EMPLOYMENT TRIBUNALS

Claimant: C

Respondent: Z

Heard at: Birmingham **On:** 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26 & 27 September 2023
28 & 29 September 2023 (panel only)
7 & 8 December 2023 (panel only)

Before: Employment Judge Maxwell
Ms S Campbell
Mr K Palmer

Appearances
For the Claimant: in person
For the Respondent: Mr K Webster, Counsel

RESERVED JUDGMENT

The Claimant's claims of direct discrimination, harassment and victimisation are not well-founded and are dismissed.

REASONS

Procedural

Preliminary Matters

1. The Claimant is a vulnerable party. The clarification of her claims and identifying the steps necessary to support her participation in the case and ensure a fair trial had been the subject of very extensive case management, by several Judges, including a ground rules hearing ("GRH") before EJ Harding.

2. The Judge began this hearing by reminding the parties of the various measures which had been directed previously to support the Claimant. In the course of the Tribunal's pre-reading, it become apparent the Claimant had not taken one of the steps ordered by EJ Harding, namely to contact her GP or Mr Basra (a

Trainee Counselling Psychologist from whom she was receiving support) to seek their views on the proposed adjustments. When we discussed this omission with the Claimant she said that she would follow it up. The Claimant engaged appropriately in this discussion, she was content with the measures and did not suggest any variation. The Respondent had complied with relevant orders in this regard. We indicated it was our intention to implement the steps directed. At the beginning of day 3, the Claimant provided a recent letter from Mr Basra. He supported the measures being taken.

3. As far as breaks were concerned, the Judge outlined our usual sitting pattern, namely 10 am to 1 pm with a mid-morning break, followed by 2 pm to 4 or 4.30 pm with a mid-afternoon break. The Claimant was advised that she could have additional breaks as and when these were required, in particular if feeling tired or distressed. Whilst the Judge would suggest a break if it appeared to the Tribunal this may be necessary, the Claimant was strongly encouraged to speak up and let us know if she was feeling in need of a pause. The Claimant was happy with this arrangement and we followed it, additional beaks being taken either at the initiative of the Tribunal or because the Claimant had asked.

4. The arrangements for witness evidence to be received were discussed. Whilst most witnesses would be in the hearing room when giving their evidence, Y (the alleged perpetrator of rape) would do so remotely by video link. This was a protective measure directed by EJ Harding following discussion with the Claimant, for her benefit, so that she would not have to confront him or be in the same room. Furthermore, in accordance with the ground rules, the Claimant had prepared a list of questions for Y, which the Judge was to ask him. Similarly, Mr Webster had prepared notes of the questions he intended to ask the Claimant about the alleged rape, for the Tribunal to review.

5. The questions proposed by Mr Webster were relevant and proportionate. The Respondent did not adopt Y's account, as it said it did not know what happened between the Claimant and him in the latter's home. He had last worked for the Respondent 5 years previously and was removed from the bank list following his arrest by the police. The Respondent adopted the position that whatever transpired between the Claimant and Y in his home, after they had been in a relationship for many months, could not have been in the course of employment. If followed that Mr Webster would not be putting Y's account (such as it was) to the Claimant.

6. The document the Claimant had prepared for Y's cross-examination consisted largely of narrative, rather than questions. In and of itself, this was not a particular problem. Unrepresented parties often struggle with cross-examination and Tribunal Judges intervene to turn their statements into questions, inviting the witness to say whether they agree with the account being put forward. The Claimant's document was, however, unduly long and repetitive. Some of the points were difficult to follow. Others were not relevant to the issues the Tribunal had to decide. The manner in which the Claimant's question were put to Y is set out later in this decision.

7. Significantly, the Claimant's document did not include any questions or indeed her account of the alleged rape (on either occasion). This was consistent with the approach the Claimant had adopted in her own witness evidence. Despite a

Claimant's witness statement bundle (primarily consisting of her own evidence in various documents) running to 268 pages, she did not describe either alleged rape anywhere. We decided (notwithstanding the order for parties to exchange statements containing all of the evidence it was proposed they give) that we could not simply ignore the deficit with respect to such a serious allegation. Mindful of the Claimant being a vulnerable party, it was appropriate to make a further adjustment. The Judge would ask the Claimant a series of short, open questions at the beginning of her evidence. In this way, the Claimant would have a further opportunity to provide her account, notwithstanding it ought to have been in her witness statement. This would be done before cross-examination by the Respondent. In order to ensure fairness to the Respondent, we indicated that if Mr Webster needed a short adjournment to take instructions on her evidence, that would be accommodated.

8. The parties were reminded of the list of issues, which had been agreed and / or ruled upon, in the course of the many earlier case management hearings. Questions and submissions would need to focus on these matters.

9. The Tribunal explained it intended to follow the timetable set out in the order of EJ Kenward. Mr Webster had populated this with proposals for when the Respondent's witnesses should give their evidence. The Claimant indicated that her live witnesses would not be able to attend the Tribunal to give evidence until 19 September 2023. According to the timetable, that would be during the period for the Respondent's witnesses. We indicated her witnesses could be interposed if necessary. Both sides were content with this.

10. The Claimant's witness evidence was taken as comprising the content of a bundle she prepared, including multiple statements in her own name and emails she had written. In addition, she provided a number of witness statements from others (which went unchallenged, the Respondent's position being they were irrelevant). The Claimant called three witnesses to give live evidence (which was also unchallenged):

    10.1 Anne Parker, a friend of the Claimant;

    10.2 Mark Bayliss, a friend of the Claimant;

    10.3 Tracey Beckett, Ward Services Officer.

11. The Claimant had originally intended to call her daughter as a witness but in the event, decided not to.

12. The Respondent provided statements and called the following witnesses to give live evidence:

    12.1 Glynis Fenner, Senior Nurse and Bank Manager;

    12.2 Frances Jackson, HR Business Partner;

    12.3 Frieza Mahmood, Chief People Officer;

    12.4 Andrew Payne, Ward Service Manager;

12.5 Stephanie Cowin, HR Business Partner;

12.6 Y, formerly a Porter;

12.7 Christine Jewkes, Ward Services Officer;

12.8 Esther Brennan, Ward Services Officer;

12.9 Carol Williams, Ward Service Manager;

12.10 W, Portering Supervisor;

12.11 Lisa Billingham, Laundry Assistant;

12.12 Emma Lovesey, Healthcare Assistant;

12.13 Ann Davis, Ward Services Officer;

12.14 Caroline Dawes, Ward Services Officer;

12.15 Glenn Bradnick, Porter;

12.16 Gary Higgins, Porter;

12.17 Stephen Smith, Porter;

12.18 Johnathan Robinson, Maintenance Worker;

12.19 Helen Bromage-Llewellyn, Associate Chief Nurse;

12.20 Danni Dhillon, Deputy HR Business Partner.

13. The Claimant was very concerned about the document bundles the Respondent had prepared and she returned to this point repeatedly as the hearing progressed. To begin with, the Claimant appeared to be saying that documents she provided to the Respondent had been excluded. The Judge asked the Claimant to identify an example of such a document and she responded by referring to a letter from Mr Basra. The Judge looked at the index and was able to identify the document immediately, which was in the bundle. He explained to the Claimant where this was referred to and how he had found it. This and other similar exchanges gave us the impression the Claimant had not looked at the bundle prepared by the Respondent or index carefully before complaining of omissions.

14. The Claimant next expressed a concern about the sequence and index for the folders the Respondent had prepared containing her documents. Because the parties could not agree on what ought to go in the hearing bundle or how this should be organised, the Respondent had prepared one bundle comprising what it believed to be the relevant documents in chronological order, which ran to 5 lever arch files, and a separate bundle of the Claimant's documents, which ran to 2 lever arch files. The Respondent had also prepared a typed index for the Claimant's documents. On examining this it became apparent the Claimant's handwritten index was present, it sat immediately behind the typed index. The

documents then followed in the order the Claimant's index prescribed. The Respondent had merely prepared a typed version of her index and put that at the beginning for ease of reference. The Judge explained this to the Claimant.

15. The Claimant was very exercised about why her documents had been put together separately and not included in the main bundle. The Judge reminded the Claimant this had happened because the parties could not reach an agreement on the bundle. He explained we would not attach any less weight to a document simply because it appeared in a separate or additional bundle. Indeed going forward, we would treat the "final hearing bundle" as the Respondent's bundle and the "additional bundle" as the Claimant's bundle. As long as we had all of the evidence the parties wished to rely upon available to us, it did not matter where it was to be found.

16. The Claimant asked how she could be sure we took into account her evidence. The Judge explained it was not our practice simply to read every one of the thousands of pages of documents produced by the parties in a case such as this, rather the onus was upon them to draw our attention to relevant material in the course of the hearing. This could be done by way of witness evidence, in cross-examination or in closing submissions. The Claimant immediately referred us to page 857 of her bundle of documents, as she considered this very important to her case. On re-reading this letter from the CICA detailing a financial award made to her, the Claimant became distressed and we took a short break.

17. Whilst most of the preliminary issues were resolved by discussion and agreement, we did receive competing applications to exclude the other side's witness evidence.

18. The Claimant said we should exclude all of the Respondent's witnesses, as they were not witnesses; we understood her to mean they did not witness the alleged rape. She then went on to describe them as perpetrators, people about whom she had complained and who had retaliated by complaining about her. The Claimant said her employer had sent an email telling employees they did not have to speak to the Claimant (we understood her to mean be a witness for her at the Tribunal). She said the Respondent had obtained the names of these witnesses from her "I was never heard" document (one of those that was intended to comprise her own witness evidence). The Claimant also told us these witnesses were respondents to her second claim (which was not before us). She told us their accounts were untrue and this could be shown by reference to documents in the bundles. The Claimant just wanted her employer to be fair and provide support. Her employer had also made things difficult over the documents.

19. The Respondent said its witnesses were relevant to the Claimant's complaints and could give evidence going to the issues in the list of issues. The Respondent then made its own application to exclude some of the Claimant's evidence. This was on the basis the evidence postdated the matters about which the Claimant was complaining in these proceedings and / or was otherwise not relevant to the list of issues. Separately, Mr Webster said the Claimant was seeking to introduce matters that were highly defamatory, such as references to alleged affairs, drug-dealing and guns.

20. Whilst, ideally, evidence should be adduced only if it is relevant and, reasonably, necessary to determine the issues in the case, in practice a more relaxed approach is often taken, with irrelevant material being allowed in but later disregarded when the Tribunal comes to makes its decision and is better able to see how the pieces of the evidential jigsaw fit together. We were not at this time in a position to rule upon the relevance points that had been raised. A vast body of documentary and witness evidence has been placed before us (thousands of pages). The Claimant's claims covered a significant period of time and involved a considerable number of individuals. We would need to read-in extensively and consider the position at length. At this stage of the proceedings, that would be a disproportionate exercise and it was not in the interests of justice to carry it out. Whilst a 20-day allocation might seem generous, given the volume of material to be digested, evidence and submissions heard, it was necessary to manage the time with care. In most cases, some irrelevant evidence is put before the Tribunal and then disregarded when a final decision is made. That is the course we decided to adopt here. Neither party would be prevented from repeating and developing its arguments on relevance in the course of closing submissions. Our decision to allow the evidence in should not be taken as involving any indication of a preliminary view that it was likely to be relevant and necessary to the disposal of the issues in this case. As the hearing went on, our appreciation of what was and was not relevant was likely to increase. We might disallow seemingly irrelevant or otherwise improper questions in cross-examination. We also added that in circumstances where the Claimant complained of sexual harassment and victimisation, we were doubtful about the helpfulness of evidence relating to affairs, drug-dealing or guns and it may that questions relating to those matters would be curtailed or not permitted at all.

21. The Claimant applied to ask her own witnesses supplemental questions. Her justification was that this was a sex discrimination claim and she had been surprised by the Respondent's response to it. We were not persuaded the Claimant could, reasonably, have been under any misapprehension as to the need for her witnesses to address relevant matters. Very many days were spent with the Claimant by several employment Judges, discussing, agreeing and where necessary ruling upon the list of issues. The case management orders were clear in explaining to the Claimant that witness statements must contain all of the evidence which was to be given. It was not in the interests justice to afford her a general permission to conduct examination in chief. This would be contrary to the overriding objective. It would contradict the "cards on the table" approach to modern litigation and the parties would not be on an equal footing. Each side should know before the hearing begins the case, legally and evidentially, they have to meet. Furthermore, this was one of many features of the Claimant's conduct of the case which tended towards its continual expansion. For the reasons discussed elsewhere in this decision, it was necessary to manage the 20 days of this hearing carefully. It was in the interests of both parties for the matter to be decided within the current allocation, rather than going part heard.

<u>During the Hearing</u>

22. When the Claimant came to give her evidence, before cross-examination the Judge asked her questions about the alleged rape. The Claimant told us what she said happened on these two occasions. One unfortunate consequence of the Claimant's factual case only emerging for the first time in this way, is that Y

had no advance notice and could not address it either in his original witness statement (which was limited on this to saying they had been in a relationship time and had consensual sex) or a supplementary statement.

23. When the Claimant was answering questions in cross examination, it was necessary for the Judge to intervene frequently because she was repeating herself, responding at disproportionate length or had gone off topic. Her answers did not tend to come to a natural halt, even when she was allowed to continue for many minutes.

24. Whilst giving her evidence, the Claimant returned to complaints about the document bundles the Respondent had prepared. She said her documents had been excluded and the indexes were confusing. The complaint about excluded documents could not be substantiated. Whenever we looked for an allegedly missing document, it was found. The Respondent had organised its bundle chronologically. We accepted the Claimant's documents were in the order she had provided them to the Respondent. There would be no reason for the Respondent to vary this, especially in circumstances where it had included her own hand written index at the beginning. On day 4, the Claimant said she could not find what she was looking for in her bundle because whereas she had prepared 3 separate handwritten indexes, the Respondent had only included one of these. The Judge told her to bring her additional paper indexes in the next day. The Claimant did as she was asked. Notwithstanding that on day 5 the Claimant had her own 3 handwritten indexes in front of her when giving evidence, she did not appear to use them at all to help her locate documents. When she complained of not being able to find a document and the Judge suggested she use her own index, she did not do so. The Judge suggested to the Claimant that over the course of the weekend she go through her own documents to find those she wished to rely upon and bring in paper copies of any documents the Respondent had excluded. The Claimant said that she would.

25. On day 6, the Claimant brought in heavily annotated copies of the Respondent's bundle indexes and pages of separate handwritten notes. She wished to rely upon all of this material whilst giving her evidence. We permitted her to have the annotated indexes but not the separate handwritten notes, which amounted to prompts for her evidence and an undisclosed supplementary witness statement. The Claimant already had the benefit of hundreds of pages of disclosed witness evidence, it would be disproportionate to allow her to expand upon this at such a late stage and prejudicial to the Respondent to have to deal with a substantial last-minute addition, which itself was not easy to decipher.

26. We do not accept the Claimant's difficulty with the documents was caused by any malpractice or default on the part of the Respondent. The Claimant is able to produce vast quantities of written material and has done so over many years. The impression we have is that she does this without much reflecting upon what she has written previously. As such, the Claimant's representations are often highly repetitive, without being identical. The Claimant has raised grievances and found many other ways to complain. The Respondent through various officers and employees has responded. The net result is the thousands of pages of documents put before us, which will at times, inevitably, be a challenge to navigate.

27. Having seen correspondence passing between the parties (much of which was copied to the Tribunal) we are satisfied the Respondent made considerable efforts to agree a final hearing bundle with the Claimant. It also sought to provide her with both physical and digital copies, which the Claimant then complained she had not received. This latter problem was echoed in her employment. The Claimant appears to have difficulty receiving documents however they are sent and it is unclear why this is so.

28. At times the proceedings became very difficult to manage. The Clamant would seek to intervene when it was neither appropriate nor necessary, often using a formulation such as “can I just say”, “I need you to understand” or “there is something I need to say”. In most instances the Claimant would then give her factual account of a matter explored in evidence earlier in hearing. On other occasions she wished to continue to argue points after the Tribunal had made a ruling. The Claimant would reiterate why she disagreed with what had been said or done and say it was unfair. The Claimant would not make short points, rather she tended to speak until stopped. At times it was necessary for the Tribunal to decline to hear further representations and simply proceed with the hearing. The Claimant’s approach was a circular one, returning to the same points again and again. Had we simply allowed the Claimant to make such representations as she wished on each such occasion, the hearing would have ground to a halt.

29. When the Claimant was cross-examining the Respondent’s witnesses it was, again, necessary for the Judge to intervene. The Claimant approached this stage of the proceedings as a further opportunity to explain her version of events. The Claimant did not make short points that could easily be turned into questions by the Judge, rather she spoke at length. The Claimant said she wanted the witnesses to hear her account and understand how she felt. The Judge explained, many times and in different ways, that it was necessary for her to ask questions of the witness, these should relate to the issues the Tribunal had to decide and it was important to challenge matters said by the witness in their statement with which she disagreed. Notwithstanding these frequent reminders, the Claimant persisted in her approach. Where a relevant factual proposition could be identified, the Judge would put that in the form of a question to the witness. Very often, however, it was difficult to follow what the Claimant was saying. She spoke in vague and general terms. She characterised her treatment (e.g. saying it was “abuse”, “coercive control” or “grooming”) rather then recounting specific events. She moved from one topic to another without warning. As with her answers, her questions frequently showed no sign of stopping, unless the Tribunal stepped in. When the witnesses gave their answers, the Claimant tended to pass comment. There was also a great deal of repetition. The Judge stopped the Claimant a number of times where she was returning to a matter the witness had already been asked about.

