to manage absence is dealt with. Paragraph 5 says this:

“5.1 An effective absence management strategy requires consistent day to day line management and support of employees who are absent from work or whose attendance levels fall below the expectations of the school.

5.2 Where there are continuing concerns regarding an employees attendance, it is essential that the Headteacher attempts to resolve these via day to day management / welfare meeting(s) to:

Raise their concerns with the employee.

Agree a course of action and a reasonable period of review with the employee (suggest between 4 to 8 weeks).

Ensure regular contact is maintained with the employee to address any issues that arise and ensure that any agreed actions remain relevant and up to date.

Retain a record of all discussions held and support offered.

Advise the employee that failure to achieve the necessary levels in attendance by the end of the review period may lead to formal processes being adopted.

Encourage the employee to see advice and guidance from their Union Representative.

5.3 At the end of the review period the Headteacher should discuss with the employee whether the targets for improvement have been achieved. Where progress is made, no further action will be required, however, employees must be informed that failure to maintain the level of attendance may result in the employee being managed under the formal stages of this policy.

5.4 Where an employee does not make sufficient improvement in their attendance, progression to a Formal Attendance Meeting will be considered”.

73. Despite the best efforts of the Respondent’s witnesses to contend that Mrs. Aitcheson complied with the requirements of paragraph 5 of the AMP, it is clear to us that she did not. We prefer the evidence of the Claimant – and there is no documentation to the contrary despite the requirements of the AMP as above – that her absence was not discussed with her or suggested to be a problem. As we have already observed, the stated reason for the last occupational health referral was not sufficient to do that.
74. There was also no review period or agreed actions nor was the Claimant ever told before December 2022 (the circumstances of which we come to below) that if her attendance did not improve then formal processes may result. In view of that, it is not difficult to see why the Claimant was shocked and distressed to later receive a letter in December 2022 which we shall

come to which suggested that a formal process was being commenced and which may result in her being issued with a warning.

75. The formal stages of the AMP were provided for by paragraphs 8 and 9 which set out as follows:

“8. Formal Attendance Management Meeting

8.1 Where there are continuing concerns regarding an employee s attendance, a Formal Attendance Management Meeting will be arranged. At least 5 working days notice will be given for this meeting.

8.2 The employee has the right to be accompanied by a work colleague or trade union representative.

8.3 At this meeting, the Headteacher, Employee and their representative will:

- a) Discuss the employees on going absence and reasons for this.*
- b) Discuss what support has been put in place to date and whether additional support is required.*
- c) Agree a formal improvement plan outlining the level of improvement required and a reasonable timescale for achievement (this is the review period).*
- d) The Headteacher will advise that failure to improve their level of attendance within the agreed timescale could result in a final warning being issued at the end of the review period.*

8.4 The employee will receive written confirmation of the outcome of the meeting.

9. Formal Review Meeting

9.1 At the end of the review period the employee will be invited to a Review Meeting. 5 working days notice will be given for this meeting. The employee will have the right to be accompanied by a work colleague or trade union representative. Both the person conducting the meeting and the employee will have an opportunity to present evidence to support their position.

9.2 The potential outcomes of the meeting are:

- a) The employee has made sufficient improvement; the attendance procedure may cease and day to day management/monitoring will recommence. Employees should be informed that if the improvement is not sustained within 12 months the process may recommence at the Formal Review Meeting stage of this policy.*
- b) If some progress has been made and more is required, it may be appropriate to extend the review period. In the majority of cases, it will be appropriate to extend the review period just once;*
- c) If no, or insufficient, improvement has been made, the employee will:*

Receive a final written warning which will remain on their file for 12 months
Be informed in writing of the details of the Final Written Warning
Be advised of their right to appeal against the warning
Be informed that failure to achieve the required level of attendance by the next review may lead to an attendance hearing where the employee may be dismissed
Receive the revised formal improvement plan with the outcome letter, detailing the level of improvement required, timescale for improvement and additional support mechanisms identified to assist the employee to return to work."

76. Special consideration is given under the policy to employees with a disability and a suggestion made that reference be had to the Disability Leave Policy. We did not have a copy of that within the bundle nor does it appear that anyone paid any regard to it with regard to the Claimant's absences and particularly not when sending the 15th December 2022 letter referenced below.

Meeting of 9th November 2022

77. On 9th November 2022 Mrs. Aitcheson had a meeting with the Claimant. That was nothing to do with absence or any attempt to comply with the requirements of stage 5 of the AMP, it was about the fact that by that point Mrs. Aitcheson wanted the Claimant to be undertaking work in the main office as described above. The fact that that was the subject of the discussion rather than absences is supported by the preparatory notes made by Mrs. Aitcheson which are in the bundle at page 209.
78. The meeting took place in S39 and we are satisfied that Mrs. Aitcheson was aware from what she had previously been told by Mrs. Fox on the Claimant's behalf that that was because she found the prospect of meeting elsewhere within the main school building was too difficult because of her anxiety (albeit that at that stage that was thought to relate only to the risk of catching Covid 19).

Letter of 9th November 2022

79. On 9th November 2022 Mrs. Aitcheson wrote to the Claimant. The content of the letter is very contentious and so it is worth setting it out in full:

"Thank you for your time on Wednesday 09/11 to meet to discuss the content of your occupational health report and how we can support you to resume all your DA responsibilities.

During the meeting I explained that the OH referral had been carried out due to your long term absence and the continued challenges you face in being able to perform your job role to its full capacity.

In order to support you in a temporary capacity, we have been able to accommodate adjustments to working patterns however, this is not something we can support indefinitely. The OH report provides us with guidance as to how we can support you to resume all aspects of your role.

We went through the recommendations in the report and I shared what we feel would be reasonable.

I explained that it was not possible to support the following:-

1. Provision of an alternative room for you to work in on a permanent basis. For the aspect of your role where you support science there is a room available for you to work in. This is a significant adjustment being made and I must be clear that whilst this arrangement is currently in place, should we need to use this room for teaching purposes in the future, this arrangement would have to be reviewed. In order to fulfill the aspect of your role which requires you to be in the main office we are not able to provide a separate working space. We can look at seating arrangements, ventilation and the option of you wearing a mask whilst in this space to support you.

2. Carrying out alternative roles in the Academy - we do not have any suitable roles available at the moment.

I explained that we could support:-

1. Carrying out a stress/wellness risk assessment. I have attached one for you to complete relevant sections and return by Friday 18th November.

2. Time to go home during the day – your days in work can include a break should you need to. We would need to discuss timings of this.

3. Counselling - I agreed that we would continue counselling for the remaining two agreed sessions and that we would support a further 6 sessions. The focus of the sessions should be on preparing you to change work environment to undertake work in the main office.

In August you suggested the possibility of picking up alternative work in lieu of the time required in the main office. This is not possible as we don't have any other options available in the Academy.

You also suggested dropping 4 hours if that would allow you to not be required to do the duties in the main office. There are a number of issues that do not make this possible. Firstly, it would be challenging for the school to recruit to a 4 hour role. Also, a reduction in 4 hours would not exempt you from the general duties in the office as this time is proportional to your total hours of work.

We will put the agreed support in place as soon as possible, with a view to you resuming your main office duties on a phased basis in the run up to the Christmas break. When we return in the new year we would then expect you to carry out your duties in the main office as per your job description.

If you have any further questions then please let me know”.

80. We accept that the Claimant was concerned about the prospect that she would have to work in the main office. Mrs. Aitcheson's view was that lockdown restrictions had been lifted and she therefore could not see the difficulty with the Claimant doing the work in the office because the occupational health reports had focused on her concerns about catching Covid 19. However, the Claimant's anxiety was wider than that and led to

her not being able to contemplate carrying out duties in the main office even for a short period of time as was originally envisaged.

81. The Claimant replied to Mrs. Aitcheson on 15th November 2022 raising a number of queries about the letter and the content of the occupational health report. The pertinent points of the letter for our purposes said this:

"I suggested two possible alternatives and I do not understand your explanation of why they are not suitable:

I suggested that I could drop 4 hours off my working week. I know that it would not be easy to recruit for 4 hours but another DA has indicated that they would like to pick up 4 hours. I do not understand why science could not have 2 DAs so that the faculty fulfils its duties in the main office. I am also unclear as to why my duties of proportional time in the main office cannot be revised (considering that other DAs hours in the main office are not proportional to their overall hours).

I also suggested that I could take on different duties instead of working in the main office. You have said that this isn't possible because there aren't any other options available, but I don't know what this means.

I am working with the counsellor and progress is being made but I do not feel that the timeframe you have indicated (by January to be back to full duties in the main office) is realistic and this timescale is creating additional stress for me. Anxiety has been something I have struggled with for years in my daily life but had not, until March 2020, impacted on my work life.

