EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms S Yardley	**AND**	Somerset County Council

HELD AT: Southampton (By CVP) **ON:** 6-9 July, 13 July 2021, 14-15 July 2021 (In Chambers)

Before: Employment Judge Self
Mr K Sleeth
Mr Ghotbi-Ravandi

Representation
For the Claimant: Ms R Jiggens - Paralegal
For the Respondent: Mr C McDevitt - Counsel

RESERVED JUDGMENT

1. The Claimant was not constructively dismissed and accordingly the claim for unfair dismissal is not well-founded and is rejected.

2. The Claimant's allegations of disability discrimination are not well-founded and are dismissed.

WRITTEN REASONS

1. By a Claim Form lodged at the Employment Tribunal on 19 December 2019 the Claimant seeks compensation for constructive unfair dismissal and disability discrimination and victimisation. Two periods of Early Conciliation took place. The first was between 15 March 2019 and 15 April 2019 naming the Claimant's employer as at the commencement of conciliation and the second between 27 August and 27 September 2019. The Respondent have consistently denied all claims.

2. The hearing was listed for seven days. It was hoped that we would be able to deliver Judgment on the last afternoon but unfortunately for a range of reasons that was not possible, and the Judgment has been reserved and time has had to be found from a full sitting schedule to complete these Reasons following the in chambers discussion.

3. We heard oral evidence from the Claimant on behalf of her own case and we also heard oral evidence from Mrs Kristie King, Ms Elizabeth Rendell and Mrs Brice on behalf of the Respondent. Each witness provided a written witness statement and were cross examined. There was a bundle of documents which was added to as the hearing went on. We considered such parts of the bundle as we were referred to by both sides. Finally, both parties provided written closing submissions. We do not replicate those submissions in this Judgment, but we have referred back to them during our deliberations.

4. The Claimant was initially employed by Somerset Partnership NHS Foundation Trust as a Health Visitor on 24 February 2014. On 1 April 2019, the Claimant's employment transferred by way of a TUPE transfer to the Respondent in this case, Somerset County Council. At all material times there were a number of Health Visitor teams servicing the needs of different parts of Somerset. Although there almost certainly were differences in these areas as to the scope of the work to be undertaken and the pressures brought to bear, the basic role of Health Visitor would have been the same in each i.e., to deliver The Healthy Child Programme to families and children aged 0-18 years.

5. Again, at the material time, the Claimant's line manager was Mrs Kristie King who was the Area Manager for the Public Health Nursing teams in Mendip and there was a team for Frome, Shepton Mallet, Wells, Glastonbury, and Street. Mrs King managed circa 46 staff. Mrs King was line managed by Mrs Elizabeth Rendell who was the Operational Service Manager for Public Health Nursing. Mrs Rendell had interviewed the Claimant upon her appointment as a Health Visitor.

6. The Tribunal heard no evidence that was critical of the Claimant's capability at undertaking her role as a Health Visitor, save to the extent that her abilities were compromised on account of her ill health, which the Claimant herself accepted. It would appear that the role was a demanding one and that the Health Visitors were kept very busy in providing their valuable service to the general public. Their job would be a fluid one with circumstances arising on a regular basis that would add to the workload or require a change in priority. The concept of the Team was clearly an important one with a need to assist others where possible a priority.

7. In a letter dated 3 August 2020 the Respondent conceded that the Claimant was a disabled person by reason of anxiety and depression at all material times for the purposes of this Claim. In that letter the Respondent stated that the first time that it had the requisite knowledge that the Claimant was a disabled person was when they received an OH report after the Claimant had resigned. At the start of this hearing the Respondent made a further concession that it had constructive knowledge of the Claimant's disability from early March 2019 and in their closing submissions made a further concession that constructive knowledge was following the OH report of 14 January 2019 (198).

8. The Claimant's position is that the Respondent should have had the requisite constructive knowledge shortly after 24 July 2018 upon receipt of the first OH report in the bundle. In that report the OH Advisor comments that in her medical opinion the Claimant would fulfil the statutory criteria for a disabled person pursuant to section 6 of the Equality Act 2010. We note that in any event the vast majority of the Claims set out in the agreed List of Issues post-dates 14 January 2019.

9. The Claimant had two sickness absences between March 2018 and June 2018 and then from 26 June 2018 until 24 July 2018. The Claimant was referred to OH who indicated that the Claimant had confirmed that she ***"was struggling psychologically on account of issues surrounding her children"***. No contributory work issues were identified as being a cause of her impairment and it was noted that the Claimant had been suffering intermittently with anxiety and depression over a long period and was in receipt of medication. The OH Advisor advised the Respondent that the Claimant was likely to be disabled and that a phased return was appropriate.

The Claimant was deemed fit to attend a meeting about her sickness absence. A phased return was recommended.

10. In addition, we have the benefit of the Claimant's GP notes over this period of time from March to July 2018 (p.76-77). There is no mention of her condition being caused by any work- related issues within those notes which focusses on the impact that the stresses and strains from home are causing. The cause of the illness is not relevant in relation to the issue of whether the Claimant was a disabled person. It is however relevant to the Claimant's credibility as she explains in her witness statement that she had good support from Dr Dolman her GP ***"who encouraged her to take time off due to my anxiety, insomnia and panic episodes which were related to work and feeling unable to cope and feeling unsafe"***. We do not accept that the cause of the Claimant's absence over this period was in any way work related as she indicates at paragraphs 9 and 11 of her statement as there is no contemporaneous evidence to support the same and we believe that the Claimant would have mentioned it to OH or her GP if work stress was a contributing factor, especially as it was a specific question asked by management of the OH Advisor (177).

11. Mrs King had taken over as manager during the Claimant's sickness leave and the evidence was that although there was no specific recollection of discussions about the Claimant with Mrs Rendell before she took over the Team, Mrs King was satisfied that some form of handover had taken place.

12. On 2 August (179) the Claimant wrote to Mrs King expressing thanks for the kindness and support shown for her upon her first three days back at work. It is clear from her e-mail that she has had two positive meetings with Mrs King in that time and that to use her own phrase from the email ***"all is well"***. The Claimant, at this hearing, was critical of Mrs King for not having a formal Return to Work meeting which was mandated under the relevant policy. We have certainly seen no formal form filled out although Mrs King thought that she had filled one out. Regardless of that it is apparent that the Claimant was grateful for Mrs King's efforts and so even if there was no formal meeting there is no indication that any adverse consequences flowed from that or certainly none were perceived at the time. It was a common theme at this hearing that the Claimant sought to find fault with the Respondent and criticise them when the contemporaneous evidence did not support that criticism. We preferred the evidence of the contemporaneous evidence when litigation was not contemplated as opposed to the negative retrospective which was self-serving in nature.

13. It is apparent that Mrs King had facilitated the claimant taking two weeks' annual leave at short notice following her extended absence on sick leave and that the Claimant would return to do four 4-hour days increasing back to normal once confidence had been gained. It would seem that the OH report had still not been sent out. The Claimant also stated the following:

    "I would like to have some discussion with HR regarding my sickness absence and the trust policy and my situation".

    The Claimant appears to be speaking about the fact that she was only offered a limited period of sheltered return back in June and that may have been a contributory factor in why she had gone off sick again. It is therefore a historical matter which she wishes to discuss as opposed to an issue with Mrs King herself.

14. The Claimant did not specifically state that this was something that she wanted Mrs King to arrange or organise. We heard evidence that there was nothing to prevent the Claimant going direct to HR if she wished about this matter relating to her former manager before Mrs King became her line manager or at any other time. Mrs King was criticised for her lack of action, but the reality is that the Claimant did nothing to progress this issue either and we find that if she believed that it as important as she sought to suggest in this hearing she would have done so. She did not pursue it and our conclusion is that she did not do so because it was not in fact the major issue for her that she has asserted at this hearing. She could have raised it again with Mrs King or dealt with it herself. She did neither.

15. The Claimant went on two weeks' annual leave and returned to work on 17 August. We have seen a note of a meeting made by Mrs King on 22 August (180 -181). We have considered the notes of that meeting and accept it is a reasonable summary of what was discussed. Mrs King described the meeting as being a positive return to work meeting. The Claimant detailed the issues at home in response to questions from Mrs King who was seeking to establish what the issues that lay behind the sickness absence were. The Claimant stated that she was ***"loving"*** being back at work. The OH report had still not been finalised as some amendments were being made. It is noteworthy that had the Claimant wanted to make clear that there were work issues contributing to her condition she had ample opportunity to make this point when the amendments were being undertaken. She did not do so and again we consider this evidence that work related issues were not the driver of any mental health issues that she had.

16. The plan appeared to be that she would work half days for two weeks and then return to 24 hours per week over 4 days. As stated the OH report had not yet been received. There is nothing from the notes of that meeting which would be anything other than positive. At paragraphs 12 and 13 the Claimant paints a gloomier return in terms of the stress caused by those around her and indicated that Mrs King told her that she needed to make time up for medical appointments. The contemporaneous documentation does not support the Claimant's account and we reject it. We find that Mrs King was being positive and facilitative at this time by seeking to understand the root causes of the Claimant's illness with a view to helping her.

17. On 7 September, the Claimant referenced the home difficulties that she was experiencing and requested that she "agile work" from home in the afternoon if she was able to conclude her visits in the morning on some days. She also asked for a day off for a medical appointment for one of her children. The only stressor from work was in relation to ***"back to school"*** chat. The agile working was agreed for 2 weeks with a review on 24 September. The Claimant was requested to attend Allocation and the Claimant agreed that she would do so. She stated that ***"Otherwise work is going well, and I am enjoying being back***". The indication once again was that her difficulties were being caused, almost exclusively, by issues at home. Mrs King communicated that state of affairs to the Claimant's Team on the same day.

18. In any Team environment the loss of a member or an individual who is not working at full capacity is bound to have an impact on the remaining members of the Team. The Claimant as a conscientious member of staff and one who will no doubt have been affected by such circumstances in the past will have been aware of that fact.

19. On 18 September, a meeting was held with four members of the Claimant's team. The Claimant was not present. The notes state that it was a meeting to discuss the Wells Team Health Visitor's concerns regarding the Claimant's well-being. The notes read as follows:

The team members shared their concerns regarding Suzy's well-being as she currently appears low in mood, tearful, distracted, vulnerable, and unable to be challenged or questioned regarding team dynamics. Susie has voiced that she is welcoming of having any prompts or direction from the team as she is struggling to organise her mindset. Their main concern is if Susie is well enough to be at work?

The team are finding it difficult that Susie is agile working after having completed her visits in the morning. They feel that they would benefit from her being in the office to take telephone calls and be present and discuss team workings. This is impacted currently as the Team do not have an administrator.

Plan - I reassured the team that I would have sought their feedback ahead of meeting with Susie on 24/9/18 and I will share their concerns sensitively with Susie.

I plan to assess and gain Suzy's opinion of her general well-being and ability to focus on her work and her perception of home circumstances improving in the future.

I plan to liaise with Occupational Health if appropriate to consider if a further assessment is required.

I consider the current HV workforce climate to be unsupportive of long term and sustained agile working.

20. The Claimant asserts that one of her colleagues had informed her that the meeting was not a supportive one and that she had been disgusted by what had taken place. Mrs King gave clear evidence that the focus of the meeting was concerns about the Claimant's welfare and her capacity to undertake the role taking into account her home stressors. She denied providing any confidential information at that meeting about the Claimant's situation. Indeed, the evidence was that the Claimant was very free with her personal situation / information with other staff and would regularly disclose the same to others whether they were keen to receive the information or not.

21. We have seen in the bundle (438-439) a statement from the colleague who was alleged to have told the Claimant how disgusted she was (CB) and her signed statement is not supportive of what she is alleged to have told the Claimant. That position is further supported between pages 430-435 by the other Health Visitors in the Team who all make it clear that nothing confidential was shared and that the main concern from the team was the Claimant's welfare.

22. Taking into account this evidence we find that the meeting was appropriate and aimed at discussing concerns that the team had for the Claimant's welfare. The Claimant's evidence is second hand, and we have substantial contrary evidence and so we accept Mrs King's account of the meeting. We acknowledge that it cannot have been easy on the Team if the Claimant was, as asserted in the statements, often on the phone sorting out home issues, leaving at short notice, discussing her issues at length and was being regularly tearful and distracted. Having said that we are satisfied that the

primary reason for the meeting was to express the concerns held in a constructive manner and that Mrs King was entirely professional.

23. Following on from the meeting Mrs King's plan was to share the concerns sensitively with the Claimant, thus demonstrating that there was no secrecy about the fact such comments had been made, and to assess the Claimant's wellbeing with a view to deciding a way forward including consideration of a further OH referral. Further Mrs King could see that the current situation was such that long term and sustained agile working was unlikely to assist the Team and the Claimant's needs needed to be monitored.