30. At the beginning of day 9, the Respondent indicated that a disclosable document had recently come into its possession, namely a copy of the Claimant’s application for a non-molestation order. The Respondent wished to apply to admit this into evidence. We were aware of these separate legal proceedings because various documents connected with it were already in the hearing bundle, including an order made by the Family Court, which the Claimant had put in her bundle. Rather than requiring the Claimant to deal with this point

immediately, we decided to give her an opportunity to consider her position and said we would determine the application the following day.

31. Later on day 9, following the conclusion of evidence from Mr Payne and during a short rest break, we received a report from the clerk of the Claimant feeling unwell and wishing to leave the Tribunal immediately. We agreed to this request and adjourned the hearing.

32. On day 10 the Claimant did not attend. She sent an email in the following terms:

> **I am sorry for the inconvenience this will cause today.**
> **I am too ill to attend court today.**
> **Bowel problems and vomiting.**
> **Off balance.**
> **Vertigo.**
> **Blistering skin problem.**
>
> **C has struggled for the past few days with C health and lack of sleep due to nightmares.**
>
> **C is so sorry about today.**
> **And C is hoping to be back in court on Monday**
> **Sorry for the inconvenience**

33. As a result of her non-attendance, it was necessary to adjourn the hearing. Whereas day 11 had been intended as a non-sitting day, we decided to convert it to a sitting day. The Respondent was able to assist by rearranging its witnesses to ensure that three could attend to give evidence that day. We caused an email to be sent to the Claimant, advising her of the position.

34. On day 11 the Judge asked the Claimant how she was feeling. She explained the previous week had been very tiring and she was affected by fatigue but felt better now. We reminded the Claimant of the discussion we had at the beginning of the case about rest breaks, to let us know if she was becoming overwhelmed and to say when she needed more breaks, as we would accommodate this.

35. We also dealt with the admissibility of the Claimant's application for a non-molestation order. The Respondent said the document was relevant because it tended to contradict the Claimant's oral evidence in these proceedings, to the effect she had not had sex with Y prior to the two alleged rapes. A copy of the application had recently come into the Respondent's possession via Y (with whom they had been in contact about him giving evidence). The Claimant opposed the admission of this document. She said the statement was made in different proceedings. She had a better understanding now than she had then (i.e. when she made the application for a non-molestation order) about the nature of her relationship with Y, which was "abusive", "grooming" and "not normal". She said this had been explained to her. She also believed the Respondent was using this document and Y to hurt her.

36. After considering the position carefully, we decided to admit the non-molestation order application. The Claimant in her oral evidence at the Tribunal, denied being in a relationship or having sex with Y prior to the alleged rapes. Her application and witness statement in the non-molestation proceedings, however,

said they had been in an "intimate personal relationship for a significant duration", namely January to August 2018. The box was also ticked for "boyfriend, girlfriend or partner who does not live with me". The application was drafted and a statement in support prepared with the assistance of solicitors and it is difficult to envisage a lawyer using the term "intimate personal relationship" other than as a result of instructions there had been a sexual relationship. The Claimant did not invite any different interpretation, instead she relied upon the matters we have set out above. This evidence was potentially relevant, not only to credibility but also to the specific issue of consent in connection with the alleged rapes. The fact of a prior sexual relationship did not mean the Claimant must have consented to what happened on the occasion of the two alleged rapes. It would, however, be consistent with the evidence of Y, who said they had been in a consensual sexual relationship for some time, which she denied. Whilst the Claimant may believe she now has a better understanding of the nature of her relationship with Y (i.e. that it was abusive) that does not change the fact of whether or not they had sex prior to the alleged rapes.

37. Later in the hearing, after we had made our ruling, the Claimant again argued that her non-molestation order application should be excluded from evidence. She referred to the order being sealed and said these had been separate legal proceedings. Whilst the application may derive from another legal process, it does not follow that was irrelevant or otherwise inadmissible. The Claimant had been inconsistent in her approach to those proceedings. She had disclosed the order and included that in her bundle of evidence. She also relied upon the statements made by W and Emma Lovesey in the Family Court, as being detriments done to her for which the Respondent was responsible. Her approach to what could be taken from that other process appeared to be selective. We were not satisfied there were grounds to reverse our earlier decision.

38. On the afternoon of day 11 we discussed the timetable for the hearing. This had been set by EJ Kenward. The time allocations were appropriate, proportionate and neither party had dissented when we reviewed it at the beginning of the hearing. The Respondent had populated a version with details of the witnesses it proposed to call on particular days. Some further adjustment was made for witness availability as the hearing proceeded. By day 10, however, we had fallen behind. The Claimant's cross-examination of the Respondent's witnesses was taking longer than anticipated. This was because of the matters referred to above, including her tendency to make long, meandering, unclear and / or repetitive statements, rather than asking questions. This was not an effective use of Tribunal time. We could not accept the Claimant's exposition as evidence and whilst she wished to explain matters to witnesses, unless that led to a relevant question, the determination of her claims was not being advanced. We were concerned there was a risk of the case going part-heard, with further dates being required next year. That course would not be in either party's interests. The existing 20-day allocation was proportionate and had factored-in the need to make many adjustments for the Claimant.

39. We indicated a preliminary view, namely that one of the days currently intended for deliberation would instead be used to hear evidence. This would make up for the day by which we were behind schedule. The Respondent would be required to redistribute its witnesses, so as to ensure no more than 3 were heard on a single day. We would then limit cross-examination to the time available on a

given day. Having invited submissions, the Claimant told us this would put her under pressure and exacerbate her health. Whilst sympathetic to the Claimant's concerns and accepting the entire Tribunal process was a source of stress for her, we were not satisfied this course of action would place her under any undue pressure. Our approach was consistent with the timetable we had endeavoured to follow from the start, with the agreement of the parties. This would tend to underline and emphasise the finite amount of time available for the hearing, requiring the Claimant to recognise and act in a manner consistent with that reality. The judge explained this would give her an incentive to stop making lengthy statements we could not take into account and instead ask questions, about matters in the list of issues. The Claimant would be relieved of the unnecessary and self-imposed burden of recounting these events and how they made her feel. Many of the witnesses were relevant to only one discrete issue and as such, their cross-examination ought to be short. The Judge reiterated the Claimant should let us know if she was becoming fatigued and we would take additional rest breaks. When the time allocation for a witness had been exhausted then absent some unexpected circumstance, cross examination would cease. The Judge would then review the list of issues and if necessary, ask the witness questions to elicit their response to any points not covered, insofar at it was relevant for them to do so. No adverse inference or evidential bar would arise from the Claimant's failure to put her case.

40. On day 12, the Claimant said she wished to recall all of the Respondents witnesses from which we had already heard because she had not received documents from the Respondent in good time, she had now read them and had more questions. We refused this application. It was apparent from the correspondence the Respondent had made considerable efforts to agree the bundle and get copies of this to the Claimant. The parties have been engaged in disputing this matter for a considerable period of time. The Claimant has repeatedly asserted that documents were missing when they were not. To the extent the Claimant had found it difficult to keep track of the vast amount of paperwork in this case, much of which she herself has created, that is understandable. We were not, however, satisfied that situation came about because of any default by the Respondent's representative in these proceedings or that any such difficulty would be remedied by giving the Claimant more time. The course she proposed was disproportionate and would inevitably result in the case going part-heard and resuming at some point in 2024. This would be highly unsatisfactory. The Respondent had already alluded to the difficulty of securing witness attendance, some of whom are no longer or were never its employees. The question of whether a fair trial could still be had with respect to allegations dating back up to 7 years would be at large if the case went off. The Claimant had been given ample opportunity to prepare questions for the Respondent's witnesses and it was not in the interests of justice to go backwards with the witness evidence rather than forwards.

41. As set out above, EJ Harding made an order requiring the Claimant to submit written questions for Y, which the Judge would ask. This was a protective measure intended to support the Claimant, given that questioning her alleged rapist directly was likely to be difficult and distressing for her. The Claimant had prepared a document. The final version of the Claimant's questions had two runs of numbering, from 1 to 5 and then 1 to 63. Most of these numbers were,

however, followed by multiple statements and / or questions. Much of what the Claimant had written was vague, repetitive or not relevant to the matters the Tribunal had to decide. We decided the best way forward was for the Judge to read this document to Y in sections. If there was a relevant question, Y would be expected to answer. If there was no question but the Claimant had set out her account of material facts, Y would be asked whether he agreed. If the material was unclear, the judge would endeavour to ask a simpler question capturing the Claimant's point. Where the matters raised were repetitive or irrelevant, then the Judge would explain this and move on without requiring a response.

42. Shortly before Y was due to give evidence (which occupied most of day 12) the Claimant said that she no longer wished the Judge to ask her questions. She said Y was hiding from her and should have to face her. The Claimant said that she wished to question Y directly as no-one knew her case better than she did. Somewhat inconsistently, the Claimant then said she was petrified of Y. This was a most surprising change in her position. The adjustment with respect to asking questions of Y had been agreed many months previously, at a ground rules hearing, to protect the Claimant. The Judge reminded the Claimant of the background to this order having been made and expressed concern about the wisdom of changing course now. Only the day before the Claimant had said that simply requiring her to adhere to the agreed timetable for other witnesses would cause her stress and yet now she wished to cross-examine Y herself, which was likely to be a highly difficult and extremely stressful undertaking. At this stage, the Claimant became distressed and began speaking over the Judge, returning to the theme of the Respondent hiding her documents and sending the bundles late. We decided to have a rest break and consider the best way forward.

43. We noted, the Claimant had agreed to this supportive measure when the matter was before EJ Harding. The recent report prepared by Mr Basra, agreed with the adjustments for the hearing, including the questions being asked by the Judge. The Claimant had not provided any coherent explanation for why she was changing her mind about this matter at such a late stage. It appeared to us the turnabout had most likely resulted from the Claimant's heightened emotional state at the point Y was due to give evidence. It was in the interests of justice and in accordance with the overriding objective to continue as planned and for the Judge to ask the questions.

44. It did, however, occur to us that a slight modification to the ground rules was appropriate. The order made by EJ Harding indicated that if the Claimant had a follow-up question, she could intervene and raise this during cross-examination. Having seen the manner in which the Claimant had intervened throughout the hearing and also the way she struggled to ask questions of witnesses (as opposed to making statements) such interventions were likely become unmanageable. There was little in this case on which the parties agreed. Notably, during the Claimant's cross-examination of the Respondent's other witnesses, she almost always sought to comment upon their answers. The course originally proposed seemed highly likely to result in the evidence of Y being extended dramatically, from 1 day to many, without any better or more relevant questions put. Each answer being followed by lengthy argument and rebuttal from the Claimant would tend to create less rather than more clarity. We decided it would be far better for the Claimant to make a note of any follow-up questions she wished to ask as a result of the answers Y gave. These could

then be reviewed and read to Y by the Judge. This was the process we adopted. We had a short break once the Claimant's original written questions had (to the extent it was appropriate) been asked of Y. After this, the Claimant proposed (Y was not in the hearing room for this discussion) 8 further questions. The Judge then went on to ask Y 7 of those questions, one being disallowed as not relevant to the matters we had to decide.

45. At the end of day 11, we had a further brief discussion about the timetable. 3 witnesses would be giving evidence the next day and this pattern repeated thereafter. We asked the Claimant for her views on how the available time, circa 4 ½ hours, should be divided between each of those who would be giving evidence. The Claimant did not engage in this exercise in a meaningful way. The Judge having pointed out it would not be helpful for the Claimant to respond by saying "she would do her best" or words to that effect, she said just that. In these circumstances, we decided it was appropriate to apportion time equally, 1 ½ hours for each witness. We had noted the time the Claimant spent with previous witnesses did not always reflect their involvement in the issues the Tribunal had to decide. The Claimant also reiterated her view that 3 witnesses were too many in a day. We were not persuaded this was so. Given a 20-day hearing and a timetable which had originally allowed 8 days (before we extended it to 9) for evidence from the Respondent's 20 witnesses, it was inevitable that on many days we would need to hear from 3 witnesses. Again, it was not in the interests of justice to go part heard. The Claimant created an unnecessary burden for herself by adopting a disproportionate approach to cross-examination. If the Claimant concentrated on asking questions relevant to the issues, then the time allowed with each witness would be more than sufficient. The Judge reminded the Claimant that when she had been re-examining her own witness, Ms Parker, earlier that day, and had been prevented from asking leading questions, she had indeed managed to formulate proper questions. It appeared, therefore, the Claimant recognised the difference between a question and a statement, yet was choosing to persist in the latter. In response to this observation, the Claimant said that she just wanted to tell the truth. There was then a further reminder to her that she had given her evidence already and now had to ask questions of the Respondent's witnesses. She was urged to think about her questions and focus on the issues.

46. On day 13, the Claimant appeared to have taken on-board the repeated reminders of the need to ask questions of the Respondent's witnesses. Whilst it was still necessary for the Judge to intervene from time to time, this was far less so than on previous days. The Claimant asked many proper and relevant questions of her own accord. While she did on occasion indulge in long preambles, encouragement to put a question resulted in this being done. Her cross examination of the first two witnesses was relatively concise and did address various relevant matters. This allowed for rather more time with the third witness. The net result was a good exploration of the witnesses' evidence that day.

47. After the first witness on day 15, the Claimant said did not have notes for cross-examination of the second witness, Mrs Dawes. We discussed the timetable and the fact of having reminded the Claimant at the end of the previous day, who was being called this day. The Claimant became very upset and said she was unwell. We took a long rest break. When the Claimant had regained her

composure we resumed and it was agreed we should proceed with the third witness, Mr Bradnick, for whom the Claimant did have notes. At the end of the morning session, the Judge suggested we begin to hear from Mrs Dawes in the afternoon, following an extended lunch break. The Claimant was reminded of the particular issue Mrs Dawes was relevant to, namely issue 2.1.3. The Claimant was invited to reflect on that issue, re-read Mrs Dawes witness statement and make a note of the questions she wished to ask. Whereas the Judge had been asking questions of witnesses after cross-examination – if the issues had not been covered – in this instance he would do so first. The Claimant would then have an opportunity to ask her questions, those she had made notes of over lunch. If all of the necessary question were asked in this way, then Mrs Dawes would be released. If the Claimant wished to ask more questions, we would consider requiring Mrs Dawes to resume her evidence on another day. The Claimant was content to proceed in this way and we did so. On two occasions that afternoon, the Claimant began to ask a question about a document but did not know where this was because the page number was in the notes she had left at home. Both times the Tribunal was able to identify the document from the Claimant's description and direct her to it. In the event, the Claimant was able to ask all the questions she wished of Mrs Dawes that afternoon. The Claimant thanked the Tribunal for bearing with her.

48. On the morning of day 16, the Claimant arrived at 10.20am. This was not the first time she had been late. Her explanation was, generally, that the bus had been delayed. The Tribunal had previously suggested she set off earlier but this did not result in improved timekeeping. The Judge explained that if we lost time because of her late arrival, this would mean there was less available for cross-examination. The Claimant then said she was unwell, in pain and needed antibiotics. The Claimant said she had PTSD and felt she was being punished. She had been trying to see her GP without success. At first, the Claimant appeared to be saying she needed a day away from the Tribunal to make a GP appointment. On exploring this further with her, it transpired the Claimant's GP had a telephone booking queue and all of the appointments were gone by 8am. Whilst sympathising with the Claimant's predicament (this is, sadly, a circumstance most are now familiar with) it did not appear that attendance at the Tribunal was preventing her from seeing her GP. Joining a telephone queue at 8am could still be done. The Claimant did not disagree with this. The Judge said that if she did succeed in getting a GP appointment, then she should attend this. We would ask for confirmation of her attendance in such circumstances. We then continued with the hearing. In the event, the Claimant's cross-examination of witnesses was rather better that day than had been the case on many others. Her approach was relevant and focused. She had prepared questions rather than statements and these went to the list of issues. The net result was the Claimant had finished with all 3 witnesses by 1.15pm.

49. At the end of day 16, it was agreed the Claimant's witness, Ms Beckett would give evidence remotely by CVP at 10am on day 17. We also discussed closing submissions to be made on day 18. The parties would exchange their written submissions when the hearing began that day, neither party having advance sight of what the other proposed to say. The Judge warned the Claimant of the need to listen quietly and not intervene when we were hearing from Mr Webster,

notwithstanding it was likely she would disagree strongly with what he said. Mr Webster would, of course, be expected to extend her the same courtesy.

50. On the afternoon of day 17, we interposed the evidence of Miss Beckett, who attended remotely by CVP. Once all of the witnesses had been heard, we reminded the Claimant about closing submissions.

51. On day 18, following what had appeared to be the end of the Claimant's closing submissions, she sought to introduce an additional document, namely a bundle index with yellow highlighting. This was intended to evidence late provision of documents or concealment by the Respondent. Because the parties had continued to disagree about when the Claimant received a copy of the hearing bundle, we invited them to address us on this matter in closing if they wished. Over the lunch adjournment, the Tribunal reviewed a bundle of the parties' correspondence. From this it appeared:

    51.1 On 24 February 2023, the Respondent provided the Claimant with a draft hearing bundle in hard copy, by Royal Mail Special Delivery (running to circa 1900 pages);

    51.2 On 25 February 2023, the Claimant requested an email copy (i.e. digital) as well;

    51.3 On 4 April 2023, the Respondent provided the Claimant with a link to download a digital copy of the updated bundle and index;

    51.4 On various dates, the Respondent sent (digitally and by hardcopy) the Claimant updated indexes and / or additional paginated documents to add to the bundle (now running to circa 2,100 pages).

52. The details set out above were confirmed by the parties when the hearing resumed, albeit it was difficult to persuade the Claimant to listen to and then answer the Judge's questions about this. Once that had been done, it was clear the Respondent had provided the Claimant with two hard copies of its final hearing bundle:

    52.1 the February 2023 draft, followed by additional documents to add;

    52.2 a further complete copy, sent on 28 August 2023, when the Claimant complained (erroneously) of not having received it before.