I do really appreciate that Kathryn Fox set up a room for me which enabled me to return to work and being able to work in that room for the foreseeable future manages my anxiety. I also habitually suffer from stomach ache and other illnesses, often attending work whilst in pain and working in this room allows me to continue at work".

82. Mrs. Aitcheson replied the following day and the pertinent parts of her letter to the Claimant said this:

"In response to the points raised about alternative options suggested by you :-

The OH referral provides us with information about how we might be able to support you in order for you to return to your full duties outlined in your job description. As a school, we then consider the extent to which we can make reasonable adjustments without it being detrimental to the running of the school.

Having considered the OH report we are not able to provide a separate working space. We can however, look at seating arrangements, ventilation and the option of you wearing a mask whilst in this space to support you.

You can apply to reduce your working hours by 4 hours. A reduction in 4 hours would not exempt you from the general duties in the office as this time spent on this part of the role is proportional to your total hours of work.

To clarify your question about of picking up alternative work in lieu of the time required in the main office. We currently have all other roles covered so this is not a possible option.

In response to the timeframe suggested for returning to full duties:-

We are willing to work with you on how we phase in your return to working in the main office but there does need to be an end point to when you will return to your full duties which is why we are supporting the counselling sessions and have extended the duration of these for you which are funded by the school.

In summary:-

- 1. We are making reasonable adjustments in areas of your role where it is feasible for us to do so.*
- 2. We need to agree a timeframe and phased actions for you returning to your full duties which include 4 hours a week in the main office. I will arrange another meeting so we can draw up a plan for this”.*

83. We are not convinced that Mrs. Aitcheson gave any particular serious consideration to or looked into the viability of the proposals made by the Claimant. Her focus was it seems to us squarely on having all DA's undertake work in the main office as she wanted them to do.
84. The Claimant replied to Mrs. Aitcheson seeking further clarification and requesting that any meetings take place in the office that she was using (S39) because it caused her stress and anxiety attending meetings and that she was caused fear by having to go to unfamiliar places (page 119 of the hearing bundle). She had earlier made a request that the meeting take place in that location or by Teams or telephone (page 121 of the hearing bundle). Mrs. Aitcheson was also aware of the Claimant's anxiety around attending meetings outside of S39 (albeit again at that stage she understood only that is related to concerns about contracting Covid-19) because she had been told about that by Mrs. Fox in her capacity as the Claimant's line manager and had attended earlier meetings with the Claimant in S39 because of her anxiety.

Proposed meeting on 5th December 2022

85. Mrs. Aitcheson proposed a date for a meeting to discuss matters further. That date was originally fixed for 29th November 2022 but that was rearranged as the Claimant was not due to be in work that morning because of a pre-existing arrangement. It was then re-scheduled to 5th December 2022 but after some initial reluctance was cancelled at the Claimant's request because she wanted to take legal advice. The meeting has not taken place to date and we accept the evidence of the Respondent that it is not proposed that it now will take place.
86. When requesting that the meeting be re-scheduled the Claimant requested that it take place in S39 because attending otherwise would cause her stress and anxiety. Whilst ultimately cancelling the meeting, Mrs. Aitcheson

rejected the notion of meeting in S39 and set out that it would be held in the conference room. She explained that that was not an area of the school that the Claimant was unfamiliar with, that it was spacious and well ventilated and that the Claimant could wear a mask. The rationale was that the conference room was more suited to a more formal meeting and Mrs. Aitcheson understood it to be suitable given the issue of space and ventilation. At that time, she was under the impression that the Claimant's concerns were solely around catching Covid-19 rather than any wider anxiety about attending in the main body of the Academy.

The Claimant's grievance

87. On 9th December 2022 the Claimant emailed Mrs. Aitcheson's personal assistant to say that she was going to raise a grievance and that was forwarded by her to Mrs. Aitcheson shortly thereafter (page 124 of the hearing bundle). It was not set out what that grievance was going to be about.
88. The grievance was sent to Mr. Taylor in his then capacity as the Chair of Governors. It was not copied to Mrs. Aitcheson (and we make no suggestion that it should have been) and it was not sent by the Claimant until 12th December 2022. The timing of the grievance and the date that Mrs. Aitcheson became aware of it is relevant to the complaint of victimisation.
89. The grievance letter said this:

"I am writing to raise a formal grievance. I have been an employee of Countesthorpe Academy for 18 years, 11 years in my present role as a Departmental Assistant working 24 hours per week for the Science Faculty.

I have a history of anxiety that has impacted my daily life for many years, but this had not previously affected my working life until the Pandemic. When I was required to return to work in September 2020, I was not able to do so. At that time, I asked for a period of unpaid leave and was advised it would be classified as unauthorised. An Occupational Health assessment was then completed in November 2020 that stated I was unfit for work and suggested working from home. This was set up and I worked 10 hours per week from home from December 2020. Although this provided me with a greatly reduced income, I viewed it as keeping my job open.

In February 2021 a second OH assessment was completed. The assessment stated I was fit to work from home and that they could not predict when I would be able to return to the workplace.

However, I did engage with the school with a view to a phased return as my line manager had facilitated a covid secure place for me to work that was spacious, well-ventilated, and had limited access by other staff. I returned to the workplace in May 2021.

In May 2022 I met with the Headteacher Mrs Aitcheson. The meeting was held in the room where I work at my request. Mrs Aitcheson explained that the school had accommodated me so far but could not continue to do so and that I would now be required to work a small portion of my time in the Main

Office on a rota basis with other DAs. She also arranged for me to have counselling that would be funded by the school. At the end of May, I was signed off for 6 weeks with a broken collarbone. Due to the Summer Holidays, I did not return to work until September 2022. In advance of this date, I emailed Mrs Aitcheson and asked if it would be possible for alternative DA duties to be assigned to me in lieu of time required to work in the Main Office. Mrs Aitcheson phoned me on 26th August 2022 to discuss and advised that the school had accommodated me for over a year and that this could not continue and I was now required to take on the full responsibilities of my role as detailed in my Job Description, that she would allow me to continue in my current location for a short period of time and would make a further OH referral and be guided by that.

A further meeting took place on 12 September 2022 with Mrs Aitcheson in the room where I work as I requested. Again, it was stated an OH referral would be made. On 22nd September 2022, I was ill and had to take time off work and on 3rd October 2022 I was signed off by my GP with Anxiety. I returned to work on 31st October 2022. In the meantime, the third OH assessment was completed on 27th October. Advice given was that I was fit for work in my current role with ongoing adjustments in place. It referenced my symptoms of anxiety and how these exacerbate other medical conditions I have. For instance, since the end of August, my IBS symptoms have been particularly bad with frequent bouts of severe stomach cramps. It recommended the continued use of an alternate room to help with my anxiety and other medical health conditions. Then followed a further meeting on 9 November in the room where I work to discuss the OH report. At this meeting, Mrs Aitcheson said that I would be required to resume my full duties to include the time required in the main office and that it would not be possible to continue to support me with an alternative room on a permanent basis although Mrs Fox, my line manager, commented that it was not a problem that I continue where I am based. She rejected my suggestion again of picking up alternative work in lieu of time required in the Main Office and rejected my alternative suggestion that I drop 4 hours (although the Main Office duties could be completed in less time). I suggested a reduction of 4 hours as that would, at least, allow me to have a day off in the week which would in some way compensate for the loss of salary and future pension. I informed her that I was aware of a DA who would not only like to pick up these hours but was also happy to work these in the Main Office. This meeting was written up and a letter sent to me dated 9th November.

I responded to this with my letter of 16 November. It pointed out the errors that had been made on the OH referral form although I would anticipate that the OH assessor would not have been influenced by them. I pointed out that my suggestions had been rejected but no explanation had been given as to why. Mrs Aitcheson answered this with her letter dated 16 November, but this was not emailed to me until 28 November. The reply still did not give any explanation as to why my suggestions were not possible. It stated that any reduction in hours would not exempt me from the time required in the Main Office and reiterated much of what was contained in the letter of 9 November. It also stated a meeting would be scheduled with the express purpose of agreeing to a timeframe for me to return to full duties. The meeting on 29th November was cancelled as I had pre arranged that day off. It was rebooked for 5 December but I asked for it to be postponed in a

letter to Mrs Aitcheson on 4th December as I had an appointment with a Lawyer on 6 December. For all meetings, I had asked for the venue to be where I work. Mrs Aitcheson is aware I am unable to attend if the meetings are not in a location where I feel safe and despite several requests, she was unwilling to relocate. The Lawyer advised that I raise a grievance. They also advised that the suggestions I made were reasonable, workable, practical and affordable and that I am entitled to an explanation as to why they have been rejected.