24. On 24 September 2018 Mrs King met with the Claimant to review her Return-to-Work Plan (186). She said she felt fragile and was close to going off sick again which is consistent with the observations of her Team. The Claimant was visiting her GP at the time on other matters and does not appear to have disclosed any issues re her mental state to her GP (5 and 19 September and 4 October). She indicated that she felt micromanaged by the team particularly in relation to agile working and that she would prefer to be moved to another base to give her a fresh start and to avoid the micromanagement. Her preference was said to be Glastonbury but Axbridge / Cheddar or Burnham / Highbridge were also options.

25. The Claimant gave examples of what she considered to be micro-management in her statement at paragraph 19. We consider that the Claimant as a conscientious Health Visitor was fully aware of the issues that she would inevitably cause at work if she were unable to be fully focussed on account of the stressful circumstances at home. It would be inevitable that colleagues would check to see if she were around at work and on whether things had been done when there was a risk that the Claimant's circumstances at home may dictate quite naturally what the Claimant needed to do as a priority. What the Claimant perceived as micromanagement at this time was simply the other Health Visitors seeking to ensure that matters were in place for the Team goals to be met and the welfare of clients met.

26. There was a plan for the Claimant to work longer hours three days a week and so reduce her hours to 24 to 22.5. There would still be some Agile working, but Mrs King requested that it not be every day. The Claimant asked for a change of base preferably to Glastonbury.

27. On 19 October 2018, the Claimant wrote to Mrs King that things had improved a lot in her present role, and she was much happier and so she would like to retract her offer to move to a different venue (187). It is clear that the Claimant's position was ebbing and flowing, and we consider that it ebbed and flowed depending on the stressors at Home. We consider that at this point Mrs King continued to work constructively and conscientiously with the Claimant to try and assist the Claimant in managing work along with the other disclosed stresses.

28. The Claimant did not attend her GP for stress issues over this period until 22 November when she went absent sick and the entry there reads ***Anxiety State Unspecified – Huge pressure at home***" with one of her children. There then follows a description of the issues he is going through which we need not specify in this judgment and then the GP states, ***"Having to fight for assessments, not sleeping, not safe to work, Review 2 weeks"*** Again to the extent that the Claimant asserts that her departure from work was largely caused or contributed to by stress caused at work we reject it as there is no contemporaneous evidence to support it. We are firmly of the view that

if that were the case the Claimant would have told the GP and the GP would have noted it.

29. As stated above the Claimant was signed off work on account of Anxiety and Stress. Although not known at the time the Claimant was never to return to work. The initial Certificate signed the Claimant off for a month. This was the third occasion when the Claimant had gone absent on account of illness within a year. Mrs King told us that she consulted with HR and HR advised that she seek to set up a Well Being Support Meeting. In the eventual letter sent the purpose was to discuss the sickness absence, the Claimant's current wellbeing and the necessary steps to supporting a return to work. The Claimant was told she could be supported at such a meeting. She was told that if she could not attend the meeting to let Mrs King know and she would rearrange and also that she was welcome to call with any queries.

30. Prior to the sending of this letter there was a discussion over the telephone between Mrs King and the Claimant on 30 November 2018. There are notes of that meeting from the Claimant whose handwritten notes were disclosed after this hearing started and there are some from Mrs King which have been incorporated into the preliminary enquiries into the grievance (224). Mrs King indicated and we accept that she had no inkling at all before the call that she had anything other than a good relationship with the Claimant whom she had sought to support throughout. We accept her position on that and we also accept that she was keen to try and assist the Claimant get back into work.

31. Mrs King records that when the wellbeing meeting was mentioned the Claimant became upset and voiced that she felt Mrs King was trying to push her out of a job. When Mrs King explained the rationale for the meeting the Claimant was able to choose a date for the meeting being 18 December. Mrs King stated that the Claimant asked about the well-being of the Team, and detailed that she felt guilty about being unwell.

32. The Claimant asserted that she was phoned numerous times by Mrs King in the first week away from work and that Mrs King was unsympathetic about her absence and was only concerned about the other members of the Team and reducing their workload. The Claimant contends that Mrs King told her that she needed to consider the Team as they were ***"frazzled"*** and ***"On their Knees."*** The Claimant contends that this telephone call upset her greatly.

33. We accept that the Claimant asked about the Team and how they were doing and was told the truth by Mrs King that they were frazzled. Mrs King does not recall the phrase ***"on their knees"*** and told us that it was not a phrase she would have used. We have found Mrs King's account of her interactions to be more reliable to the Claimant's and considered that her recollection was better than that of the Claimant and so we do not accept that that phrase was used. It matters little in any event as it was accepted that "frazzled" was used. We find that the discussion was instigated by the Claimant, and she received a response to her question. The Claimant would have been mindful about the effect of her absence on others and that is why she asked. The Claimant was starting to become concerned about her position because she recognised that her absence record had been high over the previous period and so she was defensive to the suggestion that there be a meeting which would, in our view, have been a sensible way to start a dialogue which would benefit both parties moving forward. We do not accept that there was anything said within this meeting from which Mrs King would have known that the Claimant was not fit to attend a meeting. The Claimant

apologised for her conduct on the call the following day and Mrs King accepted that.

34. On 4 December Mrs King was contacted by a Unison representative and told that the Claimant may not be fit enough to attend the meeting and Mrs King suggested that a final view was taken a week before the meeting and then something could be rearranged. We accept Mrs King's account of this conversation in the absence of any contrary evidence.

35. At para 25 of the Claimant's statement the Claimant states that she saw her GP every week and discussed how Mrs King was impacting upon her ability to recover and how this was a work-related mental health matter. That is not reflected in the GP notes at all, and we would expect it to be recorded if that were the cause suggested. On 11 December, the Claimant's entry reads:

"Massive pressure, unable to work, can't sleep, not fit to attend a meeting at work yet".

We take this to mean that because of the massive pressure the Claimant was under which she had described at home this had left her unable to work. There is no discussion of work causing the anxiety and stress.

36. The next consultation was by telephone on 27 December to extend the sick note and then on 11 January 2019 the focus of concern is in respect of her daughter. The Claimant does not attend her GP again until 25 March. The matters set out at para 25 about the claimant contemporaneously making complaints against Mrs King weekly for exacerbating her mental health is not supported by the evidence and rejected.

37. In a letter dated 12 December Dr Dolman the Claimant's GP wrote a letter in which he stated the following:

"This letter is to confirm that Suzanne is signed off medically unfit to work she has a stress related problem due to her complex family dynamics. She is being seen regularly and supported through the practise and I do not think that it is appropriate that she is asked to attend work related meetings at the present time".

Even in this letter there is no support for her position at para 25 of her Claimant's statement that work was causing her undue stress.

38. The Claimant chose to involve her GP in matters relating to her employment and enlisted his support in communicating that she was unfit to attend a meeting at the time. This is what she had told him. On 18 December 2018 Mrs King informed the Claimant that she would write to Dr Dolman asking him to provide advice and guidance on when the Claimant might be fit enough to attend a well-being meeting. In addition, the Claimant was offered the opportunity to be assessed by OH so that they could provide recommendations on how the respondent could best support the Claimant. The Claimant was also told about the EAP programme which was a service offering advice information and counselling. The Claimant was offered this service on other occasions but did not take the same up.

39. On 19 December Mrs King wrote to Dr Dolman and he was asked to provide an estimate of when an invitation to a well-being meeting might be appropriate. The Claimant has objected to this enquiry being made in that her consent was not sought before the enquiry was made. The Claimant was told that the enquiry was to be made and she made no objection at the time. We do not consider it unreasonable for such a request to be made and

cannot see that consent is required. It was the Claimant who brought her GP into the matter in order to support her position that she was not fit to attend a meeting. We can see nothing objectionable about asking a follow up question of the GP. If he or the Claimant did not wish to answer the enquiry on any ground then that would have been easily done.

40. On 21 December, the Claimant was signed off until the start of February 2019 with Anxiety and Stress.

41. On 27 December, the Claimant texted Mrs King and indicated that she was content to be referred to OH. She made no complaint about the letter to the GP. Mrs King texted by return:

Thank you for your update Suzy. I will refer you to Occupational Health with your consent. Keep in touch and best wishes Kristie King.

42. On 2 January 2019, the Claimant was notified that her employment was going to be TUPE'd to the Respondent in this case on 1 April 2019 and that formal consultation was about to start. It was important that the Claimant was notified of this change and was included or at least invited to be included in the consultation. That letter was sent from the Interim Head of Community Services and not from Mrs King.

43. The OH report was dated 14 January 2019. The Claimant's symptoms were described as a combination of anxiety, low mood, poor concentration, and disrupted sleep. The trigger is described as ***"a significant ongoing situation with her home life"*** which is wholly consistent with the GP notes and inconsistent with the Claimant's statement and evidence at this hearing and it was said that once that situation subsided so would her level of symptoms. The Claimant could have corrected that if it were wrong and we are satisfied that if it were the case that work was a major stressor the Claimant would have said so or it would have been recorded. It is recorded that:

"Her home situation has a daily impact on her, and her level of symptoms are likely to subside once her home problems improve."

44. A return to work was said to be unlikely in the next 10 -12 weeks but it seems that there was at least a hope she would be able to attend a meeting in the next 4-6 weeks. Contact from work was encouraged but the recommendation that times should be scheduled so that the Claimant could be prepared and have any questions ready. It is noteworthy that there is no indication that the vague scheduling suggested would be likely to reduce the Claimant's stress or anxiety.

45. On 15 January 2019, the Claimant texted Mrs King and stated that she had had her OH appointment and hoped it would assist Mrs King in planning. She stated that her GP had said that she was not fit to attend meetings and she would likely to be off for 6-8 weeks . In response Mrs King wrote:

Thank you for your update Suzy, I will await further information from OH and will update the Team. I hope that you are able to find some downtime to recharge.

46. On 11 February 2019 Mrs King called the Claimant in order to discuss the TUPE situation and as part of the consultation process linked thereto. She was told to do so by HR. It is recorded that the Claimant did not wish to engage in the TUPE issues as she believed the transfer was inevitable anyway but indicated that a meeting in about a month would be valuable.

Mrs King confirmed that she had received the OH report and that report had set on her calculation the 25 February before any meeting could be held and a return to work was not likely to happen before 8 April. The Plan was to call the Claimant around 4 March.

47. A further Fitness certificate was sent in between 4 March 2019 and 4 April 2019. On 7 March 2019 Mrs King contacted the Claimant to offer a Well Being meeting and return to work support and left a voice message. The Claimant responded:

Sorry I missed your call yesterday. I've just seen GP and have sick note I'm sending in until April. Sorry not any update except we are likely to be taking SCC to tribunal and it's very stressful. Will be seeing my GP at the end of the month so will update you then? Speak again soon Susie.

48. At this particular point in time the Claimant had done nothing to suggest to Mrs King that her contact with her was in any way stressful or unwelcome. The contact had not been regular but had been in our view wholly appropriate taking into account the circumstances. Mrs King was keeping in touch but most of the time was simply responding to the Claimant's messages. The Claimant's correspondence is courteous and polite. Mrs King's is the same. There was no indication whatsoever that any form of communication was outside of what was acceptable or indeed unwanted. OH, had said that it would be helpful if a call were scheduled so that the Claimant could raise any questions and had time to do so. If the message was by email or text then she would be quite able to respond in a considered fashion at her leisure. We also note that the Claimant had made no specific request for that to happen at this stage.

49. The Claimant chose to text Mrs King on 7 March and in that text is asking Mrs King if it would be alright to update Mrs King at the end of the month as to her health condition. that is the clear purpose of the question mark therein. In our view a response is expected, and it was not unreasonable to respond by text in the absence of anything that would counter indicate that being acceptable.

50. Mrs King was on a period of leave and responded when she returned at around 0730 in the morning. That read as follows:

Dear Suzy, Sorry for the delay in my response I have had a few days annual leave. Thank you for the update and I am sorry that personal circumstances are still very stressful for you. I would like to offer you a well-being meeting with myself and HR prior to our transfer to SCC on the 1st of April 2019 if you are able to attend? It would give us the opportunity to update you regarding our transfer and discuss how we can support you on your return to work in the future. What are your thoughts?

51. The Response from Mrs King is reasonable and measured. She does not dictate that a meeting should take place she makes a suggestion and asks the Claimant for her thoughts on that suggestion. It is in keeping with when the Claimant should have further input from her GP There is no precise time and date set but merely that it would be a good idea to do it prior to the TUPE transfer.