53. The Claimant then began to complain, not about non-receipt of the Respondent's final hearing bundle but instead the fact of her documents having been put into a separate bundle. We had explored and dealt with this at the beginning of the hearing. The Claimant's documents had not been ignored (as she then suggested) on the contrary they had been referred to extensively during the hearing and indeed, the Tribunal had helped her to find documents in her bundles.

54. At the end of day 18, given the Claimant's propensity to continue to litigate matters in correspondence following meetings or hearings, the Tribunal made an order that the parties should not submit any further documents or make representations, by email, letter or otherwise howsoever, until they had received

the Tribunal's reserved decision. This order was made orally and then confirmed in writing.

55. On day 19 (the start of our deliberations) in immediate breach of the order made at the end of the previous day, the Claimant sent in further correspondence, challenging the admission into evidence of her non-molestation order application. We caused a further letter to be sent to the parties:

> **The Claimant's email sent this morning is in breach of the order made to desist from engaging in further correspondence with the Tribunal. This will not be responded to. The hearing has finished. The parties have no right to make further representations at this time. They must await our decision. Should the Claimant continue to act in breach the order, then her correspondence will not be responded to or acknowledged.**

Witness Evidence

Claimant's Evidence

56. The Claimant's evidence was often difficult to follow. There were various reasons for this, including that she: failed to address the question asked, instead speaking to the matters she wished to; moved from one topic to another, unexpectedly and seemingly in mid-sentence; tended to respond with generalities rather than specific information; concentrated on saying how she felt, rather providing the detail of what was said or done. Despite interventions and reminders from the Judge of the need to focus on and answer the question asked, the Claimant's evidence continued in the same fashion. The judge sought to explain to the Claimant what was required in this regard on many occasions. At different stages, shorter or longer explanations were provided. Breaks were taken to allow the Claimant an opportunity to reflect and refocus. The pattern of her answers, however, remained unchanged. We were mindful that the Claimant's demeanour and the manner in which she answered questions may be the result of trauma suffered and / or her mental health difficulties. She is currently supported by Mr Basra (Trainee Counselling Psychologist). In a recent letter Mr Basra said there were "indications towards Complex PTSD" although he also pointed out there had been "no formal diagnosis". Mr Basra supported the adjustments directed at the GRH, which we were implementing. We did not rely upon the way in which the Claimant's evidence was delivered as a reason to doubt her credibility. Indeed, in almost every instance we accepted the Claimant genuinely believed what she was telling us to be true, even where that seemed unlikely and her account was inconsistent with other reliable sources, such as contemporaneous documents. Separately from credibility, we did have some concerns about the reliability of the Claimant's evidence.

57. The Claimant is prone to misunderstanding what is said, whether orally or in writing. She misconstrued several items of correspondence and would not accept an alternative (correct) interpretation, even when carefully explained. At times the Claimant ignored what was said; although she might pause whilst another was speaking, she continued thereafter in a way that betrayed no acknowledgement of what had just been said.

58. The Claimant jumps to conclusions and will adhere to such views in the face of compelling evidence pointing another way. The Claimant believes she was the

target of a coordinated plot, even where the steps complained of were applied to other employees in the same circumstances. The Claimant was frequently unrealistic in her view of matters, denying any difficulties in managing her or a tendency to fall out with colleagues, when there was a substantial body of evidence to show both. The Claimant cannot accept that others may have a different perception or recollection from her own.

59. Whilst we accepted the Claimant's witnesses, they spoke to the matters we had to decide to a very limited extent only.

Respondent's Evidence

60. The Respondent's managers gave good and credible evidence on the whole, which was consistent with contemporaneous documentary records. We found Mrs Fenner was mistaken in her recollection of one matter, to which we return later in this decision. The non-management witnesses were also, generally, consistent and reliable. Direct answers to questions were given. Their accounts appeared plausible. We will address our conclusions with respect to other individual witnesses to the extent necessary, when we make findings about the events in which they were involved and could speak to.

Facts

Background

61. The Claimant began working for the Respondent NHS trust in 2013. She was first employed as a Band 1 Linen Assistant. Many of the Respondent's employees, including the Claimant, have grown up and live close to one another in the local area.

62. Quite soon after starting with the Respondent, the Claimant began to have difficult relationships with various colleagues and managers. She made complaints and raised grievances. In addition to being the maker of complaints, she has also been complained about by others. The Respondent has sought to address such problems through its procedures. Duties have been varied and action plan steps implemented.

63. The Claimant had a lot of time off work as a result of her various health problems. Her working hours were also varied so that she might provide care to her sister, who was very unwell and, sadly, died.

Eavesdropping

64. On 21 March 2017, as Carol Williams went past an office in which the Claimant was speaking with Andy Payne, she overheard the Claimant complaining that her clock card had been moved. As Ms Williams had rearranged the clock cards, she thought it best to go in and explain why this was done. Mrs Williams was, by this time, aware of the Claimant's tendency to make complaints and had hoped to nip this matter in the bud. Unfortunately, her intervention had the opposite effect. The Claimant assumed, wrongly, that Mrs Williams had been outside the office eavesdropping on the entire conversation and immediately made this accusation. Mrs Williams, who had become somewhat exasperated by her

dealings with the Claimant, lost her temper and remarked upon the need to "have a witness" every time she spoke with the Claimant. Unsurprisingly, this did not tend to calm the situation. Mrs Williams wrote a note of events, shortly thereafter, which we accept as being accurate. She admitted reacting unprofessionally and recognised she ought to have dealt with the situation far better than she did.

65. Because of the Claimant's poor sickness absence record, she has been required to attend absence review meetings under the Respondent's procedure. This pattern of absence predated the allegations made by the Claimant in these proceedings. The Claimant attended such a meeting in June 2017. She was reviewed by the Respondent's occupational health advisor and received counselling.

Relationship with Y

66. The Claimant became friendly with another employee of the Respondent, namely Y, who worked as a porter.

67. We do not accept that Mrs Williams gave the Claimant's telephone number to Y. She has no recollection of being asked for this and would have no reason to give it out. Doing so would be an obvious breach of data protection rules and we have already noted Mrs Williams was apprehensive of the Claimant making complaints. Furthermore, if this had happened, the Claimant would have complained at the time. It seems far more likely and we find the Claimant gave Y her telephone number.

68. The porters' office was not far from the linen room where the Claimant worked. The Claimant and Y would frequently see each other at work. Y would go to the linen room to talk to her. They also exchanged calls and messages outside of work. None of this was unwelcome to the Claimant. She has produced copies of text messages in which Y said things such as "Hi babe how u day going". We do not accept this was a one-sided communication. The copy messages in the bundle appear to have been made by the Claimant using one phone to take photos of the screen on another phone. Very often she has done so in such a way that only part of the exchange is shown. In more than one instance, it is apparent there are messages from her to Y (they are in boxes of a different colour) but the photo is framed in such a way that her words to him are excluded. The Claimant's approach to disclosing her message exchanges with Y appears somewhat selective.

69. As far as the comment alleged to have been made by Y about him watching the Claimant go past his window as a child, wearing floral skirts and her fetching toffee apples, we find this was not said. The only evidence on this point came from the Claimant on the one hand and Y on the other. We have already referred to a number of respects in which the Claimant's evidence was unsatisfactory. Y on the other hand, answered questions in a straightforward manner. He was direct to the point of bluntness. We preferred his account. It seemed to us unlikely he would have noticed or recalled the fact of the Claimant wearing a "floral dress" or "floral skirt" (her account varied), let alone commented upon it circa forty years later.

70. By the end of 2017, the Claimant and Y were in an intimate personal relationship. This included, the Claimant staying overnight at Y's home, in his bed and them having consensual sex. She was also invited by him to parties and other social occasions.

71. The Claimant's evidence of their platonic relationship was inconsistent and unsatisfactory. Given the length of their relationship and her frequent overnight stays, the suggestion they were simply friends seems unlikely. Her evidence in these proceedings, namely they never had sex before the two occasions in August 2018 when she was raped, is contradicted by her application for a non-molestation order, to which we have already referred.

72. The Claimant repeatedly said she had been "groomed", theirs had not been a "normal" relationship and was instead "abusive". None of this can change the fact of whether or not they had sex before August 2017. Nor does it explain why she said one thing in answer to the Judge's questions at the beginning of her evidence and another in the application (supported by a witness statement) she made to the family Court in June 2022.

73. In her closing submissions, the Claimant advanced a new argument, namely the reason her application for a non-molestation order said she had been in an "intimate personal relationship" with Y was because it became so at the point when he raped her in August 2018. We did not find this persuasive. In many respects, the Claimant's account in these proceedings is contradicted by the content of contemporaneous (or near so) documentary evidence. We have, for the most part, proceeded on the basis that even if the Claimant is likely to be wrong, she subjectively believed in the truth of what she has told us (at the time of so doing). We did, however, find it difficult to follow that approach in this instance. A solicitor would not draft an application saying the Claimant had been in an "intimate personal relationship" or "a boyfriend / girlfriend relationship" based upon instructions they had sex for the first time when he raped her in August 2018, which she then reported to the police. The application also said this relationship had lasted from January to August 2018. What the Claimant told us, for the first time in her closing argument, appears to be a recently thought-up notion to explain away the emergence of inconvenient evidence she had not expected us to see.

74. Our conclusion is that the Claimant had a consensual sexual relationship with Y from late 2017 until August 2018, following them having met and become friendly at work. There is no corroborative evidence to support and we reject as inherently implausible the Claimant's current account, namely that she stayed in a unhappy platonic relationship with Y for many months because he pulled her hair, kicked her in the back or threatened to kill her and her family.

75. Whilst the Claimant now describes a campaign of ongoing harassment by Y in the workplace, we do not find her account of this to be credible. Prior to Y being arrested in the workplace, the Claimant never complained to the Respondent about his conduct toward her, whether inside or out of the workplace. As we have already noted, she is not slow to complain about her colleagues. There is no evidence from any other source of the Claimant being on the receiving end of unwanted advances from Y. On the contrary, a number of witnesses described events which tended to suggest they were happy and content in each other's

company. The Claimant was, variously, seen kissing, hugging or holding hands with Y in the workplace. They were known to be in a relationship.

Mrs Brennan & Mrs Dawes

76. We do not find that Ms Brennan, or Ms Dawes started rumours about the Claimant or said "you will never guess who Y is banging", "is it true that he is banging you" or "everyone knows". Both Ms Brennan and Ms Dawes vehemently denied these remarks. Ms Dawes in particular took exception to the language that had been attributed to her. We found Ms Brennan and Ms Dawes to be credible and direct when giving their evidence and preferred this to the Claimant's account. The Claimant also alleged that some of these remarks had been made by Ms Brennan and / or Ms Dawes in the presence of Ms Davis and there had been laughter as a result. Yet in her evidence, Ms Davis denied anything of the sort had been said. Notably, whilst the Claimant displayed considerable animosity toward most of the Respondent's witnesses, Ms Davis was excluded from that. In her witness statement, Ms Davis expressed surprise to be included in the Claimant's complaints. The Claimant has fallen out with many of her colleagues, yet she remained on good terms with Ms Davis. Indeed, during these proceedings the Claimant expressed concern about Ms Davis being in the Tribunal building because that put her at risk from Y. The Claimant's concerns in this regard were all the more surprising because, notwithstanding they were on good terms, Ms Davis was attending as the Respondent's witness. We preferred the evidence of Ms Brennan, Ms Dawes and Ms Davis, to that of the Claimant. These alleged comments were not made.

77. Whilst a number of the Claimant's colleagues became aware that she was in a relationship with Y and this resulted in some workplace gossip, there is no evidence to show that any false or unpleasant statement had been made. Nor did the Claimant raise any objection or complain at the time.

November 2017

78. In about October or November 2017, the Claimant attended a facilitated meeting with Mrs Williams and Karen Godwin. This was intended to repair their relationship, following the incident earlier in the year when the Claimant believed she had been spied upon. Mrs Williams explained what she had been doing that day. She also offered warm words in this regard, without going so far as to apologise. The Claimant did not use this occasion to report a concern that Mrs Brennan and Mrs Dawes were spreading rumours about her relationship with Y.

79. We accepted the evidence of Mrs Williams, who was an eminently credible witness, describing various difficulties she encountered whilst attempting to manage the Claimant. Mrs Williams had no recollection of the Claimant bringing up rumours being spread by Ms Brennan or Ms Dawes. The Claimant's concern about rumours being spread is a retrospective one, there is no evidence to support a contemporaneous worry on her part. Even if the Claimant had been exercised about this matter the time, there would be no reason for her to bring it up at this facilitated meeting, arranged for entirely different purpose, namely to repair the relationship with Mrs Williams. Furthermore, given the Claimant's hostility towards Mrs Williams (the facilitated meeting was not a success from the Claimant's perspective) it would seem unlikely that Mrs Williams would be

the person she approached for help. We noted, as reflected in her cross examination of Mrs Williams, the Claimant did not even accept she was her line manager. Finally, the Claimant is a prolific writer of complaints. If she had been concerned about rumours from Mrs Dawes and Mrs Brennan then, this would have been followed up and reflected in contemporaneous correspondence.

80. Mr Payne, similarly, has no recollection of the Claimant complaining to him in November 2017 about Mrs Brennan and Mrs Dawes spreading rumours. Mr Payne and the Claimant got on reasonably well at this time and she did consider him to be her line manager. Once again we are stuck by the absence of any emails or letters about this. Our finding is there was no complaint about rumours being spread made to Mr Payne, Mrs Williams or anyone else. At that time, the Claimant was preoccupied with earlier workplace disputes.

April 2018

81. We do not find that Y stood next to the Claimant in April 2018, causing "David" a "colleague" or "manager" in the "distribution department" to feel intimidated and leave. Whilst the Respondent had been able to identify some of those to whom the Claimant had referred to in vague or inaccurate terms, it could not find a "David" who appeared to be the person mentioned in the Claimant's allegation. The only evidence we have on this was, therefore, from the Claimant on the one hand and Y on the other. Y did not know who was being referred to but denied he would behave in an intimidatory fashion. In her witness evidence, the Claimant said "David" was one of a number of colleagues who witnessed Y harassing her and expressed their concern. This suggestion is uncorroborated and inconsistent with other evidence we have received. As we have already found, Y's approaches to the Claimant in the workplace were not unwelcome at the time. They were in an intimate personal relationship. Beyond the Claimant's assertion, there is no evidence of any colleague observing Y's behaviour in the workplace toward the Claimant and expressing concern.

82. In April 2018 the Claimant attended a christening with Y. A photo was taken by Emma Lovesey of them sitting together in the Church. The Claimant has insisted this photo was taken without her knowledge or consent whilst she was laughing at a child. The difficulty with her account is that she and Y are, quite plainly, looking straight into the camera, posing and smiling whilst their picture is taken. The Claimant only became concerned about this photo later on, when Ms Davis told her it had been put on facebook. The Claimant's answers to questions about her domestic arrangements at this time were not straightforward. She was asked whether she had been sharing a home with her husband. The Claimant said they separated in 2017 but she would not prevent him from accessing their children. Asked again, the Claimant said he was hardly ever there. Later, the Claimant said her home was like a hotel and she didn't prevent anyone from staying over. We did not find this persuasive. Our conclusion is that when the photo was put on facebook, the Claimant was still sharing a house with her husband (albeit she often stayed overnight at Y's home) and the emergence of this photo into the public domain was an embarrassment for her.

83. Ms Davis saw this photograph and thought, not unreasonably, the Claimant and Y were there as a couple. Shortly after it appeared, the Claimant approached Ms Davis and Justin Hughes, her supervisor, very upset about the photo and asked

how to remove it. Ms Davis said that she would need to contact the person who posted it. The Claimant became increasingly irate and began shouting at Mr Hughes. When the Claimant suggested to Ms Davis' that her evidence about this was not true, Ms Davis replied it was true and she was sorry. It was clear to us that Ms Davis was sorry to find herself at the Tribunal having to give this account. Ms Davis is sympathetic to the Claimant and did not relish being a witness for the Respondent or having to contradict the Claimant. Separately, the Claimant also approached Ms Billingham with the same enquiry, namely how to remove this photo.

84. We do not find that in about April 2018 Ms Davis and Ms Billingham made comments about Y being in the linen room, namely "he is in the room again". Both denied this and we accepted their evidence. There was no reason for them to remark upon Y being at this location. They knew he was in a relationship with the Claimant at the time. Furthermore, given the Claimant's obvious agitation as a result of the Facebook photo, her relationship with Y would not have seemed to Ms Davis a subject apt for humorous exchanges.

July 2018

85. In July 2018, the Respondent received an anonymous letter making serious allegations of a historical nature against Y. These did not involve the Claimant. Mrs Fenner met with Y to discuss this. The Claimant accompanied Y. She was there to provide support and made representations on Y's behalf. Subsequent to this, Y's clearance to work for the Respondent was renewed by Mrs Fenner and he was permitted to carry on working.

86. Mrs Fenner told us she recalled two conversations with the Claimant, both of which took place after Y was arrested for rape. She said the first involved the Claimant attending with Y saying it was all a misunderstanding (i.e. she had not been raped) and the second, the Claimant attending alone and retracting her earlier statement. Mrs Fenner did not document either meeting at the time and was only asked about this at a much later point. Our conclusion is that Mrs Fenner is mistaken. Her current recollection of their first meeting is almost certainly the product of her conflating a recollection of the Claimant coming to her with Y to discuss the anonymous letter, with the fact of Y being arrested for rape shortly thereafter. She mistakenly recalls the Claimant saying her alleged rape was a misunderstanding, when what actually happened is more likely the Claimant said something of that sort about the allegations in the anonymous letter. There is no evidence of Y attending the hospital following his arrest and it is inconceivable the Claimant would have accompanied him if he had. Mrs Fenner had completely forgotten about her July 2018 meeting with Y to discuss the anonymous letter. She was only reminded of this in the course of giving evidence at the Tribunal, when she was referred to a email about it. When asked about these events long after they occurred, Mrs Fenner reassembled her fragmentary recollection inaccurately. We address her second meeting with the Claimant later in this decision.