I am now signed off from work until 8 January 2023, which is the most recent period of sick leave. After many years of providing reliable service, I am now being subjected to continued stress and anxiety over this matter. This is sustained by repeated refusals to hold meetings in an accessible format/location for me and the imposition of a timeframe, contrary to the OH report, to achieve my full job description. My GP says that my anxiety has caused the recent flare-ups of several of my other health issues, which are painful and disabling. I do not want to be off work nor be placed in a position where I am unable to comply with a direction given by a member of senior management that could potentially result in my dismissal.

I would like for the OH report and reactionary measures to be reviewed. In particular, I would like to request that, as advised by the report, the current adjustments remain in place to enable me to return to work as quickly as possible. I would be grateful if you could let me know when a meeting can be arranged to talk about my grievance. Please could I request that it is held by Teams or by phone as I would not be able to attend otherwise”.

90. Although it is suggested by the Claimant that she believed that either Mr. Taylor or Mr. Williams - who was later tasked with dealing with the grievance at the first stage - would have told Mrs. Aitcheson about the content on or around the time of receipt, there is no evidence to that effect. We accept the account of all involved in that regard that that did not happen until January 2023 and the Claimant has nothing to gainsay that evidence.
91. We therefore do not find that Mrs. Aitcheson was aware of the content of the Claimant's grievance – only that she intended to raise one about at that time some unspecified matter – until January 2023. The timing of that is important given the content of an earlier letter to the Claimant which we come to immediately below.

The letter to the Claimant of 15th December 2022

92. On 9th December 2022 the Claimant had submitted a Statement of Fitness for Work (“Fit Note”) citing anxiety. That Fit Note signed the Claimant off as being unfit for work until 8th January 2023 (page 318 of the hearing bundle).
93. On 15th December 2022 Mrs. Aitcheson wrote to the Claimant about her absences. We accept that at this stage she had not seen the Claimant's grievance and whilst she knew that she intended to raise one, she was not aware of the subject matter.

94. The letter is a significant bone of contention in these proceedings and so it is worth setting it out in full. The letter said this:

“Sickness absence – long term sickness stage 1

I write to confirm receipt of your latest fit note dated 9th December until 8th January 2023.

I note that since 22nd September 2022 this is your fourth period of absence which now totals 36 days this academic year. Your absences for the last year are listed below:-

*09/12/2022 -08/1/2023 (10 days)
05/12/2022-08/12/2022 (4 days)
03/10/2022-30/10/2022 (15 days)
22/09/2022-02/10/2022 (7 days)
06/06/2022-11/07/2022 (25 days)
24/11/2021 – 29/11/2021 (3 days)*

This totals 64 working days.

Your absence is now considered to be of concern and in accordance with the academy’s sickness absence policy, which I attach for your information, you are therefore required to attend a formal stage 1 meeting with me to review your unsatisfactory attendance level.

The purpose of the meeting is to find out more information and what additional support we can put in place for you. We have already met to discuss the OH report and what reasonable adjustments can be put in place. I have written to you on the 9th and 25th November 2022 in relation to this. We will also discuss the impact your continuing absence has on the academy.

The meeting will be on Friday 13th January 2023 at 9am at the Academy in the conference room. Tracey Tassell (PA) will take a note of the meeting. You are entitled to have union representation at the meeting.

At the meeting, we will discuss putting in place an improvement plan in relation to your sickness. In accordance with our sickness absence policy, you are advised that a potential outcome of this meeting is that you may receive a formal warning in relation to your absence and the impact of your continuing absence is having on the Academy. You will also be advised of the potential consequences of your absence.”

95. We accept that the Claimant was shocked and extremely upset to receive the letter and that it came completely out of the blue. We prefer her account to that of the Respondent that it had not previously been made clear to her that there were concerns about her sickness absences. If there had been those conversations, we would have expected them to have been documented as that is not least what the Respondent’s Absence Management Procedure requires.
96. The evidence of Mrs. Aitcheson was that the intention of the letter was not that the Claimant would in fact receive any warning at that stage but that that

would have prompted the meetings at stage five of the Absence Management Procedure and that any warnings would be further down the line if there was not a satisfactory improvement in attendance thereafter. The difficulty with that is that is not what the letter said. It clearly envisaged that an outcome of the meeting may be receipt of a formal warning.

97. There were, in fact, a number of problems with the letter. Firstly, it referred to long term sickness absence which was not an issue in the Claimant's case. It also made reference to a stage 1 sickness absence which was not in the Respondent's Absence Management Procedure. It also skipped a number of stages of the process and particularly, stage 5 had not been properly carried out and the matter should have started there without suggestion of a formal warning being given which would not come until much later.
98. However, we accept the evidence of the Respondent that the letter came as a result of the advice of their then HR advisers, Browne Jacobson (see page 137 of the hearing bundle) and that they drafted the letter for Mrs. Aitcheson. However, that does not absolve Mrs. Aitcheson of the need to clearly check the letter for accuracy before dispatching it to the Claimant and she should have been fully aware of the requirements of the AMP, that stage 5 had not been properly dealt with, that there was no such thing as a stage 1 meeting and that an outcome of discussions with the Claimant about absences at that stage could not result in a warning if the AMP was being properly followed. She should have checked whether the correspondence was suitable and accurate. The evidence of Mr. Taylor before us was that he had had concerns over the formal tone of communications from Browne Jacobson that they had sent to him as templates and had elected to disregard them and use his own. Mrs. Aitcheson would have been wise in these circumstances to have done the same.
99. It is clear to us that whilst the Claimant did have a significant amount of time off sick with various complaints, the trigger for sending the letter was the fact that she had submitted a further Fit Note for anxiety. The letter came close on the heels of submission of the Fit Note and none of the earlier absences had triggered any form of formal procedure being invoked.
100. Whilst the Claimant raises the fact that a significant period of absence was for a broken collar bone which was unavoidable, for periods when she says that her anxiety absence was caused by the Respondent and some absences followed on directly from each other for different conditions, we nevertheless accept that the Respondent did have valid concerns in totality about the amount of absence that the Claimant had had during the relevant period. Whilst there was a duty to support the Claimant, the Respondent also had to balance into the mix the smooth running of the Academy for the benefit of other staff and particularly the students.
101. We do not find that the timing of the letter was retaliatory because of the Claimant's grievance which at that stage Mrs. Aitcheson had not seen. We find that the timing was because of the latest period of sickness absence with the Respondent being notified by way of the Fit Note of 9th December signing the Claimant off sick for a further month. Whilst the Claimant points to the fact that the AMP only required her to be given five days notice of a meeting, we accept the evidence of Mrs. Aitcheson that she was following HR advice

and was trying to give as much notice as possible to the Claimant so that she had time to prepare.

102. The Claimant replied to Mrs. Aitcheson on 16th December 2022. She made reference to having raised a grievance, that her anxiety was being caused by the situation at work, that she had sought legal advice and that matters were impacting her health (page 130 of the hearing bundle). She also raised a question as to whether stage 1 meant a reference to the Formal Attendance Management meeting as dealt with at section 8 of the AMP and what the issue was in respect of her attendance and what had prompted the letter to be sent.
103. The Claimant also raised the following in respect of her attendance at the then scheduled meeting:
- “Finally, I do need to ask as I have asked for all previous meetings that the venue of the meeting be changed to a location/format that is accessible to me (S39, or via Teams or phone). I feel that this is a reasonable request to to (sic) enable me to participate in the planned meeting. As previously explained, I am unable to attend the locations you suggest in the building due to my anxiety and I would request that you give this consideration”.*
104. Mrs. Aitcheson wrote to the Claimant on 6th January 2023 to say that in view of the fact that she had raised a grievance the absence management meeting had been postponed and would be rearranged for a later date. She also confirmed that it was not a “fast track” to an attendance hearing meeting although she did not explain any further what stage of the AMP the meeting was proposing to address. The Claimant was allocated the Deputy Headteacher as a point of contact for any questions (page 133 of the hearing bundle).
105. To date the absence management meeting which had been due to take place on 13th January 2023 has not been rescheduled because, as we shall come to further below, as a result of decisions taken by Mr. Williams in dealing with the Claimant’s grievance that meeting was off the table.

The grievance process

106. The Respondent has a grievance procedure (page 91 of the hearing bundle) under which the Claimant had submitted her grievance concerning the actions of Mrs. Aitcheson.
107. Mr. Taylor acknowledged receipt of the Claimant’s grievance on 5th January 2023. He notified her that Mr. Williams had been appointed to deal with the grievance and that he would be in touch to arrange a fact finding meeting and that once his investigations were complete he would write to her with an outcome (page 131 of the hearing bundle).