52. Mrs King sent the text on her first day back from holiday early in the morning. There is nothing which she had at her disposal which would suggest that the text would be unwelcome at all either in terms of time or content. The

Claimant states at paragraph 31 of her statement that the message was a shock so early in the morning and that OH had indicated that they would need to do a review before any meeting was set up and the Claimant stated that it felt as if the pressure was being ramped up. Although the emphasis in questioning was on the time of the text the Claimant in her statement relies more upon suggesting a meeting before OH had reviewed as being the main issue.

53. We take the view that the Claimant is now exaggerating the effect that this text message had upon her, and we do not accept her evidence to be accurate. Mrs King made a perfectly reasonable suggestion. It was not an order, or a fixture and Mrs King concludes with an enquiry as to what the Claimant's thoughts are upon her suggestion. The suggestion is made in the mildest way possible, and we do not accept that anything about that text could cause the Claimant the distress she asserts. There does not appear to us to be anything wrong with responding by the same means that the message was sent. In hindsight it may have been better to send the text during the working day, but we do not accept the Claimant's evidence as to how it affected her, and we reject the same.

54. On 15 March Ms Jiggens, the Claimant's new representative, wrote an email to Mrs King. That email asserted that the level and manner of contact was causing the Claimant unnecessary distress and was an example of a failure to make reasonable adjustments / harassment. Ms Jiggens removed authority to contact the Claimant by mobile phone or land line and specified that contact should be by email only and that Ms Jiggens was to be copied in. She asked for a copy of the grievance policy. The Claimant told us that any email or communication from Ms Jiggens was undertaken on her behalf, and she gave authority effectively for Ms Jiggens to be her conduit with the employer from this point on.

55. We have some doubts especially when the Claimant is not copied in as to whether each and every communication was with the Claimant's approval, and we are left to speculate when this took place as to the extent to which the correspondence had been approved as there are times where there appears to be some confusion as to the path being trodden on account of more than one line of communication between the parties.

56. This letter came as a surprise to Mrs King who had continued to believe that she had a good working relationship with the Claimant, and we accept her evidence in that regard. It was a complete sea change in attitude and view which would have been almost impossible to foresee from what had gone before. Mrs King set out a chronology of her contact with the Claimant since January which is broadly as we have set out above. She stated at the end of her email ***"I am sorry that I have inadvertently added to Suzy's level of stress, and I will of course adhere to her request to only make contact via email".*** We accept that sentiment is a genuine one.

57. Mrs King takes no further active steps in the matters that follow from this date. We found her to be a straightforward witness who at all times sought to tell the truth as she understood it. We consider that she had a difficult task in managing the situation that developed but she did so with professionalism and good sense. At all times we believe that she was actively looking for solutions according to the information that she had. Save for the comment at the end of November when the Claimant momentarily suggested Mrs King was forcing her out we are satisfied that she reasonably believed that she had a very good working relationship with the Claimant and that the issues

that contributed to her illness flowed from the difficult home circumstances, which we find was the case. We consider that her contact with the Claimant was proportionate and necessary. She contacted when she had to (e.g., TUPE) and in the most part sought to encourage gently a meeting from time to time to take matters forward or simply responded politely and reasonably to messages sent by the Claimant.

58. We consider that Mrs King (and the Respondent) did have constructive knowledge of the Claimant's disability from the point that she received the first OH report. That report was clear in its' suggestion that the Claimant should be treated as a disabled person and there was quite sufficient for Mrs King to conclude that the Claimant was disabled. There was sufficient evidence of both condition and its' day-to-day effect. She was certainly placed on notice of the possibility of disability and if she did not accept that then she should have followed it up. In any event we are of the view that Mrs King acted in a manner that was designed to protect the Claimant's interests no matter whether she viewed the Claimant as disabled or not. To the extent that Mrs King did not precisely follow the letter of policies we are satisfied that she acted in a manner consistent with promoting the Claimant's interests in the workplace at all times.

59. Mrs Rendell, Mrs King's line manager is copied in, to her response and states in a reply to Mrs King that she ***"does not think you (Mrs King) have been hassling"***. We take into account the fact that at that point Mrs Rendell is not in position of the full facts but having had all the evidence before us we find that was an accurate assessment. The Claimant did not find out about this email until well after she had resigned.

60. There is no more communication before a formal grievance is lodged on 21 March 2019 and sent to Mrs Rendell. That grievance clearly makes allegations that the Respondent has discriminated against the Claimant on account of her disability and accordingly is a protected act pursuant to section 27 of the Equality Act 2010 (EqA). The grievance clearly sets out a number of specific complaints some of which are replicated in this claim between July 2018 and March 2019. A detailed chronology was also attached. The desired outcomes of the grievance were as follows:

Allocation to a new team Manager. The Claimant has lost confidence that (Mrs King) is able to provide appropriate support and reasonable adjustments appropriate to mental health disability as well as having breached privacy and encouraged the Claimant's colleagues to complain about her disability related absences and need for adjustments.

Flexible working adjustment support phased return to work over a longer period of two weeks with appropriate support in place plus stress risk assessment.

61. The Tribunal consider it noteworthy that the vast majority of the complaints had not been even mentioned around the time the incidents took place. By that we do not mean the fact that they are characterised as acts of disability discrimination but the fact that the factual incidents themselves were not reported as concerns contemporaneously. We understand that through this period the Claimant had anxiety and stress at varying levels, but we are satisfied that she was well enough and able to raise matters if she wanted to. An example of that is the reference to wanting to see HR about what had taken place in June and her initial response that she was being pushed out in

the phone call in November 2018. We are not persuaded that the Claimant's condition or character played a part in not raising issues earlier rather that the effect of those allegations and incidents that are factually accurate was nowhere near as serious as the Claimant suggested in her grievance and at this hearing. In her grievance and at this hearing the Claimant substantially exaggerated the effect of such matters upon her.

62. On 27 March Mrs Rendell wrote to the Claimant to seek confirmation that the grievance was actually from the Claimant as the Claimant had not been copied in when the grievance was sent in by Ms Jiggens. She indicated that the normal process would be to ask the Claimant to attend a meeting to go through the grievance but that may not be possible on account of the Claimant's ill health. She offered a telephone call and asked the Claimant for her preference. She further stated that she would like to deal with matters in a timely fashion on account of the fact that the grievance process itself might be stressful.

63. The Claimant responded on 28 March to the effect that it was her grievance and that her priority was to be redeployed to a new team and manager which would permit her to return to work. This re-emphasised her clear priority on the grievance. She stated that she would find a phone call too stressful but would attend a meeting with Ms Jiggens and asked Mrs Rendell to liaise with Ms Jiggens to fix an appropriate time. The Claimant clearly sets out in this email that her priority was finding a solution so she could return and move on with her job as opposed to the enquiries into the past allegations. It was reasonable to focus on this aspect moving forward.

64. Mrs Rendell responds in short order that she considers the best way forward to be for her to complete an investigation as far as she can by answering the points raised and that if she needs any further information she will contact the Claimant by email. She stated that she wished to avoid too many meetings but that once the report was completed she would then arrange a meeting via Ms Jiggens to go through the findings and to discuss the future plans for work. (213)

65. The Tribunal have not been able to get to the bottom of why this course was adopted by Mrs Rendell. The Claimant had offered to attend a meeting and effectively follow a normal pathway through a grievance. There is nothing wrong per se with adapting any grievance process if necessary or appropriate.

66. The evidence from Mrs Rendell in her oral evidence was to the effect that there were a number of challenges around that time as there were issues as to who would be dealing with the grievance and who would assist and provide guidance on it on account of the imminent TUPE transfer. She said that she wanted to cut down on meetings but accepted that, in hindsight, a standard grievance process could have been undertaken.

67. There is no response to that suggestion from Ms Jiggens or the Claimant requesting an alternative course of action or that the Respondent revert back to their previous suggestion of a meeting. That is surprising because during the course of the period from Ms Jiggens intervention we note that she was quite prepared to challenge any aspects which she did not agree with. In the absence of a response Mrs Rendell was entitled to believe that her proposal was acceptable to the Claimant until such time as any contrary notice was given.

68. The transfer of undertaking was completed on 1 April 2019. It appears that Mrs Rendell met Mrs Brice from HR about the Claimant's issues (as well as other pressing HR issues) for the first time on 12 April 2019 (216). It needs to be remembered that it was only on 1 April that Mrs Brice would have had any input in the matter following the transfer. By this time Mrs Rendell had undertaken some work on the grievance and had accessed the Electronic Personnel file and had spoken to Mrs King. From those enquiries she produced a hybrid document which is between pages 217-227 wherein extracts from the P (personnel) file are entered into the grievance. The Tribunal accepts that there was a large amount going on at this time and no doubt many in the organisation including Mrs Rendell were very busy especially HR. The document at 217-227 is in the form of the sort of preparatory work prior to engaging in a full investigation. The reason for any delay at this point was on account of the changes effected by the TUPE transfer.

69. On 17 April Ms Jiggens asked for an update on the grievance and the catalyst for that appears to be that ACAS had issued an Early Conciliation Certificate. It appears that EC had been entered on 15 March and had ended on 15 April. Mrs Rendell indicated that ***"she had completed her investigation into the matters raised and that she had shared it with HR and was waiting for their feedback before she shared the contents with Ms Jiggens".***

70. We do not accept that that was an accurate update in that Mrs Rendell had only completed the first part of an enquiry by accessing the P file and getting relevant documents at her disposal. We do not consider that Mrs Rendell was seeking to mislead in any way but simply poorly communicated the state of play.

71. There was a telephone conversation between Mrs Brice from HR and Ms Jiggens on 17 April. The note states that it was explained to Mrs Brice that the Claimant wanted to move from her current team to a team where she would not be line managed by Mrs King. If this could be agreed then the grievance would be withdrawn. Ms Jiggens was advised that there was a vacancy in Bridgewater and Yeovil, but Mendip was not an option as Mrs King was the manager for that area. It was agreed that the grievance would be stayed pending outcome of discussions re transfer to another post and that Ms Jiggens would discuss the same with the Claimant (230).

72. This is a further occasion when it is clear that the outcome of moving on to an acceptable role away from Mrs King was far more valuable to both parties than a detailed assessment of past behaviour. This step was essentially forward looking and marked quite clearly the priorities for both parties in the future i.e., getting the Claimant back to work and away from Mrs King. That remained the priority and focus for Mrs Rendell and the Claimant on the grievance to the exclusion of all else.

73. On 17 April Ms Jiggens indicated to Mrs Rendell that, having spoken to Mrs Brice, the next step should be arranging a meeting with the Claimant and Ms Jiggens to discuss options for supporting a return to work. There appears to have been some issues with getting through to Ms Jiggens by telephone, but Mrs Rendell put forward dates by email on 26 April. A meeting was agreed for 9 May and Ms Rendell communicated the following re vacancies on 30 April:

Kristie King manages all the health visiting teams in Mendip and there are no health visitor vacancies in the Mendip teams. As Susie will be aware we have had to reduce the workforce significantly across the county and Mendip is at trajectory. The two areas with vacancies and a different manager are South Somerset- Yeovil and Sedgemoor-Bridgewater.

74. On 7 May Ms Jiggens wrote to Mrs Rendell stating that the Claimant had current issues with her daughter's schooling and over the potential stress levels at the Teams where there were suggested vacancies. Whilst concerns were expressed there was certainly not a clear and unequivocal rejection of the options provided It was also the case that the Claimant had a meeting re her daughter's schooling on 9 May and so a proposal was put forward to cancel the meeting on 9 May. That cancellation was clearly at the behest of Ms Jiggens / the Claimant.

75. In addition, Ms Jiggens indicated that the Claimant had a fresh sick note until 11 June and enquired as to the possibility of taking a period of unpaid leave until October once her sick pay expired in July. She expressed the view that ***"the extra time and space she needed to get better (the unpaid leave period) would enable her to get better and return to work successfully."*** It is clearly a request which is expecting a response as it concludes ***"How does that sound?"***

76. It is clear from this email that there is no expectation that the Claimant will be returning to work before October at the earliest and the suggestion is that for that period she will remain unpaid. There is no suggestion of paid leave, and the inescapable conclusion is that the Claimant was fully prepared for a period where she was not paid either on account of her sick pay expiring or being on unpaid leave.

77. Mrs Rendell agrees to cancel the meeting and states that as she is now with Somerset County Council, which was to her a new employer, she will have to take further advice on the issue of unpaid leave as it was in her experience an unusual course of action which would delay the Claimant's return. At that point there was no medical support for such a move from either the GP or OH.

78. On 14 May Mrs Brice contacted Ms Jiggens with a view to having a discussion with her. Ms Jiggens appears to have been away from the office for a period of time and Ms Brice wrote again on 23 May asking for a time to discuss matters. Again, it is the Respondent who is being proactive in relation to the situation.