87. For the sake of completeness, we also reject the Claimant's explanation of how it is Mrs Fenner now incorrectly recalls their first meeting. Having received a witness statement from Mrs Fenner in these proceedings, which includes an account of the Claimant attending with Y after his arrest for rape and her saying

it was all a misunderstanding, the Claimant has decided this must be explained by Ms Lovesey (someone towards whom she feels great animosity) having gone to the hospital with Y and pretended to be the Claimant. There is no evidence to support this. It is pure supposition on the Claimant's part. She and Ms Lovesey are wholly unalike in age, voice and general appearance. We reject as incredible the notion that Mrs Fenner would not notice the difference. This is, however, a good example of the Claimant's ability to jump to conclusions, with little or no evidence, and then adhere to this position as representing an absolute truth from which she cannot be moved.

August 2018

88. By the middle of August 2018, the relationship between the Claimant and Y had become somewhat fraught. The circumstances surrounding that go beyond the scope of the claims we must determine. Various other individuals appear to have been involved in this to some extent, including Emma Lovesey, Julie Lovesey (Emma's mother) and W, Y's manager who was staying at his home at the time.

89. The Claimant and Y agree there was a sexual encounter between them on or about 19 August 2018, which took place at Y's home. The precise physical nature of that is disputed, as is whether or not the Claimant consented to it. For reasons which we will address more fully below, we have decided that whichever version is correct, it cannot on any interpretation have been something done by Y in the course of his employment with the Respondent. As that conclusion is sufficient to dispose of the Claimant's claim, it is unnecessary for us to make detailed findings of fact about what transpired. In addition to not finding facts save unless and to the extent that it is necessary to do so, we are mindful the evidence on this point has emerged in a most unsatisfactory fashion. Despite providing lengthy witness statements, the Claimant did not include any description of either alleged rape. Her account was elicited by questions from the Judge. That was the first time she had give a specific account (at least in these proceedings). The witness statement of Y did not address what the Claimant had told us. Although the Respondent called Y as a witness, it did not adopt his evidence in connection with the alleged rape. Mr Webster said the Respondent did not know what had happened between these two but in any event, it was not in the course of employment. As a result of the Respondent's position, the Claimant was not challenged in cross-examination about the alleged rape. When Y gave evidence, the Claimant's questions were read to him by the Judge. This did not include the Claimant's own, recently received account of the rape. Separately from reading her questions, the Judge told Y what the Claimant had said about the alleged rape and invited his response. Whilst this exercise gave him the opportunity to comment it did not remotely resemble a robust cross-examination. It follows, therefore, that neither the Claimant nor Y's evidence in this regard has been properly tested. The allegation is one of the utmost seriousness and where it is unnecessary to do so, we do not propose to make findings of fact.

90. In August 2018, Y left voicemails for the Claimant. This may have been on or about 28 August 2018 but in light of the evidence we have received, we cannot make a reliable finding as to the date. The Claimant put very short excerpts into evidence. She created these clips by playing Y's voicemail messages on one phone and making a video recording on another. The audio quality was

exceedingly poor. We were unable to decipher all that was said. We heard Y saying: “answer your bloody phone, cheers”; “give me a ring when you can”; and “sorry to hear the news”. There is no documentary evidence to establish precisely when these messages were left and we are not content to rely on the Claimant’s recollection alone, as she has proven to be an unreliable historian. Importantly, however, we were able to consider Y’s tone when speaking, even where we could not make out all of the words. There was no hint of aggression. His messages sounded friendly, albeit mildly irritated when remarking on the Claimant not answering her phone.

91. We do not find that Y prevented the Claimant from attending her GP on 28 August 2018 or that someone covered him at work so he might leave to do this. We found the Claimant’s account to be unsatisfactory and preferred the evidence of Y on this point, which was a complete denial that anything of the sort happened. The Claimant said she told Y she was going to the GP to prevent him becoming angry. When she arrived at the GP surgery he suddenly appeared, grabbed her by the arm, dragged her out and told her she was going nowhere. The Claimant was not aware of anyone else noticing this. She said Y then conveyed her to his house, where she stayed whilst he went to work. This struck us as an odd account for a number of reasons. Y would have no way of knowing the Claimant was visiting her GP, save unless she told him. If the Claimant thought Y would be angered by her attending the surgery (she said it was because the doctor would see physical signs of what he had done to her) telling Y would seem guaranteed to bring about that result. The Claimant does not say Y tried to dissuade her from going to the GP, which might have been expected if he was anxious about that. Y’s arrival at the surgery at the precise point she entered the foyer (neither early enough to stop her going into the building, nor after she had reported her arrival at reception) is a remarkable coincidence. The Claimant’s assertion that Y was able to arrange cover and leave work is, like so much of what she told us, a wholly unevidenced assertion. The Claimant suggested that CCTV should have been obtained by the Respondent in various other contexts and yet did not request this from her GP, when it might be expected to show her being dragged away from the surgery. Finally, the Claimant’s evidence of being so fearful of the Claimant that she had to report her movements to him in this way is difficult to reconcile with the robust tone she adopted in their text message exchange the following day, which we address below.

92. The Claimant and Y agree there was a further sexual encounter between them on or about 28 August 2018, which took place at Y’s home. The precise physical nature of that is disputed, as is whether or not the Claimant consented to it For the same reasons as set out in connection with the first alleged rape, we have made no findings of fact on this. Whichever version of events were accepted, Y cannot have been acting in the course of his employment with the Respondent.

93. On 29 August 2018, the Claimant and Y had a heated exchange of text messages. These included the Claimant complaining about Emma and Julie Lovesey:

7.11pm

you knew how upset I have been about jul emma thing. Tried many times to talk to you. You did not want to help me. You knew mom had a fall Friday before the Saturday. Jul emma upset me that Saturday. Tried again. You did not want to help me. From Sunday to the Thursday. Dealing with Tipton home care. Social service visits. Care plan for mom. Stuff being delivered. Hard to think properly At times. When hearing also how much jul emma don't like me. Not a secret really as there bullying and the way they looked at me said it all. So by the Thursday when all mom's stuff finished. Care plan in place. I got upset. Then you called. I got upset more. Then faced the bullies jul emma. They admitted how they treated me. Bullies outed

7.31pm

I will be down yours in a bit to sort this. Its an I absolute joke. To think anything other than what I explained about jul emma thing. They are cause, [W] just tried to help. They accused [W] of taking sides. When he confronted them. Even your daughter and Germaine have been on the receiving end of them. So how can you sit there and not see exactly what kind of people they are. Friends do there utter most best for you. Not hurt| others around you. And even disrespect and bully others in your own home.

94. One of Y's messages about which the Claimant complains in these proceedings reads:

"like dead or alive anything with a hole".

The Claimant's implication appeared to be that this was a threat of something Y would do to her. Looking at this message within the context of the exchange taking place it is quite clear it was a reference not to the Claimant but to W. Y had been allowing W (his line manager) to stay at his home. Shortly before this message, Y had come to believe the Claimant may have had sexual relations with W or sought to do so. The words "like dead or alive anything with a hole" were intended by Y as a derogatory characterisation of W's indiscriminate approach to engaging in sexual relations.

95. In seeking to refute the suggestion she would contemplate having a relationship with W or he with her, the Claimant commented on their respective attitudes toward their existing relationships as making this unlikely:

"I have respect for there relationship"

[…]

"same as [W] had for our relationship".

96. We have rather more of the messages exchanged on this day than on earlier occasions. Whilst the Claimant (as before) took photos of individual messages she wanted to rely upon, Y has produced the full run. In addition to challenging the suggestion that anything had gone on between her and W, the Claimant was greatly exercised by her view that Emma and Julie Lovesey had wronged her.

Notably, the Claimant did not refer to either alleged rape or indeed the other mistreatment she now complains of. Nor does the exchange suggests the Claimant was in fear of Y. She challenged him robustly. Furthermore, we note the Claimant said she intended to go to Y's home to continue this exchange in person.

97. One way or another, it is clear the relationship between the Claimant and Y ended that evening. The Claimant's evidence was that she finally realised what Y had been doing to her and the great danger she and her family were in, such that she decided to go to the police. Y's account was that he spoke to the Claimant by telephone and ended their relationship. He says the Claimant would not accept that position and shortly afterwards was outside his home banging on the front door. It is unnecessary for us to make findings of fact on this point in order to determine the Claimant's claims and we do not do so.

98. On 30 August 2018, the police attended the Respondent hospital premises and arrested Y on suspicion of rape. He was released shortly thereafter, whilst the police made their enquiries. The Respondent immediately put Y on the "banned" list which meant he could not be provided with any work from the bank. This was intended as a holding measure, pending the outcome of the police investigation. Mr Bradley sent an email about this to Mrs Fenner:

> **As per our conversation earlier I'm just informing you that one of our bank porters, [Y] was arrested by the police for questioning over an allegation of rape earlier today.**
>
> **As you remember [Y] spoke with you last month over an anonymous letter which was sent to myself containing certain allegations which you discussed with [Y] at length and decided his DBS would be renewed and he was clear to carry on working.**
>
> **I have passed on your message to the […] Deputy Porters that until the allegation is fully investigated by the police and a course of action is taken then [Y] is not to work for the bank within the Portering Dept.**

99. Separately from reporting rape to the police, the Claimant also told her employer about this. She spoke to Mr Payne on the phone and Mrs Fenner in person (this was their second meeting). Mrs Fenner was not the Claimant's line manager. Mrs Fenner immediately sought assistance from HR and Sue Brettle took over. Ms Brettle is no longer employed by the Respondent and did not attend as a witness.

100. We are not satisfied the Claimant showed any text messages to Mrs Fenner or Ms Brettle. There is no paper trail corroborating such early disclosure. Nor can we see any obvious reason for the Claimant to have done this. The Claimant was not, at that time, concerned about "harassment". She was instead complaining of having just been raped or seriously sexually assaulted. The party most likely to have sought her phone and it has contents at this time, would have been the police, looking for evidence to corroborate or disprove her allegations. The Claimant does not say in her own witness statement that she showed text messages to Mrs Fenner or Ms Brettle and we do not find she did.

101. Unsurprisingly, the Respondent left investigating whether or not Y had raped the Claimant to the police. As above, the precautionary measure of suspending Y from work was taken. Whilst it is correct to say that no actions or outcomes were communicated to the Claimant as a result of her meeting Mrs Fenner or Ms Brettle, she had not been told this would be done.

September 2018

102. The Claimant complains that subsequent to the arrest of Y, the porters began to avoid her and made comments, including that she had been harassing Y. Most of the porters had very little do with the Claimant, either before or after Y was arrested. Their interactions with her were minimal, such as an occasional hello in passing. We heard evidence from each of those about whom the Claimant complained. They denied avoiding the Claimant or making the comments she alleges and we accept this is likely to be true. There was no reason for them to change their behaviour toward the Claimant and they did not do so. The Claimant's belief is that the porters were acting on instructions from Y to monitor and harass her. This latter proposition is most unlikely and we reject it. There was no evidence of any such instruction, nor any credible reason advanced for the porters to act on the same. The Clamant has a tendency to misconstrue the actions or words of others and it is likely she did so at this time.

103. Mr Smith denied the Claimant's suggestion that he had shouted at her whilst he was transporting a patient. He said he would not have done this, not least because it would have been unprofessional whilst he was with the patient, which struck us as an eminently realistic proposition.

104. We do not find the Claimant reported the conduct of the porters to Mr Bradley in September 2018. We were struck by the absence of anything in writing from the Claimant at this time. As we have already noted, the Claimant is apt to complain in writing when dissatisfied by events at work, at length and repeatedly. When a detailed chronology was taken from the Claimant subsequently by Mrs Bromage-Llewellyn and Mrs Cowin, that did not include any alleged report to Mr Bradley about the porters. Also, when the Claimant did write to Mr Bradley about the porters in August 2019, she did not say "as I told you before" or similar. If the Claimant had raised concerns with Mr Bradely, then we think he would have taken this up with HR. It is clear that Mr Bradley raised the anonymous letter through the appropriate channels and also that he relayed information about Y's arrest not only to Mrs Fenner but also various HR officers. Whilst the Claimant did not herself raise any concern with Mr Bradley, it is clear he was proactive in this matter. Following the arrest of Y, a remarkable event in any workplace, he impressed upon the porters the importance of avoiding getting into any discussion of it.

Late 2018

105. W had been more involved with the Claimant than his line reports, as a result of staying in Y's home. In October 2018, the Claimant applied for a non-molestation order. Y resisted that application. W made a statement in support of Y. W set out his recollection of the Claimant's behaviour on various occasions when he had been present. He referred to going on holiday to Ibiza with Y and other friends between 20 and 24 August 2018, during which time he said Y received many

phone calls from the Claimant. We accept Y wrote this account because it reflected the way he remembered these events. We make no finding about whether his recollection was accurate.

106. Emma Lovesey also made a statement in support of Y. She too set out her recollection of various events in which the Claimant had been involved. We accept she did so genuinely, what she wrote reflecting the way she recalled these matters. Again, it unnecessary for to us to make a finding about whether Ms Lovesey was accurate in this.

107. The Claimant began a period of sick leave on 1 October 2018. Mr Payne managed her absence.

108. The Claimant makes various allegations about events said to have taken place in October 2018. Since she was absent from work on sick leave at this time, the Claimant must be wrong, at least about the date. Nonetheless, we have gone on to consider her allegations on the basis the Claimant could be wrong about the date but right about what happened.

109. We do not find that Ms Brennan and Mr Robinson were discussing Y raping the Claimant and smirking, whether in October 2018 or at all. Ms Brennan only knew the Claimant at work and Mr Robinson scarcely knew her at all. Both denied having any such conversation and we found their evidence to be credible. Ms Brennan took great offence at the accusation citing her own life circumstances and became upset whilst giving evidence. We accepted this was a genuine reaction. Mr Robinson worked for a third-party contractor and was not sure he we would recognise the Claimant. We do not accept that Ms Brennan accused the Claimant of having a relationship with Craig Smith. This allegation appears to stem from an occasion when Ms Brennan encountered the Claimant and Mr Smith whilst out shopping in Walsall. They spoke briefly. Subsequently, Mr Smith tagged Ms Brennan into a post on facebook relating to a dispute between him and Y, which she did not want to be involved in. Beyond the Claimant's assertion, there is no evidence to show Ms Brennan making any comment on her relationships. We noted the Claimant on the other hand, was highly prone to commenting on and asserting the fact of relationships involving various witnesses at the Tribunal. It was necessary on several occasions for the Judge to stop the Claimant from cross-examining witnesses on their sexual relationships, as it was irrelevant to her claims.

110. There was no incident around October 2018 in a changing room at work when Mrs Jukes mentioned the Claimant having reported Y to the police and this having caused problems. The Claimant did not put this conversation to Ms Jewkes and we do not find it happened. Although Ms Jewkes knew of the Claimant, they only had one direct interaction, in which Ms Jewkes perceived the Claimant was trying to push a linen cage into her. It is unnecessary for us to make any ruling on whose version of events is correct with respect to the linen cage, as it is not one of the claims before us. The Claimant's hostility toward Ms Jewkes appears not to be based upon her experience of any adverse workplace behaviours but instead because she is W's sister.

111. The Claimant also complained about the conduct of various maintenance workers. These individuals are not employees of the Respondent. They worked

for a third-party contractor. One of those individuals gave evidence, Mr Robinson. He struck us as a very direct and straight-forward witness. Mr Robinson denied any smirking or that he saw his maintenance colleagues doing this. He said he would not laugh or smirk at someone who said they had been raped and we accept this. Mr Robinson said he did not change his behaviour toward the Claimant, with whom he had very little contact in any event. Again we accept that. We can see no reason for him or his colleagues to behave in the way alleged. We further note that given the nature of his role and that of his colleagues, they were further removed from the orbit of C or Y than many other witnesses. Our conclusion is the Claimant either misconstrued events contemporaneously, or recollected them subsequently in an inaccurate fashion.

112. We noted that the Claimant was as vague and non-specific in her complaints about the maintenance workers, as she is on so much else. Dates, locations and specific words or conduct were lacking. One of the difficulties encountered by the Respondent when it was trying to investigate her many complaints (to which we will return below) was the Claimant's failure to be specific. This has been replicated in the Tribunal proceedings. Whilst the Claimant speaks and writes at great length about the perceived injustice of her circumstances, she does so almost exclusively by way of characterisation and generality, without descending into the precise detail of what was said or done. The Claimant has accused very many of her colleagues of "discussing rape" and "laughing". She did not, however, put forward any particular words or conversation. Her cross-examination amounted to "you were talking about rape and smirking". The Claimant's inability to be any more specific points to the likelihood that there were no such words overhead by her at the time. The Claimant has a strong belief that very many people have devoted an enormous amount of time and energy, working in concert, to put her down. This is unlikely. It does, however, suggest the Claimant thinks that people are constantly talking about her, without any need on her part to hear what they are actually saying. Complaints of this sort are most likely explained simply by the Claimant seeing others laughing or smiling and assuming it is all about her.