108. The Claimant wrote to Mr. Williams on 11th January 2023 to add to her grievance the subject of the letter from Mrs. Aitcheson of 15th December 2022 which she referred to being retaliatory. The relevant parts of her letter said this:

"Mrs Aitcheson was advised of the grievance on 9 December and, 6 days later, on 15 December, sent a letter notifying me of a Formal Attendance Management Meeting, with the meeting scheduled to be held on 13 January 2023. This meeting seems to be a direct and retaliatory response to my grievance; notifying me of a meeting a month in advance that only required 5 days notice. I feel that Mrs Aitcheson could not have been unaware of the impact an attendance procedure, and this unduly lengthy notice period, would have on my work-related anxiety and health problems, especially over the Christmas holidays.

In addition to the timing of this attendance procedure, I would like to list several other factors that I feel make this action inappropriate:

- This was the first communication I had received raising any concerns regarding my attendance. As such, it did not comply with the initial and informal procedural steps listed in the Attendance Management Policy (AMP). In addition, I requested clarification on what this meeting actually was as a Formal Stage 1 Meeting was not listed as a possible route in the AMP and, as a result, I was unsure as to the possible outcomes. This was not clarified until 6 January (see above about lengthy contact periods) when Mrs Aitcheson advised that the meeting was a Formal Attendance Management meeting. In the letter she states than an outcome could be a formal warning. A formal warning is not a possible outcome of a Formal Attendance Management meeting.*
- Where there is no break in dates, this amounts to a single and continuous period of absence. The letter incorrectly records four periods of absence since the start of this academic year. This should be counted as two periods of absence. I have noticed incorrect recordings of absence periods before (please see my original grievance letter on possible misrepresentations to OH). In addition, one of the six absence periods listed on this letter was for my broken collarbone last year and is unrelated to my anxiety. Whilst I appreciate that this is, of course, a valid absence period, it seems unreasonable to be counted towards my absence being classed as a concern.*
- Despite my repeated requests to change the venue of meetings, Mrs Aitcheson scheduled the attendance meeting to be held in the conference room. I have informed her that this causes me further anxiety and, in effect, bars me from attending.*
- In my reply to Mrs Aitcheson on 16 December, I asked what thresholds I had breached to trigger these attendance proceedings and what had prompted this action. She replied to me in her latest email on 6 January but had omitted to answer these questions. She had previously done this regarding explanations as to why my suggestions for reasonable adjustments were not suitable (please see my original grievance letter).*

- *These concerns regarding my absence overlook the reason for my absences. These absences are a direct result of work-related anxiety, which have been exacerbated by the recent unwillingness to change the venue of meetings, a two-month delay in arranging the OH assessment and the general uncertainty surrounding my job security and health. Mrs Aitcheson was aware of this.*

- *In Mrs Aitcheson's final email to me, she implied that I had raised this grievance after she had initiated attendance proceedings and states that these proceedings are only postponed. It is therefore intended that they will be revived as soon as this grievance is resolved".*

109. The Claimant met with Mr. Williams via Teams on 18th January 2023. She was accompanied by a colleague, Amy Hayes. We have before us a transcript of that meeting. We are satisfied that during the meeting Mr. Williams listened to the Claimant and was supportive but was also focused on moving forward and what solutions could be put in place as adjustments for the Claimant (see for example his "putting it behind us" comment at page 408 of the hearing bundle). He sought to reassure the Claimant and particularly made it plain that there would be no formal warning issued about her absence.
110. Comments were made by Mr. Williams at the meeting that the Claimant's attendance did, however, have to be managed moving forward because they were unsustainable at the levels that they were at. That was in the circumstances a fair comment for Mr. Williams to have made and he made it plain that no warning was to be issued and a realistic plan should instead be put in place (page 413 of the hearing bundle). He also stressed that the attendance meeting would not be rescheduled and that there would be a return to part five of the AMP (page 415 of the hearing bundle).
111. Whilst Mr. Williams also made a reference to business decisions having to be taken about absences which could not be sustained, he made it plain that that was not a route that he was suggesting that he was intending to follow with the Claimant and indeed far from it when looking at the totality of what was said (see page 416 of the hearing bundle).
112. A further meeting took place between the Claimant and Mr. Williams on 24th January 2023. At that meeting the Claimant made it clear that in terms of an outcome to the grievance she was looking for confirmation of whether Mr. Williams agreed or disagreed with the points that she had raised.
113. During the meeting the Claimant discussed with Mr. Williams the difficulties that she had in contemplating attending the main parts of the school. In that context she raised an issue that an A-Level student had entered S39 whilst she was in there and had been "streaming with cold". The Claimant, in the context of her considerable concerns regarding Covid 19, raised with Mr. Williams that she had been "freaking out about it". In response to that issue being raised, Mr. Williams said this:

"Well I-I would think, if I was you, I would be wondering... And I, and I, I say this respectfully, how on earth you work in a school? You work in a very busy

environment where there are always coughs and sneezes and, you know, kids are kids – it's always been the way and... But you come into school every day in an environment which must cause havoc with your anxiety?"

114. On 10th February 2023 Mr. Williams wrote to the Claimant with a letter which purports to be a stage one grievance outcome letter. The relevant parts of the letter said this:

"As we discussed, absence is recorded when a member of staff is not present at work, irrespective of the reason behind the absence. In your first paragraph you mention that no consideration was given to the reason for the absences that prompted the attendance letter. You have also been very clear about the heightened anxiety that the communications relating to your absences have provoked in you. The attendance letter was never intended to provoke further absences. Having read the letter, I do agree that the reference to long term sickness stage 1 was misleading, as no such stage is included in Countesthorpe Academy's Attendance Management Policy.

As you request, I have once again checked with our HR provider, Browne Jacobson, and they have been clear that the approach taken by Mrs Aitcheson followed their advice on managing staff who have experienced lengthy periods of absence. As I was clear to point out to you, this is not the only interpretation that can and in my opinion should have been employed on this occasion. I understand you when you say that large periods of absence this academic year have largely been as a result of the heightened anxiety that you felt in response to receiving the communications regarding absence. As stated, this was not our intention and I have spoken to Mrs Aitcheson about the options open to Head teachers, even when given advice from HR, and how we choose to use this advice. As I and Amy were clear to point out in our first meeting, this was not a personal decision made by Mrs Aitcheson. Further to this, I also agreed with you in our first meeting to resume management of any further absences through Section 5 of the Countesthorpe Academy Attendance Management Policy – Day to Day Management to enable us support you better.

The bullet points you make regarding referrals to Occupational Health were frustratingly delayed for the reasons I explained to you in our second meeting. Although the referral was passed on in good faith by Mrs Aitcheson, there was a delay in them being processed and hence the delay in seeing Occupational Health. I understand this has exacerbated the way you have been feeling through this process. I see that Mrs Aitcheson has apologised for this delay in her letter of 16th November 2022.

From our records, and the letter that you received dated 15th December 2022, there appears to be 6 periods of absence listed. I am more than willing to meet with you remotely to check our records with you and make any amendments that may be necessary. It is also possible for you to pass any discrepancies to Amy, who could then come to me and I will ensure any necessary amendments are made.

In your Occupational Health Report dated 27th October 2022 it states, "In my clinical opinion Ms Wells is fit to continue in her role and undertake the range of activities she is capable of undertaking with considerations to the

recommendations below to support her to continue to manage her symptoms effectively and maintain her attendance at work. It is likely that she should be able to render reliable and effective service in the future with appropriate support and a clinically effective ongoing treatment plan in place.....

.....As you will be aware, my advice is for guidance purposes, therefore it is ultimately for the employer to determine what level of adjustments can be accommodated in relation to business and operational needs.”

With this report in mind, I decided in our first meeting to recommend that if you were in agreement, you could reduce your hours so that you work solely in the room where you currently work, to carry out your Science Department Assistant role. This was an option that you had previously suggested and I was delighted that you accepted this as a way forward. At the time you met with Mrs Aitcheson, this option was not easily available, and only presented itself immediately prior to my first meeting with yourself. I cannot justify why you would be requested to meet in an area of school that you do not feel comfortable in, or why the use of the phrase “we have already accommodated you once...” was used, when you were not actually in work on the day that the school arranged the meeting for. I apologise for this and have discussed this matter with Mrs Aitcheson.

Your Occupational Health Report does state that you are at a higher risk of absence than unaffected peers, so I agree that setting a nominal number of days of absence in this regard may not be helpful to you. I suggest that going forward, we manage any absences, as mentioned above, through the use of Section 5 of the Countesthorpe Academy Attendance Management Policy – Day to Day Management, whereby we work closely with you to support you. Of course, the school is obliged to manage the attendance of its employees, but this would be done taking into account your medical needs and also through regular dialogue with yourself.

I am saddened that you say you have lost trust in Mrs Aitcheson, but as Head teacher at Countesthorpe Academy, she should be able to communicate with all of her staff when needed. Mrs Aitcheson is aware of our meetings and supports the actions we have agreed in order to try and support you and help manage your attendance in a way which doesn't exacerbate your medical conditions further, and so will delegate the day to day management to a senior member of staff that you are happy with.