79. On 23 May there was a telephone discussion between Mrs Brice and Ms Jiggens. This was at Mrs Brice's request. We only have her evidence as to what took place, but we accept that the note produced is a fair representation of what was discussed (242). We accept that it was Ms Brice's view that the grievance needed to be progressed in order to conclude it. We understand why she, from an HR perspective, would consider that to be a reasonable course taking into account all the circumstances. Mrs Brice agreed that the grievance investigation would be concluded, and the report would be shared in due course. Mrs Brice indicated that as far as she was concerned she anticipated that Mrs Rendell would just get on with it in a relatively straightforward fashion, but it is not clear how this was communicated if it were at all. What is quite clear is that the stay on the grievance was lifted at this point so far as Mrs Brice and Ms Jiggens were

concerned. The issue of the OH referral was raised at this meeting. It is believed that Mrs Brice and Ms Jiggens when discussing the grievance were focussed upon the whole of the grievance as opposed to simply achieving the resolutions sought by the Claimant. We understand why a HR professional, and a paralegal would come to that conclusion.

80. On 3 June, Ms Jiggens stated that she was awaiting an email from Mrs Brice summarising what the current position was in respect of the Claimant's situation.

81. Parallel to this conversation Mrs Rendell had contacted the Claimant by email asking her to return IT equipment and the like which needed to be returned to the transferor. We are satisfied that Mrs Rendell had little choice but to make that request and it was solely because of the TUPE transfer. She apologised for having to contact the Claimant on sick leave in her email of 30 May. Later that day the Claimant responded positively and indicated she would drop off the equipment and made a request that she had some personal items she would like returned as she was not returning to Mendip (246). This clearly sets out in our view that at that point there was no thought in the Claimant's mind that she would come back to work under Mrs King. She concluded her email by saying **"I hope we can arrange a future meeting to discuss work as I do honestly feel this will help my recovery".** It is not known as to whether Ms Jiggens knew of these communications, but it is clear again that the Claimant's focus is upon having a meeting to resolve where she is going to work as opposed to trawling through the previous allegations.

82. In Mrs Rendell's response she indicates that Ms Jiggens seemed to have been away and that Mrs Rendell had herself only just returned from annual leave and she hoped that a meeting could be arranged shortly.

83. On 4 June Mrs Rendell gave the Claimant an option of meeting both with and without her representative and that she wanted to refer the Claimant to OH so that they could consider what would be needed to get the Claimant back to work. She asked the Claimant for her view on that. The Claimant responded that she was happy for a meeting between just the two of them and that she was happy for an OH referral to be made. An agreement is made to meet on 14 June. These emails do not appear to have been copied to either Mrs Brice or Ms Jiggens, although Ms Jiggens did indicate at the hearing that she knew of this meeting and had advised against it. For consistency of approach and moving towards a single outcome it would probably have been better for all four of the individuals involved to have been there. Having said that the Claimant wanted a meeting and was happy to have it on her own.

84. On 14 June, the Claimant and Mrs Rendell met. Mrs Rendell wrote to the Claimant later that day and attached a summary of the meeting and stated that hopefully they had the start of a plan to get the Claimant back to work in October. She hoped to be able to deal with the OH referral the following week as she had been unable to access it on that day.

85. The notes of the meeting show that the plan was to refer to OH and the Claimant would agree the referral before it went. They discussed that after the OH document was obtained a meeting would be set up in September with Ms Jiggens in attendance to finally plan the return to work. The issue of future teams was discussed and having outlined the options it is recorded in the note that the Claimant would be happy to go to Bridgewater but would prefer Highbridge / Burnham. The plan was for the Claimant to take a short

career break before hopefully returning in October. The grievance was touched upon, and it was suggested that the investigation report would be shared with her in September. We are satisfied that this meeting reflected what the Claimant wanted moving forward which was to continue to focus on a new role and getting back to work.

86. In her statement the Claimant stated that the meeting with Mrs Rendell was a "scary prospect" but there is little sign of any concern at all from the Claimant in her emails or any reluctance at all to attend. We consider that the Claimant had a perfectly good relationship with Mrs Rendell and was happy to see her on her own The Claimant states that the meeting started with Mrs Rendell saying, ***"why did you feel the need to raise a grievance – why didn't you just come to me"*** (para 43 C). Indeed, the Claimant's account of the meeting in her statement is very different to that of Mrs Rendell and her notes of it. Ms Rendell accepts that there was a conversation about Bridgewater but states that she told the Claimant that the Team there were very supportive as an encouragement to her to consider the role. Mrs Rendell describes the meeting as ***"very amicable"*** and this is also reflected in an email dated 17 June discussing the meeting with Ms Brice. Further Mrs Rendell's notes suggest that she would share the investigation report following the grievance and this would be done at the meeting in September when Ms Jiggens was in attendance.

87. We accept Ms Rendell did say to the Claimant words which were suggestive that there were other ways to have dealt with any issues that had arisen apart from raising a formal grievance. She did so because she had a comparatively long relationship with the Claimant and believed that matters could have been sorted out informally as indeed is often the way and consistent with then ACAS Code of Practice on Grievances. We do not accept that anything was said in an accusatory, hostile, or critical way but merely expressing the view that matters could have been equally well dealt on a less formal basis and that she would have been available for the Claimant. Again, we consider that if Mrs Rendell had have berated the Claimant at this meeting and been condemnatory / critical of the Claimant telling her she should not have raised a grievance in the manner alleged by the Claimant there would have been a contemporaneous complaint about the same. We do not accept the Claimant's account of this meeting.

88. Ms Rendell indicated that there had been agreement to an OH referral and stated as follows:

"Meeting very amicable. Suzy wants to return to work, although would still like a career break from October . She has requested a planning session in September with Ms Jiggens present – if she is to return to Bridgewater- this may need to be with Sarah Bourne. Suzy has said that she would accept a post in Bridgewater although her preference would be Highbridge."

89. Notes of that meeting were sent to the Claimant and at no point did she or Ms Jiggens write back to say that they were inaccurate or wrong. On balance we accept that the notes of the meeting are an accurate reflection of what was said, and that Mrs Rendell's view was that the outcome that was most likely was with the Claimant moving teams and that then after the OH report was received all the rest of the matters could be tied up. From her conversation with the Claimant matters were very much moving in the right direction. The focus was still very much on resolving the posting issue and supporting the Claimant upon her return.

90. On 18 June Mrs Brice responded that the meeting sounded positive although the timing of the career break had confused her. Mrs Brice asked whether the grievance and in particular how that was to be taken forward had been discussed.

91. In response Ms Rendell sought advice on whether she should seek to interview colleagues in respect of the alleged breach of confidentiality at the Team Meeting the Claimant did not attend and Ms Brice advised that she should. From this it would appear that the grievance was being progressed. It is clear from this that some work would be undertaken on the grievance which would then be discussed in September / October to the satisfaction of both parties. That was the understanding between the Claimant and Mrs Rendell which was different to what had been discussed by Mrs Brice and Ms Jiggens.

92. The Tribunal considers it likely that this time frame was firmly in the mind of Mrs Rendell and the Claimant, but that Ms Jiggens and Mrs Brice were not as clear. That is the problem when there are a number of parties and not all communications are copied to everybody. It leaves scope for uncertainty and doubt. That was the case here

93. On 25 June Ms Jiggens contacted Ms Brice (not copying in either the Claimant or Ms Rendell) to say that she was concerned that she had had no update. She stated that she was aware that the Claimant had met with Ms Rendell and ***"things seem to be progressing positively so it would be good to have everything agreed"***. This is supportive of the suggestion raised above that Ms Jiggens and Mrs Brice had differing understandings going forward to Mrs Rendell and the Claimant.

94. On 26 June Ms Rendell sent to the Claimant a draft OH referral for her approval and the Claimant asked that the rationale she had disclosed for the career break be added to inform OH as to the full position. We accept that amendment was made.

95. On 2 July (237) Ms Jiggens contacted Ms Brice (not copying in either the Claimant or Ms Rendell) saying that it was a month since the two of them had spoken and it was alleged that Mrs Brice had said that she would get the outcome of the grievance over to Ms Jiggens. This of course was at odds with what had been discussed between the Claimant and Ms Rendell. Legal proceedings were threatened if progress was not forthcoming in the next 7 days. On 3 July at 0723 Ms Brice asked Ms Rendell about the progress of her investigations into the grievance. Again, that might seem to suggest that Mrs Brice was not entirely clear what the Claimant and Mrs Rendell had discussed and agreed.

96. At 1050 on 8 July Ms Jiggens contacted Mrs Brice (not copying in either the Claimant or Ms Rendell) asking Ms Brice to contact her as there had been little contact since their previous conversation which must relate to 23 May. She stated that the delay in dealing with the grievance was now an issue and she asserted that Ms Brice had previously indicated that an outcome to the grievance was available. There is no evidence before us as to whether it was an issue for the Claimant herself who was not expecting feedback on the grievance in September.

97. On 8 July Ms Brice had a telephone call from Ms Jiggens which she describes as being aggressive and a "tirade". Mrs Brice stated that she ended up just putting the phone down on the desk due to the nature of the call which she described as unprofessional and inappropriate. Ms Jiggens

did not give any evidence about the call. In those circumstances and on the evidence we have we accept Mrs Brice's account of that call. Again, it seems to the Tribunal that these matters were a side show compared to the more helpful dialogue Mrs Rendell and the Claimant had had.

98. On 22 July Ms Jiggens emailed both Mrs Brice and Mrs Rendell but did not copy in the claimant that there had been no further progress on the grievance and that the delay was inexcusable and made allegations of disability discrimination. She asked for a time scale to be provided

99. On 26 July (258) Mrs Rendell wrote to the Claimant copying Ms Jiggens, with a view to setting up a meeting after the OH appointment on 1 August. She also stated in that email

I would like you to confirm how you would like to share the draft grievance investigation with you. The document remains in draft until I have had the opportunity of sharing it with you and for you to be able to respond with any additional investigation. If you feel up to it, it would be good to meet up, but I will be guided by you Suzy.

We find that was meant as a means of seeking to continue to work with the Claimant in a constructive way.

100. Later that day Ms Jiggens complained to Mrs Rendell about the text message received on 25 July by the Claimant. She talked about the Bridgewater vacancy and expresses the view that Suzy understood Bridgewater to have a "particularly stressful working environment" and that it would not be appropriate. It was said that a full stress risk assessment would be required before any move (257). This was the first indication since the meeting on 14 June that Bridgewater would not be appropriate or satisfactory for the Claimant.

101. On 5 August Mrs Rendell writes to Ms Brice apologising that she had "gone quiet" on the Claimant but stated that there was now a possibility of a 0.6 post at Highbridge which was one of the Claimant's preferences. She enquired as to whether or not she should offer that role and Mrs Brice replied in the affirmative. Mrs Rendell was still trying to find a solution to the key problem of finding the Claimant a role that did not come within the auspices of Mrs King and thereby facilitate the Claimant's outcome. Once that had taken place issues such as when the Claimant would return and how she would do so in terms of a gradated return would be discussed. It was still hoped that would resolve the grievance.

102. On 7 August Mrs Rendell wrote to the Claimant to state that she was still waiting to receive the OH Report and that following the previous discussions there were additional vacancies in Taunton and Highbridge. The roles were about to be advertised but effectively the Claimant was being given the first choice if she wanted to move to one of the roles. The Claimant was offered a telephone call or a meeting to take matters forward. Again, this a clear example of Ms Rendell dealing with matters in a fashion that was beneficial to the Claimant and what she wanted. It is also a further example of the focus being given to the outcome part of the grievance

103. On 8 August Ms Jiggens asked for all grievance documents to be forwarded to her and reaffirmed that the delays were inexcusable. In a separate email she made a further request for the grievance to be progressed and resolved, that the Claimant's pay should be reinstated, and it concluded:

"Suzy's daughter will be starting school in Frome in September, therefore a role in the Team covering Frome would be of most benefit to Suzy in managing her stress levels, provided that the manager there is competent in supporting staff with mental health disabilities adequately and without breaching privacy laws. Alternatively, Highbridge could be considered, please provide further details on both of these alternatives" (261).

104. The OH report is dated on 12 August 2019 following the assessment on 2 August 2019. The Claimant received the report, but it is not clear when she did. There is a letter at C1 in the supplementary bundle that suggests that there was an original report sent to management and then a final report was to be sent to them by 23 August. Mrs Rendell's evidence was unclear as to when she first saw it.