<u>January 2019</u>

113. The Claimant returned to work on or about 19 January 2019.

114. In January 2019, the Claimant told Mr Payne about a comment made by one of her colleagues. The individual named is not one of those complained about by the Claimant in these proceedings. The Claimant told Mr Payne this person had been discussing the Claimant's situation with respect to Y and said Claimant had been harassing Y. Mr Payne asked the Claimant to be specific about what she had heard. The Claimant said she heard "it is a shame about him because he is a lovely guy isn't he". Mr Payne said that remark could have been about anyone, there was no indication the Claimant or Y were being referred to. Mr Payne did not take that matter any further, nor did he tell the Claimant he would.

<u>May 2019</u>

115. The Claimant was on sick leave from 21 May to 5 June 2019.

116. By a handwritten letter of 28 May 2019, the Claimant complained that a number of her colleagues (including Mrs Jewkes, Mrs Brennan and W) had assisted Y by spreading malicious rumours. She commented upon their relationships or connections with one another and said she did not know why they were getting involved. The Claimant's letter failed to provide specific information about what had been said or done or when this occurred.

117. Karen Goodwin, Support Services manager, asked Mr Payne to seek to address this complaint by way of a mediation. He was doubtful about the likelihood of this mechanism being successful. He received advice from HR to ask each of the individual members of staff if they would be prepared to attend a mediation meeting. Necessarily, this included him explaining what they had been accused of. Mrs Brennan and Mrs Dawes were upset to learn of the Claimant's complaint. They refused to attend mediation and raised their own complaints about her. Mrs Dawes objected to being involved, saying she did not even know the Claimant. Mrs Brennan also objected, in her case because she said this was not the first time the Claimant had made allegations against her over things she had not done. Whilst Mrs Jewkes denied the Claimant's complaint, she was prepared to attend a mediation meeting. Mr Payne did not feel that he would be able to manage this meeting and that a trained mediator would be necessary. In the event the mediation did not go ahead. No trained mediator was available and the Claimant's trade union representative did not believe this process would be beneficial.

<u>July 2019</u>

118. On 5 July 2019, there was an incident involving the Claimant who was pushing a linen trolley and Mrs Brennan. A Datix incident report was created by Mrs Brennan. She said the Claimant came towards her with the cage and caught her foot. Mr Payne looked into this matter. Mr Payne approached the porter said to have been in the vicinity but he said he had not seen anything. As a result, Mr Payne did not take the matter further, save for asking the linen room supervisor to remind staff to be careful when moving linen around the hospital.

119. Shortly thereafter, the Claimant created a Datix incident report. She accused Mrs Brennan of obstructing her access to the lift and trying to intimidate her.

120. Mr Payne spoke to the Claimant, Mrs Dawes and Mrs Brennan, separately. He delivered the same message to both, saying their behaviours were silly, pathetic and needed to stop. The Claimant told Mr Payne her union representative had also said the tit-for-tat should be stopped.

<u>August 2019</u>

121. We do not find that in August 2019, Mr Bradnick made statements on Ward Newton 5, saying the Claimant had not been raped, had been harassing Y and there were images of her performing sex acts. Mr Bradnick denied this. The Claimant does not say she witnessed this herself, rather she says she learned of it from Ms Beckett. Whilst Ms Beckett was a live witness, her evidence at the Tribunal did not support this allegation.

122. By letter of 2 August 2019, the police advised their investigation had ceased and no further action would be taken against Y.

123. Mr Payne was asked by the Respondent's HR department to speak with the Claimant and obtain her views on the subject of Y coming back to work for the Respondent. They met informally on 20 August 2019. Unsurprisingly, the Claimant was not all happy about this prospect. Shortly thereafter, the Claimant telephoned Ms Brettle. The Clamant believed she should have a say as she was frightened of Y. There was a discussion about keeping the Claimant's working hours different to Y's so as to avoid them crossing paths. The Claimant also said there were still issues with Y's friends at the Respondent, naming Julie Lovesey in particular.

124. On 22 August 2019, the Claimant went into Mr Payne's office and alleged that Mr Bradnick turned his head away from her and walked out of a lift when she got into it. She told Mr Payne he must go and get Mr Bradnick, bring him down to the office immediately to explain his actions. Mr Payne said he did not have any authority to require Mr Bradnick to attend such a meeting, as he was not his line manager. Mr Payne suggested the Claimant speak to HR. The Claimant phoned Ms Brettle. The file note (which we accept as accurate) indicates the Claimant said that a named friend of hers who worked on Newton 5, Mrs Beckett, told her about a photo said to be on a phone or social media, showing the Claimant banging on Y's front door. The Claimant reiterated she would not feel safe if Y was allowed to return to work and was being made anxious by "malicious rumours". Ms Brettle's advised Mr Payne to meet with Mrs Beckett and tell her not to bring issues of this sort "on site" as they were creating further stress. Mr Payne did this. Mrs Beckett told Mr Payne she was concerned about the Claimant and believed she needed to calm down, as her reactions were making things worse at work. Mr Payne asked Mrs Beckett whether Mr Bradnick had said anything upsetting to the Claimant that day. Mrs Beckett said he had not but the Claimant thought he had ignored her.

125. Subsequently, it transpired the Claimant had also reported this matter to the police. Mr Payne received a phone call from PC Gloucester, who told him the Claimant was at the station, complaining about comments made by Mrs Dawes and Mrs Brennan, along with Mr Bradnick ignoring her. PC Gloucester said he could not arrest people for this kind of behaviour, as no crime had been committed, he described the Claimant's allegations as "playground stuff".

126. By a handwritten letter of 23 August 2019 addressed to the Portering Manager (i.e. Mr Bradley) the Claimant complained about Mr Bradnick . She said he had "told members staff" that could not look at her and she had harassed Y, "banging his door down". The Claimant went on to say that Y was using "members of staff" to spread malicious rumours. The Claimant also said she had a non-molestation order to protect her from further abuse This was substantially the same complaint as she had made to Mr Payne, Ms Brettle and the Police.

127. By a separate handwritten letter of the same date addressed to human resources, the Claimant said she had provided a copy of the non-molestation order and she was suffering third-party harassment. She referred to Mrs Dawes and Mrs Brennan "trying to create an accident". The Claimant said she had provided text messages to show the harassment. She then set out the times and

her summary of the content of various messages sent by Y on 29 August 2018 (i.e. the year before). The Claimant said she had changed her hours of work because she feared Y was stalking her. The Claimant asked what would be put in place to protect her when she returned to work.

128. In an email of 28 August 2019, Janet Clarke, Head of Support Services, wrote to express her concern about the difficulty of continuing to manage the Claimant in her department:

> **I feel that as a department we have exhausted all options in terms of providing support for C during the last several years there has been numerous grievances and complaints raised by C in relation to her colleagues, line Managers, Departmental Managers and staff form other Departments .**
>
> **The complaints are investigated, invariably there is no evidence to support the allegations that have been made.**
>
> **The situation has become unmanageable and unsustainable ,it is having a detrimental effect on other staff and the service provision.**
>
> **It is imbalanced to continue to repeatedly peruse complaint after complaint, we must consider alternative options, in terms of the best solution for C and the department.**
>
> **Based on the concerns that are being raised by the Management team I believe C should be relocated to an alternative Department that will provide her with a fresh start.**

<u>September & October 2019</u>

129. The Claimant commenced a period of sick leave on 2 September 2019 and returned to work on 11 October 2019. During her sickness absence, the Claimant did not comply with the Respondent's policy, requiring her to maintain regular contact with her line manager. Mr Payne wrote to her on 26 September 2019, reminding her of this obligation and providing his telephone number. The Claimant attended a sickness review meeting on 16 October 2019. A phased return to work, with reduced hours was agreed.

130. By a letter of 19 September 2019, Mrs Dhillon, HR Manager, acknowledged receipt of the Claimant's complaints. She noted that attempts have been made to contact the Claimant without success, due to the Claimant being absent through illness. Mrs Dhillon asked the Claimant to contact her to arrange a meeting, which her line manager Mr Payne would also attend. The Claimant did this and it was agreed they would meet on 22 October 2019. The meeting did not go ahead, however, as the Claimant indicated her trade union representative was not available and she had been unable to find an alternative.

<u>4-Year Sickness Review</u>

131. The newly appointed Chief Executive, Toby Lewis, was concerned that a small number of employees had very high levels of absence. He wished to ascertain the reasons for this and how the position might be improved. As such, line managers across the Respondent were required to hold meetings with

employees who had been identified as having excessive levels of absence during the preceding 4 years. The Claimant was one of those whose absence levels triggered a review. Mr Payne wrote to her on 21 November 2019, inviting her to a meeting to discuss her levels of sickness absence over the last 4 years and how this might be improved. She was informed of her right to be accompanied by a trade union representative or work colleague.

132. The (4-year) sickness absence review meeting took place on 29 November 2019. The Claimant told Mr Payne this was unfair because the majority of her sickness absence was linked to personal or work issues outside her control. Mr Payne asked and explored whether there was anything he could do to assist the Claimant. The Claimant said she had ongoing personal issues that needed to be resolved and HR was aware of this. Mr Payne said a sustained improvement in the Claimant's attendance was required. A letter summarising this meeting was sent out the same day and it included:

> **I informed you that the head of the department and human resources have been tasked to reduce sickness within the department the process involved reviewing members of staff files where there had been repeated episodes of sickness. I explained that your file had been identified as one that fell into this category and that your sickness episodes have been identified as being excessive and unsustainable for the department.**

133. Notwithstanding a clear explanation that this review of the Claimant's absence over the previous 4 years was part of a broader process, the Claimant believed she had been targeted. When the Claimant later complained about this step, the same explanation was given to her and expanded upon. The Claimant maintains she was unfairly singled-out. She points out that a 4-year sickness absence review process cannot be found anywhere within the Respondent's sickness absence policy. This is undoubtedly correct. The Respondent did not then and does not now say otherwise. It does not follow, however, that the Claimant had been singled out. She was one of the number of employees spoken to at this time because of their poor attendance record, pursuant to an initiative of the new Chief Executive.

<u>November & December 2019</u>

134. Mrs Dhillon corresponded with the Claimant's trade union representative, Donna Mighty in order to progress matters. 14 November 2019 was proposed as a meeting date. On 25 October 2019, the Claimant (through Ms Mighty) objected to Mr Payne attending a meeting to discuss her complaints "due to the nature of the conversation". Karen Godwin was then proposed in place of Mr Payne. In response, the Claimant then objected to her too, although no reason was given. On 20 October 2019, Mrs Dhillon asked why the Claimant objected to Ms Godwin. She had understood the concern with Mr Payne was due to him being male and the Claimant was complaining about rape by Y. Mrs Dhillon explained it was necessary for a line manager in the Claimant's area to be involved in the meeting so they might address any concerns raised. Mrs Dhillon pointed out that HR advise and managers manage. On 6 November 2019, Mrs Dhillon pressed for a response, saying if she did not hear by 11 November then the meeting would need to be rearranged. On 8 November 2019, Ms Mighty replied saying the Claimant did not want management to be present, she just wanted to meet

with HR. On 11 November 2019, Mrs Dhillon explained that she had sought advice on the Claimant's request. She pointed out the purpose of the meeting was to go through the complaints in the Claimant's two recent letters. She asked why the Claimant objected to management being present and if she was now seeking to raise issues (i.e. complain) about them too. On 12 November 2019, Ms Mighty replied saying the Claimant had been through a lot of trauma and did not feel comfortable sharing her concerns in front of the management team. There was more to-ing and fro-ing in similar terms, following which Ms Mighty quoted the Claimant as saying "this has nothing to do with my management and it is of a personal nature". Ms Mighty characterised the position as a stalemate.

135. As an alternative to meeting, it was agreed the Respondent would put in writing to the Claimant the questions that would have been asked about her complaints if there had been a meeting and the Claimant could supply written answers.

136. By email of 29 November 2019, Mrs Dhillon provided the questions. This was in the form of a draft meeting minute, which after introductions and an explanation of why the parties were meeting, included various questions about the Claimant's complaints. These were appropriate open questions, seeking to ascertain what was said or done, when, where and by whom.

137. The Claimant replied on 30 December 2019. Notwithstanding the length of her handwritten replies, these did not tend to provide the information sought. The Claimant focused upon her beliefs about motivation and involvement, rather than giving much detail of what those named in her two letters had said or done on particular occasions. The Claimant wrote about having taken these matters up with the police and the effect it was all having on her. She also set out her account of the text messages and calls she received on 29 August 2018 from Y.

138. Mrs Dhillon asked what outcome the Claimant was looking for and Ms Mighty replied on 24 December 2019:

> **• The malicious rumours to stop**
>
> **• Wants to know what/who this image is of (that GB claims to have seen)**
>
> **• Wants people at work to stop getting involved and being used by Y to inflict harm, upset and hurt**
>
> **• Wants the harassment to stop**
>
> **• Would not want Y to return to work at this organisation. C wouldn't feel safe.**

139. Mrs Dhillon did not believe these outcomes could be granted without a better understanding of the issues and an investigation being conducted. She wrote to Ms Mighty recommending a meeting in the New Year, notwithstanding the Claimant's concerns:

> **I really strongly recommend that we all meet in the new year with a line manager present from C area so that a full discussion can take place regarding the support that can be given with issues that have been raised by C once we have been given the evidence.**

> **As you can appreciate we cannot approach employees without evidence of any harassment taken place.**
>
> **I understand that C had her reasons for not wanting line manager presence at the last meetings that were arranged, as she felt she couldn't go into detail about certain aspects of her original complaint dated in August 2019, however this time round it is to move things forward and ensure that C feels safe in the workplace as agreed with senior HR management.**

140. On 31 December 2019, the Claimant left work following a disagreement with Mrs Williams.

2020

141. The Claimant commenced a further period of sickness absence on 1 January 2020. This continued through until 13 July 2020.

142. On 2 January 2020, Mrs Williams set out her concern about the circumstances in which the Claimant had departed work on 31 December 2019. We are satisfied this is an accurate reflection of what transpired and how Mrs Williams felt:

> **I wish to express my concern about the attitude towards me by C Linen distribution assistant, on Tuesday 31st December 2019.**
>
> **Following a sick call from Andrew Jones, linen distribution, I rang C to ask if she would do Andy's deliveries as he was off work. I asked C because she was more experienced in delivering the laundry than the 2 other members of staff that we were planning to take off their own jobs to put in the linen room to cover the absence. She told me that she was unable to do this because of her current health issues. I agreed for her to do her own deliveries and that we would send 2 other members of staff to cover Andy's deliveries.**
>
> **A few minutes later C rang back and said she wasn't being awkward about it. I told her that it was ok but there may be a time in the future that she would have to do some of Andy's run, depending on the circumstances. She then said, in an accusing tone of voice, " I knew you would do this to me. You have turned things round and are making my anxiety worse. I'm going home." I asked her what the problem was and she again said she was going home. I put the phone down and went down to the linen room to see what the issue was.**
>
> **When I went into the room she again said she knew I would do this and turn things round. I asked her again what the problem was. I explained that I was managing the service and had asked her to swap her delivery run for Andy's, she had said she couldn't do it, I'd said ok and arranged for other staff to do it so I couldn't see what her problem was with this decision and what she thought I had turned round. She just kept repeating she knew I would do this and turn things round. I again asked her what she meant by turning things round but she didn't answer. She then accused me of bullying her and other staff by saying, "This is how you work. You turn things round to bully people. You have always done this to me since I started and you do it to everyone. I'm going to get something done about you."**

> **This really shocked me as I did not understand what she was referring to when she said I was bullying her and always had.**
>
> **I said I had never bullied her or anyone else and she looked at me, smirked and said, " You had to apologise to me for standing behind a door listening to a conversation." I said that I hadn't been standing there and I wasn't going to discuss something that had already been dealt with. She then said that I had always been like it since she had started in the post. I said I wasn't going to discuss anything that she had just assumed had been happening from years ago. Again she said I bullied her and other staff and she was going home as she couldn't cope and I had made her feel more anxious.**
>
> **This really concerned me but given how agitated she was I said ok and turned to leave the room. All through this conversation, she wasn't listening to anything I was saying or trying to explain. She was just constantly talking over me.**
>
> **She was disrespectful, impertinent, accusing and she also threatened me by saying she was going to get something done about me.**
>
> **This left me very shaken and confused because I couldn't understand what had made her react in this manner. It was very irrational.**
>
> **I am no longer willing to sit back and let her get away with throwing accusations about me bullying her and other staff to anyone who is willing to listen to her and I certainly not willing to let her threaten me. She is casting doubt on both my character and professionalism.**

Sickness Absence – January 2020

143. By letter of 22 January 2020, the Claimant was invited to a sickness absence meeting. On 29 January 2020, Ms Mighty emailed Mrs Dhillon querying what she had been told by the Claimant, namely that the upcoming meeting was to look at the Claimant's absence going back 4 years. Mrs Dhillon replied the following day, explaining the meeting on 7 February 2020 was to review the Claimant's current absence from work and the review of historical absences was a separate matter.

144. By a hand written letter of 30 January 2020 to Mr Payne, the Claimant complained of not being able to speak with him and about the management of her sickness absence. She said the sickness policy did not include a 4-year review. The Claimant also complained about Mrs Williams. She proceeded to set out her account of the 31 December 2019 incident. Mr Payne acknowledge receipt of this letter the following day.