I do hope that you have felt listened to and that I have shown understanding of how you have felt through the school's attempts to manage your absences. It has always been my intention to listen to you and to support you where possible to feel a valued member of staff.

I hope my swift action to reset the process and reduce the anxiety and stress you were feeling has helped you whilst we work together to support you as much as we can. I write this response as Executive Head teacher of Countesthorpe Academy and also Deputy Chief Executive of LiFE Multi Academy Trust. All of our schools within LiFE are proudly signed up to the Mindful Employer Charter, a responsibility we do not take lightly. As an employer, we have made an on-going commitment to:

- ☐ *Provide non-judgemental and proactive support to staff experiencing mental ill health.*
- ☐ *Not make assumptions about a person with a mental health condition and their ability to work.*
- ☐ *Be positive and enabling towards all employees and job applicants with a mental health condition.*
- ☐ *Support line managers in managing mental health in the workplace.*
- ☐ *Ensure we are fair in the recruitment of new staff in accordance with the Equality Act (2010).*
- ☐ *Make it clear that people who have experienced mental ill health will not be discriminated against, and that disclosure of a mental health problem will enable both the employee and employer to assess and provide the right level of support or adjustment”.*

115. It is clear that Mr. Williams was trying to adopt a solution based approach to the Claimant's grievance and whilst that has ultimately been of benefit to her in respect of resetting the AMP process to properly manage any future absence under stage 5 and ensuring that she has been able to remain solely working in S39 and reduce her hours as she had suggested to ensure that she did not need to provide cover in the main office, it was very clear to us at the hearing that what the Claimant wanted was a direct response and outcome to the complaints which she had made about Mrs. Aitcheson. Rightly or wrongly, what the Claimant wanted was Mrs. Aitcheson held to account.
116. That is also reflected in the Claimant's escalation of the grievance to stage two where she made plain that aspects of her grievance had not been commented on by Mr. Williams at all. She made that escalation on 13th February 2023 to the Chief Executive Officer and also raised complaint about how Mr. Williams had dealt with the grievance at stage one (pages 140 to 144 of the hearing bundle). The focus of that was again that the Claimant wanted an outcome reflecting the Respondent's position as to whether or not Mrs. Aitcheson had done anything wrong.
117. The stage two grievance letter also made complaint with a comment made by Mr. Williams at a grievance meeting with the Claimant and that part of the letter said this:
- “I also felt that Mr Williams’ attitude towards my health issues was insensitive. In one of our meetings, he stated that “if I were you I would be wondering how on earth you are working in a school. You work in a very busy environment, where there are always coughs and sneezes, but you come into school every day in an environment which must cause havoc with your anxiety”. I interpreted this as Mr Williams stating that the school was not the right workplace for someone such as myself even with reasonable adjustments in place.”*
118. It is not in dispute that Mr. Williams made that comment to the Claimant but the context in which it was made is important. We have set out the exchange above and it came as a result of the Claimant having raised the issue of her “freaking out” about having come into contact with the A-Level student who had a bad cold. It was clearly, and we accept his evidence to that end, Mr. Williams empathising with the Claimant when she raised that issue. It was

not a suggestion as the Claimant believed that she did not belong working in a school environment.

119. Stage 2 of the grievance process fell to be dealt with by Mr. Taylor in terms of investigation and production of a report to the panel appointed to deal with it.
120. *Mr. Taylor met with the Claimant via a Teams meeting on 20th March 2023 (pages 162 and 163 of the hearing bundle). The Claimant raised the following issues that she wanted stage two to address:*
- *That Mr. Williams' letter did not accurately reflect discussions from their meeting;*
 - *That Mr. Williams did not address other issues raised in the grievance;*
 - *That there had been harassment from unjustified actions;*
 - *That the grievance had not been handled properly or fairly;*
 - *That meeting venues had not accommodated her needs and so she was unable to attend;*
 - *That focus had moved to attendance and not on her grievance;*
 - *That the AMP was not followed and no adjustment for health issues was made;*
 - *That absence for anxiety was exacerbated by the handling of the situation; and*
 - *That there should be an allowance for disability but the letter from Mr. Williams did not provide any information and she was unaware of the options available.*
121. The Claimant also set out that she wanted a sympathetic application of the AMP and a proper investigation of her complaints and valid practical reasons why her suggested adjustments had been rejected.
122. Mr. Taylor met with the Claimant remotely to discuss the grievance and also separately with Mr. Williams and Mrs. Aitcheson on 22nd March 2023 and with Amy Hayes who had accompanied the Claimant to the meeting with Mr. Williams the following day. Ms. Hayes was interviewed in connection with the comment that was made by Mr. Williams in his grievance meeting with the Claimant of which she complained at stage two. Ms. Hayes commented that she thought that Mr. Williams had listened to the Claimant and that she was offered the things that she wanted. When asked if she could recollect anything that she would regard as discriminatory, she replied that she did not remember anything that she would regard in that way (page 166 of the hearing bundle).
123. The report produced by Mr. Taylor following his meeting with the Claimant and his further limited investigations had a number of findings and recommendations which can be summarised as follows:
- *That the stage one outcome suggested that Mr. Williams had been of the view that the Academy had been unreasonable in not continuing with reasonable adjustments but that was based on the need for the setting and the availability of staff at the time;*
 - *The outcome had been to maintain the reasonable adjustments for some time;*

- *That there was no evidence of any intent to harass the Claimant;*
 - *That the investigation at stage one was thorough and fair and made offers to accommodate the Claimant's original desired outcomes;*
 - *The AMP should be reviewed and that training and guidance should be provided to the leadership team to ensure fair and consistent decisions about attendance;*
 - *That Mr. Williams confirm the proposal for reasonable adjustments to reduce hours to 20 hours per week, continued use of S39 for as long as possible and where feasible the ability to go home in between working hours;*
 - *Discussions be held about redeployment into other suitable alternative roles; and*
 - *Ensuring that external HR support recognised the Respondent's values, had an awareness of Trust policies and that advice aligned closely with their language, ethos and values.*
124. Following production of the report the Claimant met with the panel who determined the grievance at stage two. They were supported in dealing with the matter by Amanda Scott of HR. The meeting took place by Teams on 12th May 2023 and was chaired by Joe Sheahan who was the co-chair of Governors along with Mr. Taylor. The panel was made up of three individuals and Mr. Williams and Mrs. Aitcheson were also in attendance. Questions were asked of all participants by the panel. The Claimant made it plain during the meeting that she wanted answers to the questions that she had raised during the grievance. It is again clear to us that she wanted confirmation of the Respondent's position on what she saw as the wrongdoing of Mrs. Aitcheson.
125. Following deliberations, the panel gave their decision which was that the grievance was unsubstantiated. They found that the Academy had made reasonable adjustments to accommodate the Claimant, that there was no evidence of harassment in the form of unjustified actions and that the grievance had been investigated fairly (page 182 of the hearing bundle).
126. Mr. Sheahan wrote to the Claimant after the meeting to confirm the decisions which had been taken and to make a number of recommendations. As to the issue of reasonable adjustments, the letter said this:
- "The panel considered your points raised regarding the failure to consider and evaluate reasonable adjustments, rejection of the suggestion for allocation of alternative duties, failure to explain why the suggestion to reduce your working week by 4 hours was not acceptable and rejection of the request that Mrs Aitcheson have no role in your future management.*
- The panel considered the reasonable adjustments that the Academy have put in place since March 2020 and the recommendations from the Occupational Health Report in October 2022. The recommendations in the Occupational Health Report stated that the Academy may consider an alternative room to accommodate ongoing increased anxiety and support with other medical conditions, further discussions about redeployment on alternative roles, a stress risk assessment to be carried out and where*

feasible, some time in-between work hours to go home due to health conditions.

The panel considered the evidence presented that you have been informed via a recorded meeting that your current working location in a separate room will continue, with the rare exception of when the room may be required for exams or other timetabling requirements. Mr Williams confirmed in the hearing that the Academy do not see a reason as to why this would change over the next 2-3 academic years given the predicted pupil roll numbers.

The Academy considered your request to not work 4 hours per week in the main office as part of your job role. Mrs Aitcheson confirmed in the hearing that, at the time of your request, another departmental assistant taking your 4 hours as you had suggested was not at option at that time due to the staffing levels across the Academy. Mr Williams confirmed in Stage 1 of the grievance that an opportunity had become available for you to reduce your working hours by 4 hours per week as per your suggestion. Mrs Aitcheson confirmed in the hearing that this option became available due to staffing changes. You accepted the reduction of hours in your meeting with Mr Williams at Stage 1 of the grievance process. In the hearing on 12th May you stated a reduction of 4 hours per week was no longer suitable and you do not wish to accept this offer. The panel noted this and have made a recommendation in relation to this change.