105. On 16 August Ms Smith who was he Head of Early Help and Specialist Public Health Nursing emailed Ms Jiggens as follows:

Please find attached my response to your recent communication with (the Respondent) and our officers. I trust that we will be able to work towards a positive way forward.

106. The letter was headed "Reference your emails dated 8 August 2019" and read, so far as is relevant, as follows:

"With the greatest respect we consider the nature and tone of your recent communications with the Council and its officers to be inappropriately antagonistic and do nothing to endeavour to resolve Suzanne Yardley's situation or to be in her best interest. We believe that you were providing support to Suzy and had thought that this was to enable a meaningful and supportive dialogue to take place with Suzy to agree a way forward and support her return to work which we understood was what we were all trying to achieve".

107. We have considered the two emails dated 8 August and do not necessarily agree with the assessment made that the letters are antagonistic. Ms Jiggens forcefully puts her position but not in an unprofessional way in our view. It may well be that this letter was in a response to the phone call on 8 July but that is not what it says.

108. On 22 August 2019, the Claimant resigned on notice (2 months') by an email timed at 1437. The resignation letter read as follows so far as is material:

"This is formal notice of my resignation following conduct by my employer that amounts to a fundamental breach of my employment contract.

I submitted a formal grievance dated the 20th of March regarding a failure to make reasonable adjustments, harassment, and a serious breach of my privacy. In April Liz, you confirmed to my representative that you had completed the investigation to the grievance and an outcome would be shared with me. I was never called to a grievance hearing and have never been interviewed or asked any questions as part of any investigation. I have never received any outcome or update from my grievance. Part of my grievance related to unnecessary and stressful communication by my former manager whilst off sick with mental health symptoms by messages and calls to my personal mobile phone. In August you repeated the same behaviour while

simultaneously failing to respond to repeated requests for an update on my grievance.

I had asked to be redeployed to a different team and manager. When this was not implemented swiftly my mental health symptoms deteriorated again and I requested a clear period of extended leave free of communication from my employer to allow me time to recover with a view to return to work in the autumn. Contact remained ongoing and no period explicitly free of communication from my employer with a clear plan for my return has happened and the face-to-face meeting I was required to attend, I was in fact criticised for having raised my grievance. I have been required to return all my work-related equipment and apparently no longer have a role in any team.

As a result of this ongoing situation, I have been looking for alternative work, as it was clear that my employer had no intention of either taking my grievance seriously or taking the reasonable steps needed to avoid substantially disadvantaging me by the operation of absence management and communication practices. I have now been offered and accepted an alternative role in the environment that would not exacerbate my mental health symptoms. In doing this I lose my statutory and pension rights accrued in my role as a health visitor, but I must prioritise my own health and well- being when my employer persists in refusing to make very simple adjustments to protect my mental health.

109. The Claimant indicated that she considered her leaving date to be 22 October and that she would consider payment in lieu of notice and holiday pay if the Respondent wished to end the contract sooner.

110. On 28 August Ms Jiggens enquired as to what role the Claimant was assigned to so that the Claimant could make "***an informed decision with her medical team as to whether she is well enough to work her notice in that role"***. We do not accept that the Claimant had any intention of returning to the workplace during her notice period and that this suggestion was mere brinkmanship on the part of Ms Jiggens.

111. On 30 August Mrs Rendell sent an emailed response to the Claimant copying in Ms Jiggens in respect of her email of 28 August. In that letter Ms Rendell indicated that she was missing a Fit Note and reminded the Claimant of her obligations in that regard. She also stated that she had not received the OH report as yet as the Claimant had sought a delay on it being sent out and so had not been able to finalise the position re the unpaid leave. She reiterated that there had been an offer of 0.6 role in Highbridge. She stated that she would forward on an interim report on the grievance as it had not been concluded because of the fact that there had been no meeting at that point. After 6 pm that day Mrs Rendell emailed both the Claimant and Ms Jiggens saying that she had now had sight of the OH report dated 12 August and confirmed that the Claimant remained a Health Visitor on sick leave.

112. There was also a lengthy letter sent from the Respondent dated 26 August which effectively responded to the resignation letter. That letter referred to what were described as inaccuracies in the Claimant's resignation letter.

113. We have considered the evidence of the whole of the period the parties have given evidence about with care. There are two principal periods being pre and post grievance. We have already concluded that on our findings Mrs

King's conduct was unimpeachable. So far as the second period is concerned we are satisfied that throughout the whole of that period the Respondent remained focussed upon seeking to achieve the outcome which the Claimant desired from her grievance which was a change to an area that was not managed by Mrs King and that that would take place if at all possible irrespective of whether the allegations were found to be proven or not.

114. We have not detected that the goal set out in the previous paragraph was hindered in any way by either the fact that the grievance was a protected act or that the Claimant had hired a specialist to assist her. In fact, the Respondent had no obligation to engage with Ms Jiggens at all nor did they have had any obligation to discuss matters with her or indeed to accept her at any meetings. They were quite prepared to deal with her in the period and were quite prepared to ask her to come to meetings as a support for the Claimant. There was the call on 8 July where on our findings Ms Jiggens behaviour was unacceptable but apart from that Ms Jiggens correspondence whilst at times impassioned had nothing at all to be complained about. We do not find that the Claimant was subjected to any detrimental treatment because she decided to choose Ms Jiggens as her representative or because the grievance made allegations of discrimination.

115. It is correct to say that the grievance raised in March was not dealt with specifically as set out in the Respondent's policies. It was a very clear grievance which set out a number of alleged discriminatory actions and also set out very clear outcomes which the Claimant required. We find that the Claimant's priority was to try and sort out a new posting and then to move forward. That prioritisation is clear from the fact that it was in reality the only outcome sought and then in April that if that was achieved then the grievance as a whole would be withdrawn.

116. There comes a time in May / June where Mrs Brice and Ms Jiggens seem to conclude that the whole of the grievance needs to be got on with and concluded as soon as possible. They discuss it in a manner that seems to indicate that the Claimant may even not get to see what is written for fear of making her ill but that is vitiated by the agreements between the Claimant and Mrs Rendell at their meeting of 14 June which is focussed upon trying to achieve the change of region and that nothing will be shared until September. On our reading of the correspondence Ms Jiggens and the Claimant appear to be following slightly divergent courses and several emails from Ms Jiggens do not copy in the Claimant.

117. In June Mrs Rendell believes that a solution has been found in relation to where the Claimant is to go because she records that the Claimant has agreed to go to Bridgewater. Concerns are raised about that possibility over time and then an offer of Taunton or Highbridge is raised which Mrs Rendell believes will certainly be accepted as it was one specifically cited by the Claimant. It is a great surprise when the Claimant suggests Frome with a supportive manager and does not immediately accept Highbridge.

118. **The Law**

Unfair Constructive Dismissal

119. The statutory basis for constructive dismissal is set out at section 95 (1) (c) of the ERA 1996 and that section states that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

120. It follows that the test for constructive dismissal is whether the employer's actions or conduct amounts to a repudiatory breach of the contract of employment (**Western Excavating (ECC) Limited v Sharp (1978) 1 QB 761**).

121. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Malik v BCCI SA (1998) AC 20**).

122. Any breach of the implied term of trust of and confidence would amount to a repudiation of the contract of employment and the test of whether or not there has been a breach of the implied term is objective (Malik at 35C). There is no need to demonstrate intention to breach the contract. Intent is irrelevant.

123. A relatively minor act may be sufficient to entitle the employee to resign and leave the employment if it is the last straw in a series of incidents. The particular incident which finally causes the resignation may in itself be insufficient to justify that action, but that act needs to be viewed against a background of such incidents that it may be considered sufficient to warrant treating the resignation as a constructive dismissal. It is the last straw that causes the employee to terminate a deteriorating or deteriorated relationship.

124. It is clear that the repudiatory conduct may consist of a series of acts or incidents, some of which may be more trivial, which cumulatively amounts to a repudiatory breach of the implied term of trust and confidence. The question to be asked is whether or not the cumulative series of acts alleged, taken together, amount to a repudiatory breach of the implied term. Although the final straw may be relatively insignificant, it must not be entirely trivial. It must contribute something to the preceding acts.

125. The paragraphs prior to his one within this section are a summary of Lord Dyson's Judgment in **London Borough of Waltham Forest v Omilaju (2005) ICR 481**.

126. In **Kaur v Leeds Teaching Hospitals NHS Trust (2018) EWCA Civ 978** it was identified that normally it will be sufficient to answer the following questions to ask the following questions to establish whether an employee has been constructively dismissed:

a) What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?

b) Has he or she affirmed the contract since that date?

c) If not was that act or omission in itself a repudiatory breach of contract?

d) If not, was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?

e) Did the employee respond to that breach?

Section 15 Equality Act – Disability Arising from Disability

127. Section 15 (1) of the Equality Act 2010 reads as follows:

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.

128. Section 15(2) deals with knowledge but as previously stated it is accepted that the Respondent had the requisite knowledge at all material times.

129. In **Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14**, Langstaff J, held that there were two steps to the test to be applied by tribunals in determining whether discrimination arising from disability had occurred:

Did the claimant's disability cause, have the consequence of, or result in, "something"?

Did the employer treat the claimant unfavourably because of that "something"?

130. In **Pnaiser v NHS England and another [2016] IRLR 170** the EAT summarised the proper approach to claims for discrimination arising from disability as follows:

a) The tribunal must identify whether the claimant was treated unfavourably and by whom.

b) It then has to determine what caused that treatment, focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the motive of the alleged discriminator in acting as he or she did is irrelevant.

c) The tribunal must then determine whether the reason was "something arising in consequence of [the claimant's] disability", which could describe a range of causal links. That stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

d) The knowledge required is of the disability; not knowledge that the "something" leading to the unfavourable treatment was a consequence of the disability.

131. There is no statutory definition of "unfavourable treatment". However, the Supreme Court has given some guidance **(Williams v Trustees of Swansea University Pension and Assurance Scheme and another [2018] UKSC 65)**:

a) It requires tribunals to answer two simple questions of fact:

i) What was the relevant treatment?

ii) Was it unfavourable to the claimant?

132. The concept is broadly analogous to the concepts of disadvantage and detriment. The court commented that there was little to be gained in trying to differentiate between these terms, or by distinguishing between an objective assessment of the treatment, on the one hand, and a blended subjective and objective approach on the other.

133. The court considered the EHRC Code to be helpful, although noting that it could not supplant the statutory provisions. The court referred in particular to the following aspects of the EHRC Code:

a) being treated unfavourably for the purposes of section 15 of the EqA 2010 means that the person "must have been put at a disadvantage" (paragraph 5.7); and

b) "The courts have found that 'detriment', a similar concept, is something that a reasonable person would complain about, so an unjustified sense of grievance would not qualify…. It is enough that the worker can reasonably say that they would have preferred to be treated differently" (paragraph 4.9, in the part of the EHRC Code dealing with indirect discrimination).

c) There is a relatively low threshold for demonstrating that treatment was unfavourable, as demonstrated by the above provisions of the EHRC Code.

134. The EHRC Code explains that "the consequences of a disability include anything which is the result, effect or outcome of a disabled person's disability" (paragraph 5.9). No comparator is required.

135. As to the defence of objective justification at sub-section (b), to be proportionate, the unfavourable treatment has to be both an appropriate means of achieving the legitimate aim and a reasonably necessary means of doing so (Homer v Chief Constable of West Yorkshire [2012] UKSC 15).

136. It is for the Tribunal to balance the reasonable needs of the business against the discriminatory effect of the employer's actions on the employee and the tribunal must undertake a fair and detailed assessment of the employer's business needs and working practices.

Failure to make Reasonable Adjustments.

137. Section 20 EqA provides as follows:

a. 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.

138. In light of the above definition, an employment tribunal must identify the PCP applied by or on behalf of the employer, the identity of non-disabled comparators (where appropriate), and the nature and extent of the substantial disadvantage suffered by the claimant (**Environment Agency v Rowan [2008] IRLR 20**).

139. The Tribunal should not consider whether a PCP has been applied to the claimant. That is not a requirement of the EqA. The PCP need only put the Claimant to a disadvantage, irrespective of whether it was actually applied to them: **Roberts v North West Ambulance Service ([2012] UKEAT/0085/11**).

140. The Tribunal must also make findings identifying any step which it would have been reasonable for the employer to take: **Secretary of State for Work and Pensions v Higgins [2014] ICR 341**.

141. As to knowledge, under paragraph 20 of Schedule 8 to the EqA, an employer is not under a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know, that the individual concerned has a disability and is likely to be at a substantial disadvantage compared with persons who are not disabled.

142. The use of the word 'likely' in this context is important. Likely means something that "could well happen" not something that is probable or more likely than not. For the duty to make adjustments to arise, it is therefore sufficient for an employer to have constructive knowledge that an individual could well be placed at a substantial disadvantage. It is not necessary to show actual or constructive knowledge that the individual would be placed at that disadvantage.