145. An occupational health report of 30 January 2020 included:

> **I have seen C today and the history she has given Is very complex and has been difficult to clarify within the allocated appointment time. To summarise, she informs me that she initially went off work following a comment that upset her from one of the managers who she has a longstanding history of problems with. The same night she also had an attack on her home where her windows were smashed. The combination of these events have led to her absence.**

> **C informs me that she has a history of problems with another person who works at the trust who she feels has been stalking her and the police, victim support, safeguarding and other services are Involved. She also states that there have been third party malicious rumours surrounding this person and harassment in the workplace. These issues have left C feeling threatened and vulnerable at work and she is unsure what is progress is happening to manage and resolve these issues.**
>
> **On assessment today she is obviously stressed. She is not on any treatment from her GP and is receiving counselling support through external services. She has stated she does not feel ready to return to work at this stage and will be seeing her GP for a further note and I have advised a chat about medication.**
>
> **It Is difficult for me to advise on a return to work date with so many outstanding concerns regarding her safety at work. I would therefore, suggest that a meeting is held with C to address her concerns regarding returning to work and any investigations that have taken place regarding the individuals Involved. It would be sensible to also involve HR in these meetings as I understand they are aware of the issues.**

Complaints - February 2020

146. By a handwritten letter received on 3 February 2020, the Claimant raised concerns with Toby Lewis, the Respondent's Chief Executive. She complained about Mrs Williams, at length. Although the Claimant began by referring to the incident on 31 December 2019, she went back to earlier matters, including an allegation that Mrs Williams had given her telephone number to Y in 2017. The Claimant gave an account of Y's behaviour towards her, within and without the workplace. The Claimant objected to malicious rumours. She listed various named employees as having been "involved". The Claimant also complained about Mr Payne's management of her sickness absence.

147. Also on 3 February 2020, Mrs Dhillon invited the Claimant to a meeting to discuss the complaints she had raised in August 2019. Mrs Dhillon referred to the previous attempts which had been made to arrange a meeting in this regard. In order to overcome the Claimant's objections, Mrs Dhillon proposed a meeting with Jayne Evans (a manager from a different department). Dates were suggested and the Claimant invited to confirm what was convenient to her. There was then to-ing and fro-ing over Ms Mighty's non-availability, with Mrs Dhillon querying whether another representative could be arranged.

148. On 12 February 2020, Mrs Dhillon wrote to the Claimant again. She referred to her recent exchange with Ms Mighty. Mrs Dhillon proposed new dates for a meeting with the Claimant. She suggested that in the event Ms Mighty was not available, the Claimant seek alternative representation. Mrs Dhillon said this was the final attempt that will be made to arrange a meeting.

149. On 14 February 2020, the Claimant wrote to Mrs Dhillon about the meeting to discuss her complaints, saying sufficient notice of the proposed meeting dates had not been given and it was unfair to say this would be the final attempt to arrange this. The Claimant set out her account of the process which should be followed with respect to her complaints. Somewhat unhelpfully, the Claimant's lengthy letter did not include any date when she could meet to discuss this.

150. On 20 February 2020, Ms Brettle wrote to the Claimant saying that a meeting would take place on 6 March 2020 to discuss her complaints. This was considered to be ample notice. If her representative was unavailable she should seek alternative representation. If she did not attend, the matter would be treated as concluded.

Sickness Absence - February & March 2020

151. The sickness review took place on 7 February 2020. Mr Payne attended with Mrs Dhillon. The Claimant was accompanied by Ms Mighty. Whilst Mr Payne sought to explore the circumstances behind the Claimant's current absence, she did not wish to talk about this. The Claimant wanted to discuss the 4-year review meeting which had taken place in November 2019. Mrs Dhillon called a short adjournment. She hoped to refocus the meeting upon its intended subject. On resuming, Mrs Dhillon asked who the Claimant was referring to when she told occupational health about being stalked at work. The Claimant said this was Y. Mrs Dhillon explained Y no longer worked for the trust and if he was coming onto the site and harassing her, she should notify security and the police immediately. The Claimant said Y was waiting for her when she finished work. Mrs Dhillon asked the Claimant if she had reported this to security. The Claimant said she had not. Mrs Dhillon suggested she take a photo if this happened again. The Claimant said she was too scared to do that. The Claimant then moved on to her complaints about Mrs Williams. The meeting overran and had to be adjourned. A letter summarising what had been discussed at this meeting was sent on 12 February 2020. This included:

> **I explained that the meeting on 29th November 2019 was following a review of all staff sickness episodes within the department and was to try and reduce sickness within the department. Your sickness episodes fell into this category, the letter you were sent after the meeting explains the reasons for the meeting in detail however you did not receive this letter.**

152. In a handwritten letter received on 28 February 2020, the Claimant complained about the outcome letter following the sickness absence review meeting on 7 February 2020. Her objection was that this had included what she told OH about Y. She said that was private information and it put her at risk. Given the purpose of this meeting had been to explore the reasons for the Claimant's current absence and what might be done to address this, her complaint about the inclusion in the outcome letter of what she reported as the cause of her illness is difficult to understand.

153. Also on 28 February 2020, there was a further meeting under the sickness absence management procedure with Mr Payne and Ms Brettle. This was a resumption of the meeting which had begun on 7 February 2020. The Claimant was accompanied by a different Trade Union representative, Esther Fanos. During that meeting, at one stage Ms Brettle said to the Claimant that her life was "a mess". Whilst we heard no evidence from Ms Brettle, it is not difficult to deduce why she made this remark. The Claimant had an extended absence from work as a result of ill health, which stemmed from matters both within and without the workplace, with previous instances of connected sickness absence. There was a complex history of disputes with colleagues and managers. The Claimant alleged she had been raped by someone with whom Ms Brettle

believed (correctly) she had been in a relationship. The overall position was less than entirely straightforward, to put it mildly. Nonetheless, the characterisation of the Claimant's life as being a mess was rude and tactless. We accept this would have and did cause the Claimant to take offence. Ms Brettle's lapse was, undoubtedly, born of frustration. The Claimant is not always an easy person to deal with. It is clear, however, Ms Brettle quickly recognised her error and apologised for this.

154. On 5 March 2020, the Respondent wrote to the Claimant requiring her to attend a further meeting to discuss her absence. The letter referred to the meeting on 28 February 2020 as having finished abruptly. It was explained the Respondent wished to explore what more could be done to move matters forward and put in place support for the Claimant to return to work.

Band 2 Transition

155. By a letter of 4 March 2020, the Respondent informed the Claimant of a change to its pay scales. In particular, it intended no longer to recruit employees into band 1 roles and with respect to existing band 1 employees, upskill them into band 2 roles. This required redesigning existing band 1 roles to increase the requirements of the same, such that they would qualify within band 2. As a band 1 employee, the Claimant was one of those potentially affected by this process. Attached to this letter was a briefing sheet, the very first point of which provided:

moving to a band two roles will be your choice, it is not compulsory

156. A letter of 16 March 2020, invited the Claimant to a meeting on 20 March 2020 to discuss the transition process.

157. On 14 April 2020, the Claimant wrote to Mrs Jackson, who at this time was providing HR support in connection with the Claimant's various complaints. In this email, the Claimant complained about the band 2 transition. She appeared to believe this was something being done to her by Mrs Williams. The Claimant said it was unfair that she was being required to sign for a change in her job. Mrs Jackson replied the same day, explaining this was a national process and there was no compulsion. The Claimant could choose to remain in her band 1 post if she wished. The Claimant wrote back saying she would not be able to do the new role because a doctor had said her asthma would prevent her from working in the laundry. Notwithstanding a very clear explanation from Mrs Jackson that this was an exercise being conducted with respect to band 1 across the Country, the Claimant continued to suggest it was something being done to her because of the incident with Mrs Williams on 31 December 2019. Mrs Jackson wrote again on 17 April 2020, reiterating the Claimant could choose to stay in her current role. Unfortunately, the Claimant's concerns were not assuaged, then or since. The Claimant tended toward a conclusion that any unwelcome event in the workplace must be the result of her being targeted.

158. By email of 13 May 2020, the Claimant complained about the band 2 transition process. She continued to assert this was all being done because of Mrs Williams and much of her message was devoted to that theme. She also explained that she had asthma this would prevent her from working in the laundry room. She suggested she had been told different things by different

managers about the band 2 transition. She said her request for a copy of her personnel file had not been responded to. Her lengthy email included:

> **Very close to the porters room is. I feel this suggestion is very cruel.**
>
> **As I still have unresolved issues. Reguarding portering staff. And Carol Williams.**

159. At the Tribunal, the Claimant suggested the only issue she had raised about the band 2 transition process was the requirement to work in the laundry, in particular because of its proximity to the porters' office. This is not a fair characterisation of her position at the time. Her complaints were many and varied. The main issue she pursued, again and again, was the assertion that she was being targeted by Mrs Williams. Her complaints in this regard also ignored what the Respondent told her repeatedly, namely it was entirely a matter of choice for her. If the Claimant did not wish to take on the additional duties required to elevate her role from band 1 to band 2, she could simply elect to remain in her existing band 1 role, without any change whatsoever.

160. Mrs Jackson wrote the Claimant on 15 May 2020, reiterating much of what had been said before, about this being a national process and a matter of choice. She said she would be happy to explain this at a meeting, as that originally proposed had to be rescheduled. She said she would arrange for the Claimant have access to her personnel file.

161. By an email at 19 May 2020 to Mr Lewis, the Claimant complained about the band 2 transition process and various members of the HR Department. This included a complaint it was unsafe for her to work close by the porters. The Claimant continued to assert she was being targeted because of the 31 December 2019 incident with Mrs Jackson.

162. The Claimant was invited to a meeting on 27 May 2020, to discuss her complaint about the band 2 transition process.

<u>Y Not Returning</u>

163. Because of the Claimant's complaints about being stalked by Y, Mrs Jackson made enquiries with a view to confirming that he was still suspended from the Respondent. She was told his file had been terminated. Mrs Jackson, in an email of 24 March 2020, stated that whilst the Respondent was desperate to recruit bank staff, Y was not to be allowed back onto the bank because of the risk he might pose.

<u>Complaints - March 2020 to June 2020</u>

164. The Claimant wrote to Mr Lewis again on 3 March 2020. She complained that during her recent sickness absence review meeting, Ms Brettle said she had a relationship with Y and her life was a mess. The Claimant objected to both comments, the first because she said it was untrue and the second because Ms Brettle had no right to say it, as she did not know about the Claimant's family life and this had nothing to do with her. The Claimant included an account of Y's behaviour. She attached photos of messages from Y sent on 29 August 2018.

The Claimant complained about the various processes being followed and that she had not received an acknowledgement of her previous letter to Mr Lewis.

165. With the passage of time, the volume of the Claimant's complaints and the variety of matters and persons about whom she complained increased. As well as complaining about many individuals, she complained to many different managers or officers of the Respondent. The Claimant had by this stage also complained about Ms Brettle, who was providing HR support.

166. On 6 March 2020, Francis Jackson drew the attention of Freiza Mahmood, Chief People Officer, to this situation. With respect to the 28 February 2020 meeting, Mrs Jackson noted Ms Brettle had admitted not handling this well or being sufficiently sensitive. Nonetheless, Ms Brettle was very upset about the Claimant's complaint, as she believed she had devoted a significant amount of time and energy to supporting her.

167. By an email of 9 March 2020, Ms Fanos, wrote to Ms Brettle proposing a meeting to discuss the Claimant's grievances. Ms Brettle replied the following day, asking her to hold fire and explaining that arrangements were being made for Sue Wilson, Safeguarding Lead Nurse, to lead the meeting and for another HR officer to support this. Thereafter, Mrs Jackson provided HR support for the resolution of the Claimant's issues.

168. As part of the Respondent's attempt to address the Claimant's concerns, in March 2020 a table was prepared identifying various items of correspondence she had submitted, summarising the complaints which appeared to be made and identifying possible actions. The table included a list of correspondence sent by the Respondent seeking to arrange meetings with the Claimant to discuss her concerns. This document ran to 18 pages.

169. On 19 March 2020, Mrs Jackson wrote to the Claimant, inviting her to a meeting on 2 April 2020. The letter explained the purpose of this would be to discuss not only the complaints she had raised in August 2019 but also those set out in various items of more recent correspondence (which were listed) including her letters to Mr Lewis.

170. Arranging meetings at this time became more difficult because of lockdown and the need to do so by remote means. In email of 24 March 2020, Mrs Jackson proposed a meeting by zoom, WhatsApp or telephone. Later that day Ms Fanos wrote saying:

> **She says that she understands that a face to face is not possible. All said and done, she would like to be able to return to work ASAP. The only thing that is stopping her is not so much the need to have a conversation about the issues she has raised but that she needs a named mentor or someone/somewhere she can go to if she feels overwhelmed by any comments that people may make about her situation.**
>
> **I have explained that it is quite possible, indeed likely that in the current climate people are too busy, too worried and coping with the stresses of Covid 19 to be talking about her. She agrees that is likely.**

171. Following a telephone discussion with Ms Fanos, Mrs Jackson responded:

> **I will ask Andy to identify an appropriate mentor for her. As discussed, C was given this support previously but I don't believe she accessed it. It will be important that understands the current climate in the Trust, that staffing is changing rapidly with people having to isolate, or be deployed to different areas I tasks to help with the effort. This means that any assigned mentor might not always be available and the situation will need to be kept under review.**

172. On 27 May 2020, Mrs Clark and Mrs Jackson met with the Claimant, accompanied by Ms Fanos. They discussed her concerns and complaints about the band 2 transition process. The discussion on that occasion and outcome is accurately reflected in the Respondent's letter of 29 May 2020 (incorrectly dated 29 March 2020):

> **During the meeting Frances re-capped on the context to the band 1-2 transition process, in that this is a national process to remove the band 1 payscale for new starters and to upskill existing band 1 employees to band 2 roles. As part of this process, we were required to review job descriptions to redesign them to Band 2 posts and provide employees with a choice as to whether they remain in their existing Band 1 post or progress to Band 2. Our Trust trade unions were consulted on the process and the proposed JD (which is a generic JD that will apply to all employees in the linen and laundry areas) was developed for consultation with relevant employees. The letter from Frieza Mahmood, which outlined the process and provided key facts to consider in making your choice, was also sent out to all Band 1 employees, including yourself.**
>
> **[…]**
>
> **We discussed your reasons for not wishing to accept the proposed band 2 post within the linen/laundry service and it was confirmed that this was primarily due to your health as you have a health condition which means you need to work in cooler areas and avoid contact with chemicals, such as bleach. In addition you have concerns regarding working relationship difficulties with members of the portering department (the portering department is located adjacent to the laundry), meaning you don't wish to be located in this area.**
>
> **[…]**
>
> **The conclusions from our discussion was that your choice from this exercise is to remain in your existing band 1 role (which is the post you will therefore return to when you return to work), not to work in the laundry and to consider moving to a band 2 role more widely within the organisation if option is available (which we will come back to you on).**

173. On 3 June 2020, Mrs Wilson and Mrs Jackson met with the Claimant, who was again accompanied by Ms Fanos. The purpose of this meeting was to discuss the Claimant's various other concerns, as set out in numerous items of correspondence she had sent in the period from August 2019. The discussion on that occasion and the outcome is accurately reflected in an email from Mrs Wilson of 11 June 2020. The Claimant focused upon her concerns about Y and how colleagues in the workplace were being used by him. Mrs Wilson explained it was difficult for the Respondent take action with respect to comments made by individuals if there were no witnesses. She suggested focusing on steps which

could be taken to make the Claimant feel safe at work. The possibility of a role elsewhere in the Respondent was raised. The Claimant said Y would be able to target her wherever she went. Mrs Wilson encouraged her to go to the police if she was being stalked or harassed. Mrs Wilson made various proposals:

> **I also suggested that we brief the security department regarding the risks that the perpetrator poses so that they can record any observed incidences of stalking behaviour which may take place on or close to Trust premises. You consented to this approach.**
>
> **Esther suggested that you access assertiveness training and conflict resolution training to give you the confidence to assertively deal with difficult situations without them becoming inflamed.**
>
> **In summary we agreed the following support:**
>
> **• General domestic abuse awareness training for specific staff groups**
>
> **• Assert and disengage strategy for dealing with comments/gossip from colleagues**
>
> **• Continued support via counselling and stalking team**
>
> **• Assertiveness training**
>
> **• Conflict resolution training**
>
> **• Mentor**

174. The Claimant decided she did not wish to pursue any formal complaints against colleagues:

> **Esther asked you to clarify whether you are seeking any formal processes in relation to the matters raised in your letters relating to the behaviour of colleagues. You confirmed that you felt it best to leave the previous complaints and focus on tacking any future issues. If it occurs again with the same individuals you would like these matters to be addressed with these historic issues taken into consideration.**

175. The Claimant denied having any issue with her line manager, Mr Payne. She said the only difficulty had been with Mrs Williams, who she did not encounter very much.

176. Mrs Wilson's email contained a proposed 10-point safety plan. This included steps for the immediate escalation to the police and security team of any safety incident. The security team would be briefed as to the potential risk posed by Y. A short script was prepared which the Claimant could use to avoid being drawn into any conversation with colleagues about Y. There would be a password she could say to her manager, which would allow for the Claimant to be removed immediately to a place of safety. A report form was created to capture incidents of direct or indirect stalking. A mentor would be identified.

177. Whilst the appointment of a mentor to the Claimant was explored, the Respondent was unable to find someone willing and able to undertake this role. Somewhat later in the year a potential candidate did agree but after speaking

with the Claimant came to the conclusion her situation was very complex, they did not have enough time to undertake the mentor role, were doubtful both about the Claimant's understanding of mentorship and indeed the likelihood of anyone within the trust being able to discharge this successfully

178. The Claimant now characterises the outcome of the 3 June 2020 meeting as the Respondent refusing to address the problem of staff in the workplace passing information to Y. This portrayal is unfair. Mrs Wilson had spoken, realistically, about the difficulty of taking disciplinary action against employees where there was no evidence. The Claimant repeatedly complaining of "malicious rumours" was no substitute for witness evidence (whether from the Claimant or someone else) describing the specific words uttered or actions taken by a named individual on particular occasions. Furthermore, the Claimant actually agreed she did not wish to pursue any formal action against her colleagues.