A stress risk assessment was carried out as per the Occupational Health Report. The recommendation to allow some time in-between work hours to go home due to health conditions was put to Catherine Aitcheson in the hearing. It was also agreed that on occasions where you needed to leave work early due to your anxiety or IBS, these hours could be made up using TOIL. It was agreed that these arrangements could be accommodated by the Academy.

Your request to not be directly managed by Mrs Aitcheson as the Headteacher was considered in Stage 1 of the grievance where it was confirmed that, so as not to exacerbate your medical conditions further, Catherine Aitcheson would delegate the day to day management to a senior member of staff that you are happy with.

The panel considered the reasonable adjustments in place and the points raised in the hearing and decided the Academy had made arrangements to accommodate you returning and remaining in work and therefore found this aspect of the grievance unsubstantiated”.

127. In respect of the complaints of harassment relating to unjustified actions the grievance outcome letter said this:

“The panel considered your points regarding the implementation of the Attendance Management Policy, rejection of requests for absences due to anxiety and IBS to be counted separately to other absences, the delay of the referral to Occupational Health, the rejection of requests for a change of date and venue of a meeting and the timing of the notice to attend a formal Attendance Management Meeting.

The panel referred to the Academy's Attendance Management Policy and the actions taken as part of the processes under this Policy.

The panel considered your request that there is acknowledgement that the formal Attendance Management process should have not have started. It was recognised that there are no set triggers outlined in the Attendance Management Process but the panel felt 64 days absence was reasonable to reviewed the day-to-day management outlined in the policy and felt that the discussions between August and October 2022 could be regarded as day-to-day management. In the hearing you stated although these discussions related to your absences you did not feel they were under the day-to-day management of the process. The panel also felt the support mechanisms referred to in the Policy were in place prior to initiating formal proceedings. You had stated that the absences reported in the Attendance Management Meeting letter dated 15th December were not referred to correctly and should have been reported as 4 absences not 6. Looking at the reasons for absence it was clear to the panel that the absences were listed separately as they related to different reasons of absence. The panel concluded that this was not done in a malicious manner and did not affect the total number of days absent which was the reason for the notice to attend an Attendance Management Meeting.

Your request that absences for anxiety and IBS be counted separately to other absences was discussed at Stage 1 of the grievance process where Mr Williams had stated that there was acknowledgement that you are at a higher risk of absences than your peers and because of this the Academy would revert your stage in the Attendance Management process back to day-to-day management to ensure this was considered and to keep an open dialogue with you.

The panel recognised the Occupational Health referral being delayed was due to confusion between the Academy, the external HR providers and the Trust HR. The panel understood this may have caused you inconvenience which is regrettable, but did not feel this was done intentionally from any party.

The panel questioned Mrs Aitcheson on the reasons for not relocating the venue to be held for an informal meeting regarding your absences and reasonable adjustments. The reason given by Mrs Aitcheson was that the planned room for the meeting was more appropriate for the nature of the meeting, it was still large enough to ensure distance and that moving the location to the room you currently work in was not conducive to the meaning of the meeting. Mr Williams apologised for any heightened anxiety this may have caused in Stage 1 of the grievance and stated he had discussed the matter with Catherine Aitcheson, who also apologised in the hearing for any exacerbation to your anxiety this may have caused as this was not her intention. The panel felt that this was an acceptable management request due to the meeting space being specifically designed for meetings and that it allowed for social distancing and was well ventilated. However, the panel also appreciate the impact this had on your anxiety and note that further meetings were accommodated either being held in your work space or virtually.

The panel considered the timing of the letter of notice to attend an Attendance Management Meeting following the advice given to Mrs Aitcheson from the external HR providers. The records of absence show that you had an absence from 5th December 2022 until 8th December 2022 for an illness. A fit note was then presented for a different illness from 9th December until 8th January. Given the timing of the fit note confirming the length of the absence, the panel felt sending the letter was procedurally acceptable and a reasonable explanation for the progression to formal proceedings resulting in a notice to attend an Attendance Management meeting. The letter inviting you to the meeting was dated 15th December 2022 with the meeting planned for 13th January 2023. Given the school closure period from 17th December to 2nd January and your fit note dated until 8th January, the date of the meeting as 13th January was in line with the 5 days working notice to attend as per the Attendance Management Policy. For this reason, the panel did not find these timings unjustified.

The panel considered the processes in line with Attendance Management Policy and did not find them to be unjustified. It was recognised that there had been a failing in the delay of the Occupational Health referral and the change of meeting location could have been accommodated sooner. The panel noted that you had received apologies for these, both prior to and during the hearing, but it was not the panel's opinion that either of these matters had been done intentionally and did not amount to harassment. For these reasons, the panel found this aspect of the grievance unsubstantiated”.

128. In terms of the Claimant's contention that the investigation had been unfair at stage one, the outcome letter said this:

“The panel considered your points regarding the grievance not being dealt with properly or in a fair and impartial way, the outcome letter failing to reflect and contradicting the content of the meetings between yourself and Mr Williams, the comments from Mr Williams being unwanted and discriminatory and the differing views and decisions made not being explained or supported.

The panel referred to the Stage 1 grievance letter from Mr Williams dated 10th February 2023 and the meeting minutes from the Stage 2 investigation interviews.

The panel considered the investigation and response letter dated 10th February to your Stage 1 grievance and could not find any evidence that the grievance was not dealt with in a fair or impartial way. While investigating the grievance, Mr Williams had held meetings with you, with a witness present as you chose not to be accompanied and the meetings were held virtually and recorded as per your request. The response letter responded to your requests for reasonable adjustments and accommodated all the requests you had made as well as reverting the attendance management process back to day-to-day management by a way of showing that the Academy was sympathetic to the fact that, although your attendance levels warranted a formal meeting and the HR advice followed was not incorrect, your absences are likely to be higher than peers due to your medical conditions. The panel felt that this was a supportive measure taken with a view to resolving your grievance and moving forward positively. Mr Williams explained and apologised for the delay in the Occupational Health referral and stated that

he had taken action regarding not Mrs Aitcheson not accommodating an alternative location for your meetings. The panel recognised that the Academy had acknowledged and apologised that these matters could have been handled differently but did not see this response as unfair or not impartial.

The investigating officer, Mr Taylor, had reviewed the recordings of your meetings with Mr Williams gathering evidence and seeking outcomes that were acceptable to both you and the Academy. Mr Taylor also interviewed Amy Hayes who was present at your meetings with Mr Williams who stated that the meetings were generally positive, that Mr Williams really listened to you and you were offered the things you wanted. Ms Hayes also stated that she did not recall anything said in the meetings that would be regarded as discriminatory and this was also the opinion of Mr Taylor following his investigation meetings, the panel concluded that the meetings were not contradictory to the letter dated 10th discriminatory but rather sympathetic to your position.

The panel considered your point regarding the differing views and decisions made not being explained reason for the delay in the Occupational Health referral and that he had taken action regarding the relocation of the meeting venue. The panel asked what more you required from the Academy other than acknowledgment and an apology but you did not make any further suggestions on a resolution for this. The panel did not believe the responses of Mr Williams were not explained or supported.

The panel considered the investigation by Mr Williams, the response letter to your grievance and the witness statements from your meetings with Mr Williams and concluded the investigation at Stage 1 was fair, therefore this aspect of the grievance was found to be unsubstantiated”.

129. The panel made the following recommendations as a result of the Claimant's stage two grievance:

- *“A letter from the Academy, to you, confirming the reasonable adjustments that are in place and the suggested review periods for these. This should include the use of a separate room for you to carry out your role, where feasible to allow some time in-between work hours to go home due to health conditions and to be directly managed by the senior leader delegated by Mrs Aitcheson and agreed by you. You stated in the grievance hearing that a reduction in hours was no longer acceptable to you. This is an operational decision that the panel are not delegated to make, but the panel recommend that there are ongoing discussions on the 4 hours a week of work that are required to be carried out in the main office and how this can be accommodated in line with your needs and the Academy's.*
- *For you to have continued access to counselling services funded by the Academy, allowing attendance to these sessions within working hours. Following the hearing you were also passed on details of the Education Support Services helpline.*

- *As per the Academy's Grievance and Dignity at Work Policy, the panel recommends that there is a meeting held between the employees involved in the grievance to rebuild relationships and clarify expectations of the working relationships moving forward. This should be held with an impartial mediator from the Trust's HR team and held at a time and place convenient to you.*
 - *The panel were informed in the meeting that the Trust are forming a new, clearly defined Attendance Management Policy with supplementary guidance. The panel feels this is a positive move and will provide further clarity to employees of the processes the Academy will follow. It should be noted that all attendance management is dealt with on a case by case basis that depend on the circumstances of each individual and the reasons for absence".*
130. The Claimant was informed of her right of appeal against the stage two decision in the event that she did not agree with it.
131. Mrs. Aitcheson also wrote to the Claimant setting out the position again on reasonable adjustments as recommended by the stage 2 panel. That included continued use of S39 for at least 2 years, provision to go home in between working hours in regard to her IBS, continuation of no direct management by her, offering mediation, access to further counselling (the Claimant received 23 sessions paid for by the Respondent which we understand is over and above the six usually provided) and to continue in discussions about the four hours which would be needed to provide cover in the main office (page 189 of the hearing bundle). In respect of the latter, the Claimant has never provided cover in the office which is dealt with by the other DA's.
132. The Claimant appealed the outcome of the grievance. She said that her points remained unanswered and requested that there be a further investigation (page 191 of the hearing bundle). An appeal hearing was held with the Claimant via Teams on 7th July 2023 and thereafter the chair of the appeal panel wrote to the Claimant on 12th July 2023 to confirm the decision reached. That decision was that it was determined that the stage two panel had taken due care in considering all the evidence presented when reaching their conclusions and that the original decision was upheld on appeal (page 207 of the hearing bundle).