143. **In Secretary of State for the Department for Work and Pensions v Alam UKEAT/0242/09**, the EAT posed the required questions in the following terms:

a) Did the employer know both that the employee was disabled and that his disability was liable to disadvantage him substantially?

b) Ought the employer to have known both that the employee was disabled and that his disability was liable to disadvantage him substantially?

144. Employers will not avoid the duty to make reasonable adjustments where they did not know, but should reasonably have known, about an individual's disability and substantial disadvantage. Therefore, they should take reasonable steps, and have systems in place, to find out the relevant information.

145. The PCP, properly construed, has been described as the "base position": The PCP "represents the base position before adjustments are made to accommodate disabilities. It includes all practices and procedures which apply to everyone but excludes the adjustments. The adjustments are the steps which a service provider or public authority takes in discharge of its statutory duty to change the PCP By definition, therefore, the PCP does not include the adjustments" (**Finnigan v Chief Constable of Northumbria Police [2014] 1 WLR 445**).

146. As to substantial disadvantage, "substantial" is defined by section 212(1) of the EqA 2010 as "more than minor or trivial". This is a low threshold. A substantial disadvantage is one which must exist in comparison with persons who were not disabled.

147. There must also be a causal connection between the PCP and the substantial disadvantage so identified. It is not sufficient merely to identify that an employee has been disadvantaged, in the sense of badly treated, and to conclude that if he had not been disabled, he would not have suffered; that would be to leave out of account the requirement to identify a PCP. Section 4A(1) of the Disability Discrimination Act 1995 provides that there must be a causative link between the PCP and the disadvantage. The substantial disadvantage must arise out of the PCP (**Nottingham City Transport Ltd v Harvey UKEAT/0032/12**).

148. The making of reasonable adjustments may necessarily involve treating a disabled employee more favourably than the employer's non-disabled workforce.

149. 'Steps' for the purposes of section 20 encompasses any modification of, or qualification to, the PCP in question which would or might remove the substantial disadvantage caused by the PCP: **Griffiths v Secretary of State for Work and Pensions [2016] IRLR 216**.

150. It will be a reasonable adjustment if there is "a prospect" – which need not even be a 'good' or 'real' prospect – that doing so would prevent the claimant from being at the relevant substantial disadvantage: **Leeds Teaching Hospitals NHS Trust v Foster [2010] UKEAT/0552/10**.

151. The efficacy of an adjustment is a factor for the tribunal to take into account when considering its reasonableness. However, to uphold a claim, it is not necessary for the tribunal to be satisfied that a proposed adjustment would have been completely effective. As expressed in Griffiths ***"So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed: the uncertainty is one of the factors to weigh up when assessing the question of reasonableness"***.

152. The tribunal need not be satisfied that the adjustment, if made, would have removed the disadvantage in its entirety. As per **Noor v Foreign & Commonwealth Office [2011] UKEAT/0470/10: *"…although the purpose of a reasonable adjustment is to prevent a disabled person from being at a substantial disadvantage, it is certainly not the law that an adjustment will only be reasonable if it is completely effective"*.**

153. The duty to make adjustments arises by operation of law. It is not essential for the claimant to identify what should have been done, although commonly this will be the basis on which a claim arises: **Cosgrove v Caesar and Howie [2001] IRLR 653**. Going further, the EAT held in **Southampton City College v Randall [2006] IRLR 18** that a tribunal may find a particular step to be a reasonable adjustment even in the absence of evidence that the claimant had asked for this at the time.

154. The statutory duty is to take steps which are reasonable and would avoid a substantial disadvantage to which an employee is subject. The duty is not to investigate or consider what steps should be taken: **Tarbuck v Sainsburys Supermarkets [2006] IRLR 664**. Nonetheless, the EAT in that case issued a warning to employers of the dangers of failing adequately to consider possible adjustments: ***"..it will always be good practice for the employer to consult and it will potentially jeopardise the employer's legal position if he does not do so because the employer cannot use the lack of knowledge that would have resulted from consultation as a shield to defend a complaint that he has not made reasonable adjustments."***

155. This is advice echoed in the EHRC Code of Practice on Employment (2011) (CoP) at para 6.32, where it states: "It is a good starting point for an employer to conduct a proper assessment, in consultation with the disabled person concerned, of what reasonable adjustments may be required".

156. The two-stage burden of proof contained in s.136 EqA applies equally to reasonable adjustments claims. If the burden shifts at the first stage, a failure by the employer to discharge the burden at the second stage must result in the claim being upheld. Its particular application to reasonable adjustments was discussed by the EAT in **Project Management Institute v Latif [2007] IRLR 579** where it held:

> **"…the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made".**

157. In relation to the payment of sick pay as a reasonable adjustment, in **Nottinghamshire County Council v Meikle [2004] IRLR 703** the disabled employee was absent from work because of the employer's failure to make reasonable adjustments. The Court of Appeal held that the employer's failure to extend the provision of sick pay to them (once contractual entitlement had been exhausted) amounted to unlawful discrimination under the DDA 1995.

158. In **O'Hanlon v Commissioners for HM Revenue & Customs [2007] IRLR 404**, a disabled employee who had exhausted her sick pay entitlement claimed that she was substantially disadvantaged by her employer's sick pay rules. The Court of Appeal agreed with the EAT's statement that it would only rarely be a reasonable adjustment to give higher sick pay to a disabled employee than a non-disabled employee. The duty to make reasonable adjustments is designed to enable disabled people to play a full part in the world of work, not to treat them as "objects of charity" (which may act as a disincentive to return to work). The Court of Appeal upheld the tribunal's finding that the claimant had been disadvantaged as a disabled person (because she had exhausted her sick pay) but that her employer had made all the reasonable adjustments to alleviate her disadvantage and assist her back to work.

159. Meikle was distinguished by the fact that, in that case, the absence from work (and hence the loss of pay) had itself been caused by the employer's failure to make reasonable adjustments at work.

Harassment

160. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of either: violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

161. In deciding whether conduct shall be regarded as having the effect referred to above, the following must be taken into account:

a. The perception of B.

b. The other circumstances of the case.

c. Whether it is reasonable for the conduct to have that effect.

162. There is no need for a comparator; the claimant does not have to show that they were, or would have been, treated less favourably than another person.

163. To amount to harassment, A's conduct must have the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. Where B claims that the conduct had this effect (although this was not A's purpose), the tribunal must consider whether it was reasonable for the conduct to have that effect.

164. The EHRC Employment Code advises that the word "unwanted" means the same essentially as "unwelcome" or "uninvited" and it does not mean that express objection is made to the conduct before it is deemed to be unwanted (paragraph 7.8).

165. The test of conduct "related to" a protected characteristic is wider than the test for direct discrimination, which requires treatment "because of" a protected characteristic. However, the tribunal will take into account the context in which the conduct takes place. In determining whether particular conduct is "related to" a protected characteristic, an employment tribunal must make a clear finding of fact, based on the evidence before it.

166. If A's unwanted conduct is shown to have had the purpose of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out and there is no need to consider if it has that effect and the reasonableness of B's perception is not relevant.

167. Where A's conduct is not shown to have that purpose, the effect of their conduct on B must be determined. When considering whether conduct has the proscribed effect, a tribunal must take into account: B's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect (section 26(4)).

168. Whether it was reasonable for A's conduct to have the effect it did on B is an objective test. A's conduct will only be considered as having the necessary effect on B where it is reasonable for the conduct to have that effect. Therefore, provided any offence caused is unintentional there will be no harassment if B is being "hypersensitive." In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT made clear that an individual's dignity would not necessarily be violated "by things said or done which are trivial or transitory, particularly where it should have been clear that any offence was unintended".

169. In **Pemberton v Inwood [2018] EWCA Civ 564**, Underhill LJ, sitting in the Court of Appeal, revisited guidance he had previously given in the EAT in Dhaliwal, and held that:

a) In order to decide whether conduct has either of the proscribed effects, a tribunal must consider both:

b) Whether the claimant perceives themselves to have suffered the effect in question (the subjective question) and

c) Whether it was reasonable for the conduct to be regarded as having that effect (the objective question).

d) It must also take into account all the other circumstances.

170. The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that, if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for them, then it should not be found to have done so.

Victimisation

171. Victimisation occurs where a person (A) subjects another person (B) to a detriment because either B has done a protected act or A believes that B has done, or may do, a protected act (Section 27(1), EqA 2010.)

172. The following protected acts are listed in section 27(2) of the EqA 2010:

a. Bringing proceedings under the EqA 2010 (section 27(2)(a)).

b. Giving evidence or information in connection with proceedings under the EqA 2010, regardless of who brought those proceedings (section 27(2)(b)).

c. Doing any other thing for the purposes of or in connection with the EqA 2010 (section 27(2)(c)).

d. Alleging (whether expressly or otherwise) that the respondent or another person has contravened the EqA 2010 (section 27(2)(d)).

173. For the victimisation to be unlawful the detriment must be linked to a protected act. The EqA 2010 does not require a comparator for a victimisation complaint. A claimant only needs to show that they have been subjected to a detriment because of a protected act. It is not necessary for them to show that they have been treated less favourably than someone who did not do the protected act. However, the claimant must be able to show a link between the detriment and the protected act.

174. In **St Helens Borough Council v Derbyshire and others [2007] IRLR 540**, a victimisation case under the old regime, the House of Lords stated that the reason for the treatment should be assessed by asking "why" the respondent acted as it did, and whether the treatment was "because" of a protected act.

175. As with direct discrimination, victimisation need not be consciously motivated. If A's reason for subjecting B to a detriment was unconscious, it can still constitute victimisation (**Nagarajan v London Regional Transport and others [1999] IRLR 572**). Further, the protected act need not be the main or only reason for the treatment; victimisation will occur where it is one of the reasons (paragraph 9.10, EHRC Services Code).

Conclusions and Findings on Issues

176. In dealing with our conclusions in respect of each head of claim within the List of issues we will set out the Claim as drafted in the List of issues and then set out our conclusions below each head of claim. For the ease of the parties, we shall retain the numbering in the List of issues. For the reasonable adjustment and the section 15 claims the parties have split up the various parts of it but our findings are set out solely under the PCP section of the Reasonable adjustments Claims and the Unfavourable treatment part of the section 15 claims although we have considered each part of the statutory definition.

177. <u>8. Constructive unfair dismissal claim</u>

8.1. Has the Respondent committed a repudiatory breach of contract? The contractual term which the Claimant alleges has been breached by the Respondent is the implied term that an employer will not act in a way which is calculated or likely to destroy or seriously damage the trust and confidence between employer and employee The allegations which are said to amount to such a breach are:

8.1.1. April 2019 onwards – alleged failure by the Respondent to deal properly/ promptly with the Claimant's grievance including:

(a) failure to carry out a proper investigation

(b) failure to hold a grievance hearing

(c) failure to provide opportunity for the Claimant to provide evidence and failure to consider / give proper consideration to the Claimant's evidence

(d) failure to share investigation report with the Claimant/ her representative

(e) failure to carry out a transparent and open process

8.1.2. March 2019 (together with subsequent requests in April, May, June, and July 2019) - failure to engage/ engage appropriately with the Claimant regarding requests for re-deployment (including, but not exclusively to the Mendip team).

8.1.3. 23 April 2019 onwards – lack of information/ failure to respond to requests for information / regarding the outcome of the Claimant's grievance.

8.1.4. The Claimant relies on 8.1.2 and 8.1.3 as the final straws giving rise to "her resignation".

8.2. Did the claimant accept the alleged breach and resign from the Respondent's employment because of this breach?

8.3. Did the claimant delay too long in accepting the alleged breach?

8.4. If the claimant's resignation can be construed to be a dismissal by the respondent, was it nonetheless fair and reasonable in all the circumstances of the case?

Is the alleged loss recoverable in the unfair dismissal claim? Did it arise from the dismissal or from some other matter?

Should the award/s be reduced on the grounds that termination would have occurred in any event and / or by reason of conduct / contributory fault or for any other reason?

Should any ACAS uplift or reduction be made?

Findings on Constructive Dismissal

173. We do not accept that the Claimant has been constructively dismissed and so the issue as to whether the dismissal was unfair or not does not arise. We do not consider that the Respondent's actions were in repudiatory breach of contract as alleged or at all.