179. By an email of 12 June 2020, the Claimant complained about the suggestion she had refused to meet with Mr Payne. She said she did not know why this was being said. The Claimant's complaint did not appear to take into account the stance she had adopted, through Ms Mighty, when attempts were made previously to arrange a meeting with the Claimant and Mr Payne to discuss her complaints. The Claimant's email continued to set out various other complaints. Indeed, she went further back in time that she had done previously, complaining about her treatment by Mrs Williams in 2014. Various individuals were accused of targeting her. The Claimant also returned to the reviews of her sickness absence.

180. Because it had not been possible to cover all of the Claimant's concerns in the meeting on 3 June 2020, a further meeting took place on 17 June 2020. The discussion and outcome is accurately reflected in a long letter of 26 June 2020 from Mrs Wilson. This included:

> **You confirmed that you don't wish to make a formal complaint against Carol Williams (regarding the incident on 31st December 2019) as you are aware she has been unwell and you realise she was angry at herself on that day.**
>
> **[…]**
>
> **In relation to the complaint you made against Sue Brettle (Operational HR Manager), you stated that you have managed to let this go now and don't wish to take this forward formally. Esther stated that she had spoken to Sue Brettle following the meeting to raise the issue and Sue had explained the situation and Esther therefore felt the matter had been put to rest.**
>
> **[…]**
>
> **I stated that I have some concerns that some of the issues you were raising in your email dated 12th June 2020 go back 6 years. I stated that there seems to be such a long history of difficult relationships with colleagues and managers, many of which have been formally investigated before. I observed that you have stated that you want to return to work and move forward, yet the review of your personal file seems to have brought things to the fore in your mind. I asked whether you feel these**

relationships are capable of moving forward. You stated the problems are just with a few people; you haven't had any issues with Carol Williams since 2018 so you didn't feel you had done anything to warrant Carol's behaviour on 31st December 2019. You stated that you want to return to work and try to move on.

[…]

Frances pointed out that you had raised a number of complaints against a variety of people/actions taken by different people e.g. Carol Williams regarding the incident on 31st December, various colleagues in Portering and Ward Services, Andy Payne's management of your sickness absence, Sue Brettle regarding your sickness review meeting, Janet Clarke regarding the Band 1-2 process, Danni Dhillon regarding the arrangements to meet with you etc. She asked whether you felt that you had trust in the organisation given that you have felt it necessary to raise concerns in writing (some to the Chief Executive) even in relation to people you have stated you work well with (e.g. Andy Payne).

[…]

You stated that you believe people in senior management tell lies (referring to Janet Clarke) and there is proof in your personal file of this.

Frances stated that the language you use when talking about your concerns and within your letters is very strong and emotive (for instance, the use of the words 'cruel', 'dishonesty', 'targeted', 'destroy)'. She advised that people have the right to respond to concerns raised about them and asked how you felt these issues could be resolved when you felt so strongly about the severity of them.

[…]

We then moved on to review progress with the actions agreed at the last meeting as follows:

- **The safety plan has been drawn up and shared with OH as agreed. You confirmed you were happy with it.**

- **I will arrange to meet with the Head of Security to discuss the safety plan and ensure appropriate measures are in place. You confirmed you were OK with this.**

- **I explained that Conflict Resolution is a mandatory training module so is available online for you to access as necessary. However, the Trust isn't currently running assertiveness training so unfortunately that isn't available.**

- **There is additional support available via the Thrive App which the Trust has recently launched (you confirmed you have a Smartphone). I recommended you download the Trust's MyConnect App for access to other Trust information and well-being resources.**

We then agreed actions going forward from this meeting as follows:

> **• In relation to your concerns about the sickness absence process, we will arrange to meet with Andy Payne regarding the concerns raised in your letter.**
>
> **• In relation to your complaint against Carol Williams, we agreed that you would speak with Esther outside of this meeting to determine whether you wish to pursue a formal complaint, or attempt an informal resolution.**
>
> **You confirmed you don't wish to progress the concerns raised about Sue Brettle. You stated that you recognise that sometimes people don't understand what people go through when they're being stalked so don't always realise the impact of their words, which you felt was the case here. You acknowledged that Sue had apologised. I stated that I was looking to do some general training on domestic abuse with the HR team as well.**
>
> **[…]**
>
> **In terms of a return to work plan, we agreed that Andy would need to speak with you first to formulate a plan. You stated that you were very grateful for everything we have done to support you so far and for the last few meetings. You stated you are still fearful about returning to work in case the perpetrator of the stalking behaviour finds out you're back at work. We reassured you that the safety plan was there to protect you and you need to make sure you work within the plan if you need help. You were advised to inform security of your working hours so they can keep a look out for you. If you feel you are in immediate danger you should contact the police. You also stated that you can foresee having problems with Julie Lovesey as she saw you when you were on site recently and you felt she looked surprised to see you. Frances advised you not to assume that you will have problems with people before it has occurred as this can impact on your perception of events, however you stated that you had a strong feeling there would be a problem.**

181. Following this meeting, Mrs Jackson met with Mr Payne on 19 June 2020 and asked him questions relating to the management of the Claimant's sickness absence.

182. Whilst the Claimant had said she wished to return to work immediately, Mrs Jackson believed there were matters which still needed to be addressed before this can occur. She wrote to the Claimant on 19 June 2020:

> **I'm just getting in touch following our meeting on Wednesday. I understand you wish to return to work on Tuesday, however Sue and I have discussed this and have some concerns about the timing of your return for the following reasons:**
>
> > **• Sue hasn't yet been able to meet with the Head of Security to put the safety plan in place (as he's on leave until next week). We need to ensure measures are in place for you to return safely.**
> >
> > **• As agreed, we are following up the concerns raised about the management of your sickness absence and need time to review the information and feedback to you.**

> **• There is the outstanding matter of your working relationship with Carol Williams and with your management team as a whole and how this is to be addressed. We had agreed that you and Esther would discuss options when Esther is available next week and feedback to us so we can determine the best course of action. Given the nature of the concerns raised, it's important that we address this before you return to the department.**
>
> **I have shared the safety plan with Andy Payne as agreed and Andy will arrange to meet with you to plan your return to work in due course, but this will need to include a wider discussion about the support / expectations that will need to be in place going forward.**
>
> **The above actions therefore need to be concluded in the first instance to ensure a safe and effective return. As such, can I suggest that you remain off sick next week and we review the situation at the end of the week once we've had chance to progress the agreed actions and we've heard back from you and Esther following your discussion?**

183. By email of 23 June 2020, Ms Fanos confirmed the Claimant had been touch with her GP and would obtain a further fit note. Whilst disappointed at the need for this, the Claimant understood it would take time to put in place the measures and only wished to return when it was safe to do so. The Claimant later characterised this as amounting to the Respondent keeping her off work sick. This is unrealistic. The Claimant had been absent on sick leave for many months. The main obstacle to her coming back was the need for this to be in circumstances where the Claimant felt it was safe. The parties only having just agreed such measures, some time would be required to implement them.

184. On 27 June 2020, Mrs Wilson confirmed to Mrs Jackson she had spoken with Security and the necessary measures were put in place.

Sickness Absence – June 2020

185. An occupational health report to 16 June 2020 provided:

> **She has been off work since early January. Her fit note expires on 22nd June. She reported that she has been stalked and harassed from an acquaintance that used to work in the Trust that had a significant effect on her mental health wellbeing. She receives appropriate care from her GP and a number of professionals that provide support and counselling. She also reported receiving support from the police, she has taken legal action against this person and she is currently getting support from hospital management in ensuring her safety when she is back at work. Thank you for sharing the safety plan that I understand has been agreed.**
>
> **In order to facilitate her return to work it will be useful to agree if operationally feasible a phased return over 4 weeks for example 2 weeks working 50% of her duties, followed by 2 weeks working 75% of her duties and then review with a view to return to full duties.**

Managers' Concerns

186. The prospect of a return to work by the Claimant caused alarm amongst several managers. In a letter of 19 June 2020, Mrs Clark wrote:

> **I have to express my concern about the impact this will have specifically on the Ward Services Management Team's Health & Wellbeing.**
>
> **In recent months C made complaints about her departmental managers and members of staff that to date have not been resolved and are ongoing.**
>
> **[…]**
>
> **The previous complaints that C has raised have been formally investigated and have been found to be without foundation due to lack of evidence to support the allegations she has made.**
>
> **The staff that were under investigation were exonerated of all allegations, however the stress and anxiety the process causes to those staff named in the complaint, has been significant, and has had a detrimental effect on their health, wellbeing and confidence.**
>
> **My overriding concern in relation to C return to work is the detrimental impact that it will have on the management team and the staff that she will come into contact with; they are concerned that there will be a continuation of the repeated complaints when they carry out their day to day management, in terms of issuing simple instructions or general communications.**
>
> **I am aware that her immediate line manager Mr Justin Hughes is so anxious about the potential for allegations and complaints, he feels that he cannot manager her and has concerns about being alone with her. (He was named subject to a complaint by C that was not upheld)**
>
> **This situation is unacceptable in terms of the pressure the management team are put under and staff Health & Wellbeing. I am aware of my duty of care, and whilst I accept I have obligations for also have the same responsibility and obligations for the managers and staff that have been and are continuing to be affected by the repeated complaints.**

187. Mrs Clarke attached letters she had received from Mr Hughes, Mr Payne and Mrs Williams, setting out their concerns about working with the Claimant going forward.

188. Having previously said she did not wish to pursue a full complaint against Mrs Williams, by email of 1 July 2020, the Claimant said see did wish to pursue this with respect to the incident on 31 December 2019 involving Mrs Williams.

189. Mrs Jackson came to the conclusion it would be necessary to postpone the Claimant's return, in particular in light of the concerns going in both directions about the management relationship. By an email of 2 July 2020, Mrs Jackson gave the Claimant an update and proposed a meeting:

> **I think it would be best if we meet first to discuss the way forward. Sue has now met with Security to put the safety plan in place. However, the workplace issues have not yet been resolved - we would like to feedback to you regarding the outcome of the meeting with Andy Payne regarding the sickness process and also discuss next steps regarding your formal complaint against Carol Williams in relation to the incident on 31st December 2019.**

> **It has also come to light since our last meeting that others within your management team also share your concerns that trust and working relationships have broken down between you. We therefore need to discuss this, talk about the way forward and support in the interim.**
>
> **As such, we don't think it would be good for the well-being of all concerned for you to return to your department next week. One of the options we can explore to support your return to work is a temporary deployment to another area whilst we work through this difficult issue. Sue and I are considering suitable options which we'd like to discuss with you, with the safety plan being of paramount importance in determining what may be suitable.**

190. The Claimant phoned Mrs Wilson to say she did not understand the email she had just received from Mrs Jackson. Mrs Wilson explained there was a concern that relations between the Claimant and her managers had irretrievably broken down. There were also concerns from other members of staff. Asked why she decided to pursue her complaint against Mrs Williams, the Claimant explained this by reference to the band 2 transition process. The Claimant said she had a good relationship with Mr Payne. Mrs Wilson pointed out she had raised a formal complaint against him. Mrs Wilson said the complaints and relationship issues had to be investigated before a return. There was a discussion about possible redeployment, albeit the Claimant only wished this as a temporary measure. The Claimant then sent an email making various complaints.

191. On 3 July 2020, Mrs Jackson spoke with the Claimant. The discussion covered many of the matters they had previously talked about. The Claimant's answer to there having been a breakdown in relationships with her managers was to say that she did not come into contact with them on a day-to-day basis anyway and could therefore carry on with her role. Mrs Jackson suggested they meet to discuss this and asked the Claimant to refrain from sending further emails until that point. The Claimant followed this up with an email on 6 July 2020.

192. On 6 July 2020, Mrs Godwin provided a history of her dealings with the Claimant, going back to 2013. She said there was a persistent pattern of baseless complaints against colleagues and managers, which caused stress and anxiety.

<u>Complaints – July 2020</u>

193. Mrs Jackson and Mrs Wilson met with the Claimant on 7 July 2020. The Claimant was accompanied by Ms Fanos. They discussed the Claimant's various concerns at length. Key themes were identified. It was agreed the Claimant's concerns about Y, staff spreading rumours, Facebook posts and her complaints about Mrs Dawes and Mrs Brennan, would all be addressed by the safety plan. A formal fact find would be undertaken with respect to the Claimant's complaint about Mrs Williams on 31 December 2019. As far as the management of the Claimant's sickness absence was concerned, Mrs Wilson declined to take complaints about this any further, on the basis that matter had already been discussed at great length and the Respondent's reasons for proceeding as it did explained to the Claimant repeatedly. Mrs Wilson considered there could be no basis for a complaint in this regard. Mrs Wilson then went on to discuss the issue of breakdown in working relationships.

Complaints had been received from 3 managers who felt vulnerable working with her. There was a pattern of the Claimant negatively interpreting what was said to her and making baseless complaints. Notwithstanding she was then pursuing complaints against Mr Payne and Mrs Williams, the Claimant said there had been no problems. The Claimant also said that Y was behind this, had damaged her reputation and malicious rumours were being spread. Mrs Wilson said the Respondent was still gathering information and looking at bringing the Claimant back to work in a positive environment. There was discussion of alternative roles.

194. On 10 July 2020, the Claimant submitted a 28 page letter. This was wide-ranging and made many complaints.

195. An alternative temporary position was found for the Claimant as a housekeeper in Critical Care, under the management of Dean Farrington. The Claimant returned to work in this position on 13 July 2020.

196. Mrs Jackson responded to the Claimant on 21 July 2020. She said the concerns in relation to an alleged breakdown in working relationships had to be investigated. The Claimant would have an opportunity to provide her response to this. Mrs Jackson was seeking to identify appropriate individuals to undertake the investigation. She noted the Claimant did now wish to pursue complaints against the porters, notwithstanding her former stance. Mrs Jackson would need to discuss the matter with Mrs Wilson then consider appropriate next steps. Mrs Jackson also expressed concern about the way in which the Claimant had portrayed their meetings and phone calls.

197. An initial fact find was carried out into the Claimant's complaint about Mrs Williams on 31 December 2019, by Anita Patel, Employee Relations Team Manager. The conclusion of the initial fact find was that Ms Williams had acted appropriately and there was no basis for disciplinary action. The steps taken in this regard and conclusion reached were provided to the Claimant by a letter of 16 July 2020, from Mrs Jackson.

198. Mrs Wilson sent two important letters to the Claimant as attachments to her email of 17 July 2020:

> **I hope your first week in CCU has worked out okay. Please find attached two letters, the first from our last meeting and the second is the outcome of the initial assessment of facts into the alleged incident on 31st December involving Carol Williams. I will also send hard copies out in the post.**

199. In the first letter, Mrs Wilson summarised the content of various recent meetings with the Claimant, on 3 June 2020, 17 June 2020 and 7 July 2020. This included a summary of the Claimant's account of the incident with Ms Wilson and:

> **We agreed that we would write to you to confirm the outcome & next steps from the initial assessment of facts into the Carol Williams incident in due course. We will also write to you to confirm next steps in relation to the investigation into the working relationships issue once this has been scoped out.**

200. In the second letter, Mrs Jackson began by saying:

> **I am writing further to our meeting on 7th July 2020, where we agreed to conduct an initial assessment of facts into the alleged incident on 31st December 2019 involving Carol Williams.**

201. Mrs Jackson went on to explain why, following an initial fact find, the Respondent had decided to take no further action on the Claimant's complaint about Ms Wilson, concluding:

> **In weighing up the evidence collected, it is deemed that there is more evidence to corroborate Carol's version of events regarding the incident in question. Therefore it is not felt that a formal investigation would be appropriate or proportionate on this occasion.**

202. The Claimant replied to Mrs Wilson's email the same day, 17 July 2020, reiterating her factual account of the incident on 31 December 2019 with Ms Williams and concluding:

> **I really don't understand what is going on in this department anymore.**
>
> **I want to appeal against the decision.**

203. In the course of being cross-examined, the Claimant denied receiving Mrs Jackson's letter containing her decision on the complaint about Mrs Williams. She is mistaken about this. The fact of the Claimant receiving this is evidenced by her seeking to appeal Mrs Jackson's decision the very same day it was communicated to her.

204. Mrs Jackson was of the view that because the complaint about the conduct of Mrs Williams had been investigated by way of an initial fact find as a potential disciplinary matter, the Claimant had no right of appeal against that decision.

205. Given the Claimant now wished to pursue formal complaints about her colleagues, Mrs Jackson undertook a detailed review of the various items of correspondence which had been submitted. Despite the great length of the Claimant's letters and emails, Mrs Jackson concluded there was "scant detail" of what rumours had been spread, when and by whom. She believed it would be necessary to obtain further information, namely specific details, from the Claimant in order to undertake a meaningful investigation. Mrs Wilson drafted a letter to the Claimant requesting this information. That letter was not actually sent because it's preparation overlapped with another event, the security breach to which we will refer below.

<u>August 2020</u>

206. The Claimant raised further complaints by way of various letters and emails sent on 10 and 11 August 2020. In some respects these merely reiterated her earlier complaints and / or complained about the way in which these had been addressed. There was, however, a significant new matter, namely a security breach.

207. In order to implement the safety plan, a photograph of Y and his car registration details had been provided to the security team. The email containing this

information was forwarded to Y. The Respondent conducted an investigation into this matter but was unable to discover who was responsible for this or how it had occurred. The Claimant was given paid leave from work for two weeks during this time.