CONCLUSIONS

133. We now turn to our conclusions in respect of the remaining claims before us.
134. We begin with the complaint of a failure to make reasonable adjustments and start by dealing with the question of knowledge of disability which is also relevant to other complaints advanced by the Claimant. As set out above, the position of the Respondent is that they did not have actual or constructive knowledge of the Claimant's disability until receipt of her grievance, the rationale for that being that it was not until that time that there was a knowledge that her anxiety was caused by anything other than the pandemic.

135. For the reasons that we have already given, we do not accept that. It did not matter what the cause of the Claimant's anxiety was, it was the effects upon her and the duration of those effects which was the key consideration. Those matters were made plain in the occupational health report of February 2021 and we are satisfied that the Respondent had knowledge of the Claimant's disability from receipt of that report and therefore at all material times with which this claim is concerned.
136. Turning then to the substance of the complaint of a failure to make reasonable adjustments, we are satisfied that both PCP's relied on by the Claimant were imposed by Mrs. Aitcheson prior to Mr. Williams becoming involved in the matter after she raised her grievance. In respect of the first PCP of DA's being required to work part of their time in the main office, that was something that Mrs. Aitcheson clearly conveyed to the Claimant that was going to happen. There may have been some time provided as a lead in to that commencing, but the requirement to do work in the main office as a DA was there nonetheless and we are satisfied that it was accordingly applied by Mrs. Aitcheson. We are also satisfied that the PCP of being required to attend meetings as directed and in a stipulated venue was imposed by Mrs. Aitcheson prior to the involvement of Mr. Williams. The requirement was not for a meeting to take place within S39 as had previously been the case but there was an insistence that this take place within a designated conference room in the main school building.
137. However, we are not satisfied that the Claimant was placed at the asserted substantial disadvantage. In relation to the requirement to work in the main office the Claimant relies on being unable to comply with a new job requirement for which she could be disciplined and resulted in her having to raise a grievance. There was never any suggestion that the Claimant was going to be disciplined for not working in the main office although we accept that she may well have been concerned that that might eventually result.
138. The actual substantial disadvantage was the anxiety that the Claimant was placed under at having to contemplate meeting that requirement but that was not her pleaded case. Moreover, we are satisfied in all events that the Respondent via Mr. Williams has made reasonable adjustments for her because she has in fact never been required to work in the main office. To the date of the hearing before us the Claimant has continued to work separately in S39 and the administrative cover in the main office has been dealt with by the other DA's with the Claimant not being required to provide cover. This part of the claim therefore fails and is dismissed.
139. Insofar as the second PCP of attending meetings as directed and in a stipulated venue is concerned we are also satisfied that the Claimant was not placed under the pleaded substantial disadvantage of being unable to comply with a management request for which she could be disciplined and resulted in her being unable to participate in her own management. There was never any question that the Claimant would be disciplined for not attending a meeting in the conference room and there was equally no question that she could not participate in her own management. Insofar as the first meeting was concerned, that was twice postponed at the Claimant's request and never re-arranged and the attendance management meeting was similarly cancelled by Mr. Williams with confirmation that it was now not to take place

and that absence management would revert to stage 5 of the AMP. This part of the claim for those reasons also fails and is dismissed. We are again satisfied that the Respondent made reasonable adjustments following the involvement of Mr. Williams because the meetings were cancelled and never re-arranged.

140. We then deal with the complaints of discrimination arising from disability. The first complaint is the requirement to work part of her time in the main office. We accept that this occurred before the involvement of Mr. Williams and that it was unfavourable treatment because the Claimant could not countenance that possibility because of her anxiety. However, the Claimant's pleaded case is that the something arising from her disability was the inability to work in the main office. That would mean that the Respondent required her to work in the main office because she could not work in the main office which is a confusingly circular argument. It is not the case that that was the reason for the treatment complained of. The reason why the Respondent – or Mrs. Aitcheson more particularly – wanted the Claimant to work in the main office was because there was no longer any administrative cover in place there and the idea was for all DA's to provide that cover moving forward. The unfavourable treatment was therefore not because of anything that arose in consequence of the Claimant's disability and certainly not as pleaded. This part of the claim therefore fails and is dismissed.
141. The second complaint of discrimination arising from disability is requests to attend meetings in certain parts of the school. We accept that that was unfavourable treatment because again the Claimant was not able to countenance attending the main part of the school because of her anxiety. This allegation, however, also relies on the same circular argument as the previous one. The Claimant says in this regard that the unfavourable treatment was because of her inability to comply with those requests which arose in consequence of her disability. Again, it is clear that the Respondent was not requesting the Claimant to attend meetings in certain locations because she could not do so. The reason for the requests was because Mrs. Aitcheson wanted a more formal setting for more formal discussions/meetings and believed the rooms identified to meet the Claimant's requirements at that time. Again, the unfavourable treatment was therefore not because of anything that arose in consequence of the Claimant's disability and certainly not as pleaded. This part of the claim therefore fails and is dismissed.
142. The final act on which the Claimant relies is being subjected to shortened, incorrect and poorly timed formal attendance proceedings as being an act of unfavourable treatment because of the Claimant's absence for anxiety, caused by the Respondent's actions, and grievance concerning the Respondent's failure to make reasonable adjustments, both of which arose in consequence of her disability. We are satisfied that the letter of 15th December 2022 calling the Claimant to an attendance meeting was an act of unfavourable treatment. We are also satisfied that this was sent because of the Claimant submitting a Fit Note for one month for anxiety and that that absence was something that arose from her disability. Whilst the Respondent relies on the totality of the absences as being the reason for the treatment complained of, it is clear to us that the catalyst was the absence for anxiety. Nothing had been done before that point to deal formally (or indeed

informally) with absences and the trigger was clearly the anxiety absence with the letter coming hot on the heels of submission of the Fit Note for that condition.

143. For the reasons that we give below in respect of the complaint of victimisation, we are satisfied that the grievance had nothing to do with the matter.
144. Whilst we accept that there may be a legitimate aim in a school seeking to manage attendance for the benefit of staff and students, calling the Claimant to an attendance meeting at that stage was not a proportionate means of achieving that aim. Particularly, the Respondent had not complied with its own AMP and specifically had not carried out the process required by section 5. That asserted defence to the claim therefore fails and it follows that this allegation of discrimination arising from disability is well founded and succeeds.
145. We turn then to deal with the complaint of victimisation. We do not need to address whether the Claimant's grievance regarding Mrs. Aitcheson was a protected act as that was sensibly conceded by Ms. Morgan in her closing submissions. To any extent that we had needed to determine that question we would have resolved it in favour of the Claimant as she was plainly making an assertion that there had been a failure to make reasonable adjustments.
146. To any extent that the Claimant had sought to rely on her email to Mrs. Aitcheson's personal assistant as being a protected act, we would have rejected that suggestion. That email said nothing other than the fact that she was going to raise a grievance which could have been about anything. It was not something that in any way fell within the requirements of Section 27 EqA.
147. The victimisation complaint was also not set out as the Claimant saying that Mrs. Aitcheson believed that she *might do* a protected act. The list of issues was confirmed to be agreed by the Claimant at the outset, her witness statement was advanced on the basis that the protected act was her grievance of 12th December 2022, no application to amend the claim was made and the suggestion was not put to Mrs. Aitcheson in cross examination. Whilst potentially Mrs. Aitcheson may have been able to infer what the grievance may have been about, the claim was not advanced in that way.
148. We therefore deal solely with whether the Claimant's grievance of 12th December 2022 was the reason why Mrs. Aitcheson sent the letter of 15th December 2022 (which we accept was such as to amount to detriment because the Claimant was being told that she was facing a formal process for which she may receive a warning). We are not satisfied that that grievance letter itself played any part in the decision to send the letter or the content of it. That is principally because as at that date Mrs. Aitcheson had not seen the grievance and had not been told what it was about. If she did not know that the Claimant had done a protected act (and she did not until the following month) it is clear that Mrs. Aitcheson's actions in sending the letter could not have amounted to victimisation.