174. Within the List of Issues, we note that the matters which are alleged to have contributed to the constructive dismissal are exclusively post grievance. We will focus on those, but we make it clear that our view in the pre-grievance period Mrs King managed the Claimant reasonably and appropriately. We find that the Claimant's ill health stemmed from home issues as is set out in all the contemporaneous documents. The impact of work matters has been exaggerated by the Claimant at this hearing and whilst we are unable to say work issues had absolutely no impact we are satisfied that any effect it did have was minimal for the reasons stated above and in particular the Claimant's own representations at the time to OH and her GP. The Claimant's exaggeration / shift of focus has damaged the Claimant's credibility as a witness, and we consider the same to be self-serving.

175. The Claimant asserts that the failure to deal with her grievance properly or promptly is the first matter to be considered when assessing whether there has been a repudiatory breach of contract. The essence of any grievance is seeking to understand what the outcome desired from the grievance might be. In this case the desired outcome was set out clearly within the original grievance letter as set out at paragraph 60 above. Mrs Rendell makes the suggestion of proceeding initially without a meeting with the Claimant and that is not objected to (para. 67 above) and then there is an agreement that the grievance will be stayed pending an attempt to resolve the posting issue and it is confirmed that if that is resolved then the grievance will be withdrawn (para.71 above). It is readily apparent that the clear focal point of the Claimant is moving forward not looking back and the Respondent were entitled to focus on that.

176. On 30 April Mrs Rendell suggests that there are positions in Yeovil or Bridgewater and there is to be a meeting on 9 May to discuss matters. That is cancelled by the Claimant. On 11 June Ms Jiggens makes a suggestion about there being unpaid leave until October. There is a telephone call between Ms Jiggens and Mrs Brice on 23 May where they seem to agree that the grievance needs to be concluded. It is by no means clear that that is adequately communicated to the Claimant and Ms Rendell who are having almost parallel discussions that end with a meeting between the two of them on 14 June. They continue on the path of seeking to resolve the posting issue and in that meeting we find that the Claimant did agree to go to Bridgewater and that any grievance outcome would be shared in September. That was the agreement that was made between the parties and so time was not of the essence.

177. We find that there was a disconnect in information which led to Ms Jiggens to keep pushing for a grievance outcome which was at variance with the Claimant's understanding. Mrs Brice was not entirely clear as to what was happening but again we find the key discussion is between the Claimant and Mrs Rendell on 14 June. We note that the emails in June from Ms Jiggens asking for progress on the grievance did not copy in the Claimant and we are not satisfied that the Claimant had knowledge of those emails purportedly sent on her behalf.

178. In early August Mrs Rendell was in a position to offer a 0.6 role in Highbridge which she knew would be preferable to Bridgewater and was one of the places the Claimant had highlighted as a possibility. The response from Ms Jiggens was that the Claimant now wanted to go to Frome as that would be of assistance vis a vis her daughter's schooling. That was in Mrs King's area and so was wholly inconsistent with all previous requests.

179. It is clear that the grievance did not take a normal path, but we are satisfied that was because the Claimant and the Respondent wanted to focus upon sorting out the new posting and there was agreement as to the way forward. Ms Jiggens may have held a different view as to what was required but we are satisfied that the Claimant was content for the grievance to be focussed and dealt with in the way that it was with a meeting to be held in September and hopefully a return in October. The criticisms levelled at 8.1.1 above do not resonate and we find that the manner in which the grievance proceeded was with the acceptance of the Claimant, who holds the important view which we need to take into account.

180. There was a preliminary investigation into matters raised and there was a meeting about resolving the posting issue on 14 June which was certainly part of what had been raised on the grievance. There were a number of discussions over the period between the grievance and resignation. Just because they did not focus upon Mrs King's alleged actions does not mean that other issues which

were deemed more important were not progressed. By the start of August an offer consistent with what the Claimant had indicated she wanted had been made re redeployment and the Claimant had indicated that if that was forthcoming the grievance would fall away. That position would have been further discussed in September had the Claimant not resigned first. We consider that there were some communication issues on both sides, but Mrs Rendell and the Claimant certainly understood what they had discussed and what they understood going forwards.

181. The final straws are set out at 8.1.2 and 8.1.3. It is perhaps unusual to have two final straws, but we will not dwell on that philosophical conundrum further. We do not accept that there was a failure to engage properly or at all about new roles. It was identified as a priority and an offer was made and accepted to go to Bridgewater in the June meeting and then when a more favourable option came up at the start of august to Highbridge that was offered without the need for any interview at all. It is hard to see what more could have been offered. It was the Claimant who suddenly decided that she wanted Frome at the end which was under the management of Mrs King. We reject the Claimant's assertion that there were failings by the Respondent in this area.

182. 8.1.3 is effectively a repeat of that we have dealt with at 8.1.1. Ms Jiggens was writing through July although not copying the Claimant in. At the end of the month (26 July) Mrs Rendell did ask how the Claimant how she wanted the draft grievance document shared and said that it would remain in draft until she had had the Claimant's input and there was no response to that question.

183. Taking into account the specific points that the Claimant has identified in the List of issues as leading to her decision to dismiss and answering the **Kaur** questions we do not accept that the final straws identified amount of themselves to a repudiatory breach of contract taking into account all the circumstances of the case and the situation between the parties. We have considered all of the conduct complained of and in particular those parts identified in the list of issues, and we do not consider that there was a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence. The employer did not without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The unfair constructive dismissal claim is dismissed.

9. Disability

The Respondent admitted that the Claimant was disabled at all material times before the hearing. We accept the Claimant's case that the Respondent should reasonably have known she was a disabled person from the OH report in July 2018 for the reasons set out above. That report should have placed them on notice that the Claimant was likely to be a disabled person

10. Reasonable adjustments: section 20 and section 21 of the 2010 Act

10.1. Did the Respondent apply the following provision, criteria and/or practice ('the provision') generally, namely: -

10.1.1. November onwards- requiring the Claimant to return to work in her existing role. / Failure to redeploy to an alternative role. Para 10 "requesting as her desired outcome from the grievance to be assigned to a different team with a

manager with greater experience and training in support [sic] mental health at work"

This is not a PCP that was applied. We do not find that from November onwards the Claimant was required by the Respondent to return to her existing role or that there was a PCP not to redeploy the Claimant. The Claimant's existing role was a Health Visitor based in Wells. From 22 November 2018 to 19 March 2019 there was not any issue about the Claimant changing roles and any thoughts in that regard (if there were any) were hidden from the Respondent. On 20 March, the Claimant stated as a desired outcome to her grievance that she wished to move Teams and at no point after that was there ever any indication that she would have to return to work in Wells as Health Visitor, but all discussions were on facilitating an acceptable change and as at the date of the resignation options were still available to be taken. Whilst the Claimant was not finally redeployed all reasonable efforts were made to try and bring that about. The Claim related to this PCP is dismissed

10.1.2. September 2018 – October 2019 – the Respondent's practice of contacting employees on a regular basis whilst off sick/ requiring engagement from them during periods of sickness without adequate consideration of mental health disability.

Factually we do not accept that the Claimant was contacted regularly (whether that is meant to mean too frequently or on a regular pattern). The Claimant was contacted from time to time, largely in response to contact from the Claimant. We consider that the level of contact was reasonable and appropriate. We consider that the Respondent was fully mindful of the Claimant's condition when communicating with the Claimant. We are not satisfied that this was a PCP that was applied to the Claimant as drafted. We do not consider in any event that there was any substantial disadvantage and the Claimant's evidence is not accepted in that regard. No adjustments were necessary vis a vis the regularity of any contact or the engagement required.

10.1.3. ***Withdrawn***

10.1.4. April 2019 onwards applying the Respondent's sickness absence policy relating to pay for a period of absence arising as a consequence of disability where adjustments had not been made.

It is accepted that the Respondent did apply its sick pay policy to the Claimant and that would be capable of being a PCP under the EqA. It is by no means clear however precisely what the Claimant asserts was the substantial disadvantage that this caused the Claimant when compared to a non-disabled person. A non-disabled person absent for the same amount of time would have also been on nil pay.

On the evidence which was before the Tribunal the issue of pay was not one that was a problem for the Claimant moving forward as her active request was for an extended period with no pay. Whilst that option was not granted in terms it was, in terms of payment what happened in practice. We do not consider in those circumstances that the Claimant has demonstrated a substantial disadvantage from this PCP at all and the claim fails. In any event we do not consider in the circumstances of this case that providing the Claimant full pay when she had exhausted her contractual sick pay entitlement to have been a reasonable adjustment. There was no basis to do so on the facts we have found.

10.1.5. April 2019 onwards- failing to comply with the Respondent's grievance policy/ deal with the Claimant's grievance in an appropriate manner as alleged above.

We do not accept that this is a PCP. This is a good example of what is said in Ishola of seeking to cast what is, in reality, a section 15 claim as a reasonable adjustment claim. We consider that the manner in which this grievance was dealt was individual to the Claimant and so does not have the continuum required to be a PCP at law even taking into account a liberal view of the wording of the statute. In any event the circumstances were such that both parties (the Claimant and the Respondent) accepted that a course would be adopted focussed on seeking redeployment as opposed to making findings of fact on previous allegations. We consider that the grievance was dealt with appropriately and any variation to the published grievance process was justified and in all parties' interest. We do not consider if they were PCPs that any substantial disadvantage accrued, and that the Claimant was content with how things were dealt with at the time. There was no need for any adjustments to be made.

10.1.6 **Withdrawn**

10.2. Did the application of any such provisions put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that:-

10.2.1. The Claimant was unable to return to her existing role as such a return would have exacerbated her anxiety and depression.

10.2.2. The Respondent's contact with the Claimant (including on one occasion by way of a text before 8am in the morning) / the requirement to engage with the Respondent whilst off sick exacerbated the Claimant's anxiety/ depression.

10.2.3. The Claimant was unable to attend for work because of her anxiety / depression/ needed time (3 months with no requirement to engage with the Respondent during that period and a clear plan and identified role to return to Para 14) to recover her health.

10.2.4. The Claimant was unable to attend for work because of anxiety/ depression and failure to address grievance and / or redeploy the Claimant which resulted in the reduction of her pay by 50 per cent in April 2019 and 100 per cent in June 2019.

10.2.5. The Respondent's alleged failure to adhere to its grievance policy/deal with the Claimant's grievance in an appropriate manner exacerbated the Claimant's anxiety / depression.

10.2.6 Persistent uncertainty having moved the Claimant out of her previous role but not redeployed to an adjusted role from TUPE exacerbating the Claimant's symptoms [para 17 "the continued failure of the Respondent to reply to queries … [about] redeployment" Claim B]

10.3. Did the Respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the Claimant, the following are indicative but not exhaustive steps the Claimant asserts would have been reasonable for the Respondent to have taken to avoid the substantial disadvantages above.

10.3.1. Provide the Claimant with an alternative role (including but not exclusively a role in the Mendip team).

10.3.2. Refrain from regular/ inappropriate contact/ requiring the Claimant to engage with the Respondent whilst off sick.

10.3.3. Allowing the Claimant's request for a period of 3 months' unpaid leave from June to October 2019 to allow her to recover her health.

10.3.4. Continuing to pay the Claimant full pay during her sickness absences pending resolution of the Claimant's grievance and redeployment to an appropriate role

10.3.5. Dealing with the Claimant's grievance promptly and appropriately.

10.3.6. Training managers and HR staff adequately to be able to understand mental health disability and to refrain from communication practices that exacerbated the Claimant's ill health

10.3.7. Implementing effective return to work support meetings / procedures tailored to those with anxiety and depression that supported recovery and supported return to work

10.3.8 Supporting the Claimant to make an application to Access to Work for holistic assessment and funding of support and training for managers, colleagues, and HR staff.

10.4. Did the Respondent not know, or could the Respondent not be reasonably expected to know that the Claimant had a disability or was likely to be placed at the disadvantage set out above?

12. S15 Discrimination for something arising as a consequence of disability

If the Claimant was disabled, did the Respondent have knowledge, actual or constructive, of disability? If so, from what date?

This has been dealt with under the disability section.

12.1 Did the Respondent treat the Claimant unfavourably by:

12.1.1 Not providing the support needed to assist the Claimant to return to work successfully in a timely fashion following periods of disability-related sick leave [Claim B - 'something' 12.2.1, 12.2.3, 12.2.4, 12.2.5]

This allegation of unfavourable treatment is not made out factually. We are satisfied that during the Claimant's sick leave the parties were working together towards reintegrating the Claimant back into the workplace. The Claimant and Mrs Rendell had agreed that that was not going to happen until October at the earliest and offers of alternative roles had been made and were in the process of being considered at the point in time the Claimant resigned. At all times we find that the Respondent wanted the Claimant to return if at all possible and was making alternatives available to the Claimant for her to consider. The Respondent's interventions were reasonably "timely" and in accordance with availability. The undeniable truth is that the Respondent was charged with finding the Claimant an alternative that was acceptable to the Claimant, and they had done so on 14 June (Bridgewater) which was subsequently withdrawn from by the Claimant and Highbridge on 8 August. There was no unfavourable treatment, and this claim fails.

12.1.2 Reducing the Claimant's pay in April and June without having concluded the grievance procedure and / or without having redeployed the Claimant to a new suitable role [Claim C – 'something' 12.2.1]

The Respondent did reduce the Claimant's pay in April and June because she had run out of contractual sick pay entitlement. It is accepted that this would amount to unfavourable treatment and that it arose on account of sick leave arising from her disability. It falls therefore to consider the proportionate means of achieving a legitimate aim. The legitimate aims set out were maintaining the integrity of the sickness absence and sick pay policies, achieving adequate attendance levels, and assisting and supporting the claimant to get back into work. We do not accept that the Respondent contributed to the Claimant's sickness absence and taking into account the authority of O'Hanlon that there was no reason in this case why the normal consequences of exhausting sick pay should not be followed in this case and not paying further sick pay was a proportionate means of achieving the legitimate aims put forward by the Respondent.

12.1.3 **Withdrawn**

12.1.4 Failing to clarify grievance complaints prior to investigating the grievance [Claim F 'something' 12.2.1, 12.2.2, 12.2.4.]

There was no need to clarify the grievance complaints. Those complaints were quite clearly set out in the grievance as were the outcomes which were sought. There can be no unfavourable treatment when there is a failure to clarify what does not need clarifying. In any case the course adopted was accepted by the Claimant.

12.1.5 Failing to seek evidence from the Claimant prior to or during investigation of the grievance [Claim F 'something' 12.2.1, 12.2.2, 12.2.3, 12.2.4, 12.2.5]

The Claimant made it clear early on what resolution she wanted from her grievance and that was to move to a different team. There was a stay placed on the grievance whilst that was being considered. The Claimant herself appears to have continued with that agenda herself in her discussions with Mrs Rendell and it appeared that a resolution had been agreed in the June meeting. In the circumstances that there was no unfavourable treatment as the Claimant was seeking forward resolution and this was facilitated.

12.1.6 **Withdrawn**

12.1.7 Withdrawn

12.2. Was this unfavourable treatment because of something that arose as a consequence of the Claimant's disability?

12.2.1 absence from work arising as a consequence of disability [Paras 3 "mental health sick leave", 5 "disability-related absence", 9 "disability sick leave"]

12.2.2 grievance relating to disability and reasonable adjustments arising as a consequence of disability [Para 10 "desired outcome from the grievance was to be assigned to a different team with a manager with greater experience and training in supporting mental health at work"]

12.2.3 requirement for mental health disability knowledge / experience in new manager arising as a consequence of disability [Para 10 above]

12.2.4 anxiety and depression symptoms requiring adjustments to communication practices arising as a result of disability [Paras 5 “not well enough to attend a return-to-work meeting at that time”, 6 “the Claimant was not well enough to receive phone calls or attend meetings”, 9 “too unwell to attend meetings”, 10 “KK’s approach was actively hindering her recovery and return to work”, 14 “ongoing communication from the Respondent was hindering her recovery”]

12.2.5 requirement for reasonable adjustments arising as a consequence of disability [Paras 3, 4, 5, 6, 7, 9, 10, 14, 15, 17, 18]

12.3 Was the unfavourable treatment done in the pursuit of a legitimate aim?

13 Harassment related to disability

13.1 Did the Respondent engage in the following unwanted conduct related to disability?

13.1.1 KK November 30th, 2018 – Para 5 “KK emphasised to the Claimant that her disability-related absence was negatively impacting colleagues’ in the Claimant’s team … KK described the impact of the Claimant’s absence on her colleagues as leaving them ‘frazzled’ and ‘on their knees’”

This claim is rejected. The Tribunal accepts that Mrs King indicated to the Claimant that her colleagues were “frazzled” ” because that was an accurate description of their state. We do not accept that she said they were “on their knees”. We considered Mrs King to be a more credible witness than the Claimant and accept her evidence in this regard.

Mrs King stated the Claimant’s colleagues were “frazzled” in response to a direct question as to how they were, and we find that the message conveyed to the Claimant was nothing that she did not already know because she had been recently working in the department. We do not consider that the comments were unwanted because the Claimant asked for the information and wanted to know the situation. We are also satisfied that the reason why they were frazzled was no more than partially related to the Claimant’s absence but was primarily because of the wider demands of the role.

The purpose of the words was not to violate the Claimant’s dignity nor was that its’ effect. It did not create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. If it had have done we are quite satisfied that the Claimant would have raised it at the time notwithstanding the fact that she had recently gone on sick leave. If we are wrong on that then we would further find that it would not be reasonable for the conduct to have that effect in the context where it is a response to a question posed. This head of Claim is rejected.

13.1.2 KK December 2018 inviting the Claimant to a meeting knowing she was not well enough to attend.

Factually this claim is not made out as we do not accept that Mrs King did not know that the Claimant was not fit enough to attend a meeting. She was aware that the Claimant was unfit to carry out her day-to-day duties and had been signed off work but that is not the same as not being fit enough to attend a meeting that was designed to inform both parties and assist the Claimant in getting back to work. The meeting was a sensible course of action taking into account the Claimant’s sick leave record with a view to trying to help the Claimant back to work.

Whilst we accept that the request to attend a meeting was unwanted we do not accept that the purpose of the invitation was to violate the Claimant's. dignity nor was its' effect to create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The Claimant did raise it briefly on the telephone at the time but then mellowed and ended up apologising for her reaction. If it had have had the effect alleged then she would have maintained her complaint.

If we are wrong on that then we would further find that it would not be reasonable for the invitation to have that effect in the context of the Claimant's sickness situation and the desire expressed by all parties, including the Claimant, to get the Claimant back to work.

13.1.3 KK 18th December 2018 writing to the Claimant's GP without the Claimant's consent [Para 6]

Mrs King did write to the GP, and it was in response to a letter the GP had sent to her which she was following up in order to ascertain timescales when a meeting could take place. That was clearly a matter that the GP could have assessed and commented upon.

We do not consider that it was unwanted at the time and if the matter caused the Claimant any concern at all we are quite satisfied that she would have raised the matter then. She did not.

We do not accept that the purpose / effect of the invitation was to violate the Claimant's dignity nor was its' purpose / effect to create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The Claimant did not raise a concern at the time, and we find that she had both the capacity and the character to do so. If we are wrong on that then we would further find that it would not be reasonable for the request to have that effect in the context of the Respondent seeking information from the GP the Claimant herself had involved in her situation at work.

13.1.4 KK February 2019 telephoning the Claimant without OH referral to confirm C well enough to take a telephone call from R.

It is correct that Mrs King did call the Claimant in February 2019. Our findings in respect of that call and the subsequent communications are set out at paragraphs 46-48 above. In February the communication was to discuss the pending TUPE transfer, and it was appropriate for such a call to be made. The Claimant had not made it clear that she was in any way in conflict with Mrs King and the contact was proportionate and reasonable.

We do not accept the Claimant's evidence that it is unwanted. We do not consider that it was unwanted at the time, and it has only become so with the benefit of hindsight. It did not have the purpose of causing the prescribed harassment effects and we have explained that the Claimant has exaggerated the effect and we do not accept her evidence. In any event we do not consider objectively that it would be reasonable for it to have that effect.

13.1.5 KK 14th March text message at 7.28am

The Claimant had texted Mrs King on 7 March, and we refer back to paragraphs 49-52 of this judgement. The Claimant's text required, in our

view, a response and we find that one was expected by the Claimant. We do not accept that notwithstanding the Claimant's evidence at the Tribunal that the text was unwanted. It did not have the purpose of violating dignity or creating a prescribed environment. We also do not accept that it had the effect of so doing and we consider that the Claimant has exaggerated the effect of the text greatly. We also do not consider that it would be reasonable for the text to have the effect suggested in terms of its content or even in the context of its timing. It could have probably been better sent later in the day but in our view the timing should not have been a big issue objectively speaking.

13.1.6 ER 17th April claim to have completed investigation into grievance

Mrs Rendell's communication and the message was unclear. She had not completed the investigation but had completed the first stage of information gathering only.

We cannot see how that statement would have amounted to an act of harassment. Our understanding of the Claimant's case as now put is that she wanted a completed investigation into her grievance although as we have previously stated we find that what she really wanted was a resolution to whom she was going to work under and where that was going to be. On the basis of the Claimant's case the statement must have been what she wanted to hear and there is no evidence at all before us that this particular act created the prescribed harassing circumstances, and we dismiss the claim.

13.1.7 ER 14th June expressed "disappointment" C had raised grievance and claimed to have completed investigation.

We refer back to our findings at paragraphs 84-87 of this judgment. The context of what was said is such that we do not accept that it meets the definition of harassment at all. Again, there was no contemporaneous complaint about the alleged conduct. We do not consider that the comment from Mrs Rendell was unwanted nor that it had the purpose or effect of causing the prescribed effects. We quite simply do not accept the Claimant's evidence as to how that has affected her. In any event we do not accept that what we have found to have been said and the context of it could reasonably have been deemed to be harassing in nature. We do not find that it was claimed at this meeting that the investigation was completed

13.1.8 ER 25th July unexpected text message to Claimant's private mobile

The Claimant had met with Mrs Rendell on her own on 14 June and there had been email correspondence at the end of June about the OH referral. The Claimant does not refer to the 25 July text in her witness statement at all. In her oral evidence it suggested that text messages made her jumpy. In an email dated 26 July Ms Jiggens reminded Mrs Rendell that emails were preferred to text messages as texts were a source of stress to the Claimant.

We conclude that the text message was not an act of harassment. It would have been better had it been sent by email and we accept that it was unwanted. It was not done with the purpose of causing the prescribed environments or adverse working environments set out in the EqA harassment provision and again we have no evidence before us

that it had the effect of bringing about those states. There was insufficient evidence before us to form those conclusions.

In any event in the context of a successful meeting in June we do not consider that a text message would reasonably have had the effect described.

13.1.8 ER April – October failed to offer suitable posts for redeployment

Suitable posts were offered to the Claimant over this period and factually this claim is not made out for the reasons set out in the section 15 claims and constructive dismissal analysis.

13.1.9 ***Withdrawn***

13.1.10 ***Withdrawn***

13.2 Did the unwanted conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

13.3Was it reasonable for the unwanted conduct to have that effect?

14 Victimisation S27 Equality Act 2010

14.1 Did the Claimant do a protected act by submitting her grievance complaining of disability discrimination on 21st March 2019?

We accept that this is a protected act.

14.2 Did the Claimant do a protected act by using the services of a non-profit disability specialist representative to act for her in addressing her complaints of discrimination and seeking to ensure the Respondent complied with its duty to make reasonable adjustments? [Claim H + I]

Although perhaps different from many protected acts that are suggested in cases such as these we accept the Claimant's submissions that this was a protected act by the Claimant. Ms Jiggens set out her stall immediately and it must have been quite clear to the respondent that she had been engaged with the specific task of holding the Respondent to account both internally and, if necessary, externally for alleged breaches of the Equality Act 2010. We are satisfied that this comes within the broad banner of subsection (c) of section 27 EqA.

14.2.1 Did the Respondent treat the Claimant unfavourably by failing to follow its own grievance procedure from at least 17th April when it was clear an expedited redeployment to avoid the need for the grievance procedure to be completed was not going to be implemented by the Respondent, because she had done the protected act(s)? [Claim H]

It is correct that the specific process contained with the grievance process was not followed but we do not accept that either of the protected acts influenced that. As we have explained the focus on Ms Rendell was to try and resolve matters by sorting out a change of Team. We have found that that was the Claimant's primary focus too. We do not accept that either the allegations of disability discrimination in the grievance or the fact that Ms Jiggens was involved had any bearing on the path that was followed in respect of the grievance. Part of the reason was the level of work which had accrued on account of the transfer and the other part of the reason was because of the focus that a change of

team would resolve matters which was certainly the focus as between Ms Rendell and the Claimant.

14.2.2 Did the Respondent treat the Claimant unfavourably by not providing the Claimant with an outcome and / or appeal because she had done the protected act(s)?

There is no evidence to support this contention and indeed it was not even put to the Respondent's witnesses for them to deal with.

S109(4) EqA 2010

Did the Respondent act such as to be able to rely on S109(4) EqA 2010?

No evidence has been provided by the Respondent in respect of this possible defence and it is rejected so far as is relevant.

184. In all the circumstances we dismiss all claims before the Tribunal.

Employment Judge Self
Date: 10 August 2021

Sent to the Parties: 17 August 2021

FOR THE TRIBUNAL OFFICE