149. We are also satisfied that the reason that the letter was sent was the fact that Mrs. Aitcheson had a few days previously received the Claimant's Fit Note signing her off sick for a month with anxiety. Mrs. Aitcheson had sought HR advice and that advice was to send the letter in the form that was drafted by Browne Jacobson and on their advice. We are satisfied that the Claimant's grievance of 12th December 2022 therefore did not materially influence Mrs. Aitcheson in the sending of the letter although given the timing we can well see why the Claimant may have believed otherwise.

150. We turn finally to the complaint of harassment. We remind ourselves that this is in respect of the comment made by Mr. Williams on 24th January 2023 where it is not disputed that he said this:

"Well I-I would think, if I was you, I would be wondering... And I, and I, I say this respectfully, how on earth you work in a school? You work in a very busy environment where there are always coughs and sneezes and, you know, kids are kids – it's always been the way and... But you come into school every day in an environment which must cause havoc with your anxiety?"

151. When considering this complaint it is necessary to look at the context in which that comment was made. Had it been made without any background then the matter may well have been different but the comment came off the back of the Claimant having specifically raised the issue about her "freaking out" because of encountering an A Level student with a severe cold. We are satisfied that Mr. Williams was seeking to engage and empathise with the Claimant as he had done throughout both of his meetings with her.

152. It is against that backdrop that we consider whether the comment amounted to harassment within the meaning of Section 26 EQA.

153. We have to firstly consider if the conduct was unwanted. We accept the Claimant's evidence that it was and that she was upset and offended by it. We also accept that it was related to her disability because a significant stressor in respect of her anxiety – a matter that the comment specifically referenced – was the possibility of contracting illnesses from others in the school and outside environment.

154. We have to then consider whether the comment had the purpose or effect of violating the Claimant's dignity and/or creating an environment that was intimidating, hostile, degrading, humiliating or offensive to the Claimant. The comment plainly did not have the purpose of creating such an environment. We have accepted that it was said by Mr. Williams immediately off the back of a comment made by the Claimant about a student and her reaction to coming across her whilst she was ill. It was designed to display empathy for the Claimant and in the context of a topic which she herself had introduced.

155. We turn then to consider whether the comment had the prescribed effect. We have accepted the evidence of the Claimant that she did find the comment offensive. However, we have to consider if it was reasonable for the comment to have had that effect. We do not conclude that objectively it was. The Claimant has a hyper-sensitivity regarding the senior management of the Respondent. She views them with distrust and that is plain from comments made at the hearing, in various meetings and in the

correspondence that we have seen. The effect on her has to be viewed through that prism and the fact that all that Mr. Williams was doing was responding to a topic that the Claimant herself had introduced and empathising with her in the context of that ongoing discussion.

156. In those circumstances, whilst we accept that the effect on the Claimant was to create an offensive environment, we do not conclude that it was reasonable for the comment to have had that effect and as such it did not amount to harassment. This part of the claim therefore fails and is dismissed.
157. Whilst we have dismissed all but one of the complaints raised by the Claimant she is clearly entitled to a remedy in respect of the same. This should be a matter capable of agreement between the parties and the claim is stayed for 28 days for that purpose. If remedy cannot be agreed, the parties should inform the Tribunal shortly after that time has passed and a Remedy hearing will be listed.

Approved by:

Employment Judge Heap

Date: 23rd September 2026

JUDGMENT SENT TO THE PARTIES ON

24/09/2026

J. Woolley
FOR THE TRIBUNAL OFFICE

IN THE EMPLOYMENT TRIBUNALS

CASE NO: 2600754/2023

BETWEEN:

Christina Wells

Claimant

and

LiFE Multi Academy Trust

Respondent

LIST OF ISSUES

Equality Act 2010 claims- Time limits

- 1 Have the Claimant's claims of disability discrimination been brought within three months of the acts complained of, taking into account the effect of the 'stop the clock' early conciliation provisions? (EqA 2010, ss 123(1)(a) and 140B))

Failure to comply with duty to make reasonable adjustments contrary to sections 20–21 of the Equality Act 2010

- 2 Did the Respondent apply a PCP to the Claimant? (EqA 2010, s 20(3))

The Claimant relies upon the following PCPs:

A) That all Departmental Assistants work part of their time in the Main Office.

B) That all staff attend meetings as directed and in a stipulated venue.

- 3 In respect of each PCP relied upon, did that PCP put the Claimant at a substantial disadvantage in comparison with persons who are not disabled? (EqA 2010, s 20(3))

The Claimant argues the substantial disadvantages of:

A) Being unable to comply with a new job requirement for which she could be disciplined and resulted in her having to raise a grievance.

B) Being unable to comply with a management request for which she could be disciplined and resulted in her being unable to participate in her own management.

- 4 Did the Respondent know or ought it to have known that the Claimant was likely to be put at a substantial disadvantage by that PCP? (EqA 2010, Schedule 8, Part 3, para 20)

- 5 Did the Respondent take such steps as were reasonable to avoid that disadvantage? (EqA 2010, s 20(3))

The Claimant argues that the following steps would have been reasonable but were not taken by the Respondent:

A) To be allocated alternative Departmental Assistant duties instead of those in the Main Office or to reduce her working hours to allow another Departmental Assistant to fulfil those hours in the Main Office.

B) To hold meetings in the room where the Claimant works, as previously conducted, or remotely as subsequently requested by the Claimant.

Discrimination because of something arising from disability contrary to section 15 of the Equality Act 2010

6 Did the Respondent know or could it have been reasonably expected to know that the Claimant had a disability? (EqA 2010, s 15(2))

7 Did the Respondent treat the Claimant less favourably because of something arising in consequences of her disability? (EqA 2010, s 15(1)(a))

The Claimant relies on the requirement to work part of her time in the Main Office as being an act of unfavourable treatment because of the Claimant's inability to work in the Main Office which arose in consequence of her disability.

The Claimant relies on management requests to attend meetings in certain parts of the school as being an act of unfavourable treatment because of the Claimant's inability to comply with these requests which arose in consequence of her disability.

The Claimant relies on shortened, incorrect and poorly timed formal attendance proceedings as being an act of unfavourable treatment because of the Claimant's absence for anxiety, caused by the Respondent's actions, and grievance concerning the Respondent's failure to make reasonable adjustments, both of which arose in consequence of her disability.

8 Can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? (EqA 2010, s 15(1)(b))

Victimisation contrary to section 27 of the Equality Act 2010

9 Did the Claimant do a protected act within the meaning of section 27(2) of the Equality Act 2010?

The Claimant relies on the following: on 12 December 2022 the Claimant raised a grievance against Mrs Catherine Aitcheson, Head Teacher of Countesthorpe Academy, concerning a failure to make reasonable adjustments.

10 Did the Respondent subject the Claimant to a detriment because the Claimant had done a protected? (EqA 2010, s 27(1))

The Claimant relies on the following: on 15 December 2022 Mrs Aitcheson commenced shortened, incorrect and poorly timed formal attendance proceedings against the Claimant.

Harassment related to a protected characteristic contrary to section 26 Equality Act 2010

11 Did the Respondent's behaviour amount to:

11.1 unwanted conduct;

11.2 related to the Claimant's disability;

11.3 which had the purpose or effect of violating the Claimant's dignity and/or creating an environment that was intimidating, hostile, degrading, humiliating or offensive to the Claimant? (EqA 2010, s 26(1))

- 11.4 Was it reasonable for such conduct to have had the effect on the Claimant in all of the circumstances?

The Claimant relies on the following conduct: on 24 January 2023 Mr Gareth Williams, Executive Head Teacher of Countesthorpe Academy, said to the Claimant “If I was you, I would be wondering how on earth you are working in a school. You work in a very busy environment where there are always coughs and sneezes, but you come into school every day in an environment which must cause havoc with your anxiety.”

Equality Act 2010 claims—remedy

- 12 What declarations, if any, as to the rights of the Claimant and Respondent would be appropriate? (EqA 2010, s 124(a))
- 13 What compensation, if any, should the Respondent be ordered to pay to the Claimant? (EqA 2010, s 124(2)(b)) In particular:
- 13.1 what injury to feelings, if any, has the Claimant sustained?
- 13.2 did the Respondent unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to increase the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s 207A(2))
- 13.3 what interest, if any, should be added to the compensatory award?
- 14 What recommendations, if any, would be appropriate? (EqA 2010, s 124(2)(c))