208. On 19 August 2020, the Claimant telephoned Mrs Jackson. She told her how upset she had been about the security incident. The Claimant also told Mrs Jackson about various other matters involving Y. She felt that nothing was being done to address her workplace issues. Mrs Jackson reminded the Claimant of their various meetings and what had been agreed to protect her at work. The Claimant asserted the Respondent had refused to investigate her allegations of rumours being spread because this would make people angry. Mrs Jackson attempted to explain why that was not the position. The Claimant said she wished to pursue a grievance about the security breach, third party harassment and working relationship investigation. The Claimant raised various historical issues, which Mrs Jackson said had already been addressed by way of previous formal processes. Mrs Jackson explained they would need specific information about her complaints in order to pursue this. They also needed to distinguish between new matters, which could be considered, and matters which had already been dealt with, which would not. Whilst the Claimant provided various names as being those involved in the third party harassment, she remained vague with respect to individual incidents. Mrs Jackson said the Facebook posts were outside the workplace. The Claimant returned to the issue of Mrs Williams on 31 December 2019. Mrs Jackson said this had been dealt with under the Respondent's disciplinary procedure and the Claimant had no right of appeal. The Claimant said she wished to return to her usual place of work.

209. Also on 19 August 2020, Mr Farrington contacted Mrs Jackson to raise concerns about the Claimant's behaviour. He described her as being emotional, erratic and paranoid. He said this was having an impact on colleagues and patients. Mr Farrington was reluctant for the Claimant to return to his department. Mrs Jackson advised Mr Farrington he should meet with the Claimant and explore this. Mr Farrington did so and a further occupational health assessment was arranged.

210. On 20 August 2020, the Claimant telephoned Mrs Jackson. Because she was in a meeting, Mrs Jackson was unable to answer this call. Afterwards, she left a voicemail for the Claimant. The Claimant called Mrs Jackson back. Whilst this second call came through when Mrs Jackson had left work, out of courtesy she answered it. The Claimant then began to repeat much of what she had said the previous day. Mrs Jackson explained she had now finished work and could not stay on the call because she had to look after her children. Whilst Mrs Jackson sought to be reassuring and sympathetic, the Claimant did not accept she was trying to help. Following a discussion about the most recent occupational health referral, the Claimant accused Mrs Jackson of "playing a dirty trick" on her. Mrs Jackson was very offended by this. Mrs Jackson became frustrated, she decided the conversation was not constructive and ended it.

211. On 21 August 2020, Mrs Jackson contacted Mrs Mahmood. She expressed her concerns about dealing with the Claimant and proposed an independent review. Her email included:

The workload this behaviour has generated, in addition to C attitude and unwillingness to accept advice, guidance, support or explanations, is having an impact on my ability to deliver what is required of me in my role, which is in turn having an impact on my own well-being. I find my interactions with her to be stressful, emotionally draining (due to the excessive level of emotional support and attention she requires) and cause me to feel distracted from being able to concentrate on other key areas of my work. I have prioritised her issues as best I can and tried to handle things to the best of my ability, however her reactions to me are beginning to feel personal. It's worth noting that whilst dealing with this case, I've also been trying to support my Groups in the recovery process from the pandemic, which has been a really challenging time for the organisation, however despite this, I have continued to prioritise her concerns and try to progress things in a timely fashion.

This email is not intended to devalue or undermine any legitimate concerns she may have, however she refuses to accept actions put in place to progress or address things appropriately. Likewise, she refuses to accept that other staff also have the right to raise their concerns and have them taken seriously. She often takes what is said to her negatively, making it difficult to have a mature conversation and find effective resolutions. The effect that her behaviours have had on me personally has had a direct impact on how I have recently responded to her during a phone call, which lead me to politely but assertively terminate the call.

I feel the level of attention C requires from the organisation is excessive and unreasonable. Whilst I sympathise with her difficulties (which we have taken seriously and done our best to support), I feel that the amount of management time, both within HR and managers/individuals outside of HR, is disproportionate and unsustainable, has no insight into her own actions/behaviours and doesn't take ownership for following up or accepting the support put in place for her. Agreed actions made with are subsequently disputed or she changes her mind, meaning that the efforts put in place to address matters are wasted.

Myself and my colleagues have dedicated a huge amount of effort to try and progress this case effectively and in a timely fashion, however based on conversations I have had with and her continued actions and behaviour, I'm increasingly concerned that it is unlikely that anything we put in place will satisfy C.

212. By an email of 23 August 2022 to Mr Lewis, the Claimant made further complaints, including about Mrs Jackson and their recent conversation.

<u>September 2020</u>

213. As Mrs Jackson was now a subject of the Claimant's complaints, Mrs Mahmood took over the task of dealing with this. She reviewed a great deal of correspondence and wrote to the Claimant on 17 September 2020. Mrs Mahmood began by apologising for the time taken to confirm the way forward. The letter listed various items of correspondence in which the Claimant had made complaints. Mrs Mahmood had decided to commission a formal investigation under the Respondent's Dignity at Work policy ("DAW"). She set out the various complaints made by the Claimant this would explore and identified specific information the Claimant was required to provide in order to

facilitate this, namely the specifics of what was said or done, when and by whom. Mrs Mahmood also identified various matters that would not be included within the scope of the DAW investigation, namely: any matter which had already been addressed as part of a DAW or grievance investigation; the 31 December 2019 Mrs Williams matter as it had been dealt with under the disciplinary procedure; the Claimant's complaints about the sickness absence management process because she had already been given a response; and the Claimant's very recent complaint about Jenny Hamlett (one of the housekeepers) on the basis she had done no more than raise concerns about the Claimant's behaviour and well-being in good faith and confidence to her line manager. Mrs Mahmood said that in light of the Claimant's concerns about the investigation into the breakdown of relationships with her own management team, this would be paused until the Claimant's other complaints had been investigated.

214. The Claimant characterises Mrs Mahmood's approach as "picking and choosing". To the extent this form of words is intended to convey that what was done was arbitrary and unfair, we strongly disagree. Most of that which the Claimant complained about was to be looked into. Proper reasons were given for why some matters were not included. Mrs Mahmood set out her rationale in this letter and has developed the points in her witness statement. She was endeavouring to find an appropriate and proportionate way of dealing with a vast, complex and ever expanding array of complaints from the Claimant. Her approach was eminently reasonable.

215. The further information was required from the Claimant by 1 October 2020. A meeting to discuss and agree terms of reference for the investigation was proposed for 14 October 2020. The Claimant was asked to confirm she would attend this. Mrs Mahmood reminded the Claimant of the various counselling and support services that were available to her from the Respondent. Mrs Mahmood also asked the Claimant to limit the frequency of her correspondence and direct that only to those within the body of that letter. The Claimant was advised that if she did not do so her correspondence may not be responded to.

<u>October 2020</u>

216. Mrs Mahmood wrote to the Claimant again on 9 October 2020. In the absence of the Claimant having provided the required further information or confirmed her attendance at the meeting, the investigation would be based upon the content of Mrs Mahmood's earlier letter. The Claimant was asked to send any information to Mrs Mahmood's PA, whose email address was provided. In the event nothing was received by 12 October 2020, then the meeting on 14 October 2020 would be cancelled.

217. The Claimant replied by email on 12 October 2020, saying she had only just received Mrs Mahmood's letters. The Claimant has repeatedly complained of not receiving emails or postal correspondence, despite them being sent correctly. This occurred not only during her employment but also in the course of this litigation. We do not accept the Claimant's explanation of this, namely the Respondent is at fault for sending this material to the wrong address. As such, the difficulty remains unexplained. In her reply on 12 October 2020, the Claimant said she was dealing with various important matters, including a bereavement

and would not be able to respond that day. She said she was unprepared for a meeting on 14 October 2020.

218. This matter was passed to Mrs Bromage-Llewellyn to commission an investigation. She received HR support from Mrs Cowin

219. Mrs Bromage–Llewellyn wrote to the Claimant on 20 October 2020, expressing surprise at the Claimant not receiving the correspondence previously sent. She set out her understanding of this. Nonetheless, she agreed to postpone the proposed meeting to 29 October 2020. She reiterated the matters that were and were not within scope. Attached to the letter was a table, which the Claimant might complete by the addition of relevant factual details such as "details of the rumour/what was said".

220. No further information having been received, on 27 October 2020 Mrs Cowin telephoned the Claimant. The Claimant asked for the meeting to be postponed again, saying she had been given insufficient notice. Mrs Cowin disagreed with this and said the Claimant could either provide the requested information in writing or attend the meeting, the latter being preferable because it would allow for clarification to be sought if what the Claimant said was unclear. The Claimant said she would do both.

221. On 28 October 2020, the Claimant hand-delivered 23 pages of manuscript notes to the Respondent. Mrs Cowin reviewed this and found it difficult to follow. The Claimant had not completed the table provided, she instead wrote at length in her usual style. Mrs Cowin worked through this material and sought to extract relevant details, which she then put into a table for Mrs Bromage-Llewellyn.

222. On the morning of 29 October 2020, the Claimant sent an email to David Carruthers of the Respondent. This included a complaint that Mrs Mahmood was not dealing with her complaints properly and had chosen the ones she was willing to look at. Whilst the Claimant asserts she made a further postponement request and was told the meeting would go ahead in her absence if she did not attend, this does not appear to be corroborated by the contemporaneous documentary evidence. The Claimant does not refer to this request in her email that morning. Nor was it mentioned at the meeting which took place, shortly thereafter, a transcript of which was included in the Tribunal hearing bundle. We are not satisfied there was a further postponement request that morning or that it was responded to as alleged.

223. The meeting went ahead on 29 October 2020 with Mrs Bromage-Llewellyn and Mrs Cowin. The Claimant attended. She referred to the long document she had delivered the day before. She in turn was referred to the table of complaints. There was a very lengthy discussion about the Claimant's various complaints, including what would and would not be in scope for the investigation.

<u>November 2020</u>

224. On 3 November 2020, the Claimant sent a text message saying she was concerned about how the grievances were being handled and things were being missed out.

225. On 6 November 2020, the Claimant sent a text message complaining about emails being sent when she could not access these and had requested to be allowed to collect any letters.

226. The Claimant sent various further emails, on 14, 15, 17, 19 and 22 November 2020 with additional information about her complaints.

227. Draft terms of reference were sent to the Claimant on 23 November 2020, by way of a lengthy letter into which relevant sections of the updated table had been inserted. The Claimant was asked to proofread the terms of reference and revert with any corrections or further information by 4 December 2020.

228. The Claimant sent further emails on 24, 25 & 26 November 2020. She did not, however, provide any amendments or corrections to the terms of reference she had been asked to review.

Laptop

229. The Claimant alleges that in November 2020, Mrs Jackson was responsible for her not having a laptop. Mrs Jackson gave evidence on this point, to the effect that by November 2020 she was no longer involved in supporting the Claimant and had nothing to do with her access to IT equipment and whether or not she had a laptop. Mrs Jackson was aware of there being an issue with the Claimant's IT but did not deal with that matter. The Claimant did not put to Mrs Jackson in cross-examination that she has issued any instruction in this regard. Indeed, when asking questions the Claimant's case appeared to shift to an unnamed HR manager advising the receiving department that it would have to pay for a laptop as HR would not.

230. We would not expect the Respondent's HR department to provide IT equipment (save of course for those working in HR) and there is no evidence of this having been promised. The receiving department for an employee would, ordinarily, be responsible for giving that person the tools necessary to do their job.

December 2020

231. Mrs Cowin sent text messages to the Claimant on 3 and 8 December 2020, chasing any amendments she wished to make to the terms of reference.

232. The Claimant sent a further email on 9 December 2020.

233. On 12 December 2020, the Claimant emailed saying that Y had attended the Respondent's premises to receive treatment and was talking about her with members of staff. The Claimant did not name the members of staff, nor did she provide details of what Y said to them. Mrs Bromage-Llewellyn replied explaining that Y was still entitled to access the hospital for treatment as a patient.

Terms of Reference

234. The terms of reference for the investigation were then sent to Zoe Wood of Ibex Gale, an external provider who would be conducting the investigation:

1. Whether the Trust's response and handling of concerns raised by C in respect of Y was appropriate, specifically:

a. The actions taken by Glynis Fenner, Trust Bank Manager, and Sue Brettle, Human Resources Manager following a complaint raised on 29 August 2018;

b. The actions taken by Andy Payne following a complaint raised on 23 August 2019;

c. Failing to provide C with an update or feedback on how her concerns were being addressed until September 2020.

2) The investigator is to consider the following complaints under the Trust's Dignity at Work Policy:

a. Between June and August 2018, rumours spread by Esther Brennan and Caroline Dawes from Ward Services including a reference to Y "banging" C;

b. On 5th July 2019 Esther Brennan tried to cause an accident in paediatric outpatients;

c. In 2019, did Caroline Dawes attempt to block C from accessing the lift by standing in front of the lift doors?

d. On / around 18/19 November 2019, did Julie Lovesey spread rumours about C including rumours of a sexual nature, obtain telephone numbers of people who were close to C to get them to "shut" her up and make false Facebook posts?

e. On 20 July 2020, was Glenn Bradnick aggressive towards C when collecting the bulk trolley after breakfast? Specifically did Glenn use hostile body language and fling the door open?

f. On 21 July 2020, was Esther Brennan hostile towards C when she came out of the lift?

g. On 27 or 28 July 2020, did Esther Brennan say to Lisa Hamlett "be careful of C she could replace you?"

h. On 29 July 2020, was Glenn Bradnick hostile to C when she was trying to leave Newton 1 and did he attempt to block C from passing him?

i. Did Esther Brennan spread rumours on Facebook / Facebook Messenger that C performed sexual acts on Y

j. Did Glenn Bradnick talk about C to other members of staff, specifically claiming that was harassing and claiming that he had seen an image of C banging on Y front door

k. On 1 September 2020, did Jenny Hamlett inform Dean Farrington that C had dug up her mother's grave?

l. On 18 October 2020, did Ann Davis post laughing emojis in response to Y comments on Facebook made on 18 October 2020?

3) Whether the Trust carried out the Band 1 to Band 3 transition appropriately in C's case, specifically in respect of C's proposed working location.

4) Whether Frances Jackson, HR Business Partner, blocked B' complaints, specifically:

a. On 26 June 2020, did Frances Jackson ignore C' request to appeal the grievance into Carol Williams' conduct?

b. On 7 July 2020, did Frances Jackson ignore C's emails and requests to address the complaints about malicious rumours and harassment in the workplace?

c. On 1 September 2020, did Frances Jackson ignore C's request to appeal the decision not to investigate Jenny Hamlett for spreading malicious rumours to Dean Farrington?

d. On 2 September 2020, did Frances Jackson refuse to allow X to address complaints about malicious rumours and harassment, and ignore C's emails?

235. Notwithstanding an initial view having been reached by the Respondent that the Claimant's complaint against Ms Hamlett would not be investigated, following the Claimant's representations this was included. Furthermore, whilst Mrs Williams' conduct on 31 December 2019 was not included in the investigation, the refusal of a right of appeal against the decision not to take disciplinary action was.

Investigation Report

236. Mrs Wood provided her report in March 2021. It ran to 554 pages. She interviewed: Mrs Jackson; Mrs Fenner, Mr Payne, Mrs Brennan, Mrs Dawes; Mr Bradnick; Mr Farrington; Ms Lovesey and Ms Hamlett. Ms Brettle was approached but declined to participate. A substantial body of documents were obtained, considered and appended to the report.

237. Ms Wood did not interview the Claimant. Despite making numerous attempts, no date for an interview could be agreed. Indeed, Mrs Wood included a section in her report dealing with this unsuccessful endeavour. Interviews were proposed for 25 January 2021, 3 February 2021, 26 February 2021 and 8 March 2021. None of these dates were agreed, the Claimant saying she had other commitments or insufficient time to prepare. Mrs Cowin became involved in this exercise, sending text messages to the Claimant explaining that Ms Wood wished to meet her and providing relevant contact details. As this became more protracted, Mrs Cowin and Mrs Bromage-Llewellyn came to the view that a sufficient opportunity to participate had been offered and it was not appropriate to continue to postpone the investigation. This position was conveyed to the Claimant by text message and she was encouraged to attend for interview. Mrs Cowin told her she could do so by telephone or video.

238. Ms Wood included a copy of the terms of reference and summarised the matters she was investigating in the following way:

238.1 Whether the Trust's response and handling of concerns raised by C in respect of Y were appropriate;

238.2 3.2 Complaints raised by C under the Trust's Dignity at Work Policy ranging from June 2019 to October 2020;

238.3 Whether the Trust carried out the Band 1 to Band 2 transition appropriately in C case, specifically in respect of C's proposed working location;

238.4 3.4 Whether Frances Jackson, HR Business Partner, blocked C complaints.

239. The report prepared by Ms Wood was very thorough. Her analysis of the response to Claimant's concerns about Y began from the point at which she spoke with Mrs Fenner on 30 August 2018. The Claimant's various complaints about her colleagues began with allegation (a) that Mrs Brendan and Mrs Dawes were spreading rumours of Y "banging" the Claimant and ran through to allegation (l) that Mrs Davis put laughing emojis next to a Facebook post made by Y in October 2020. The band 2 transition process was explored, as were Mrs Jackson's dealings with the Claimant.

240. Ms Wood did not find any of the Claimant's complaints to be substantiated. She identified the relevant evidence in each case and explained how her conclusion had been reached. More broadly, Ms Wood observed:

> **191 There is a considerable history of C raising allegations with various people in the Trust, including her line manager (AP), with various members of the Human Resources Department (including DD, SB and FJ), with SW and also sending a number of emails to the CEO. Many of these allegations are duplicated and repeated over time and there is evidence that C appears to change her mind on how she wishes these to be dealt with; confirming her agreement with a particular course of action or acknowledging it has been dealt with, and then later claiming her concerns have not been dealt with or she has been 'blocked' or unsupported in her complaints. C also fails to provide evidence to support her allegations.**
>
> **[…]**
>
> **201 Many of C's complaints appear to be completely unfounded, or at best a complete misinterpretation of events. In some examples there is evidence to indicate that her complaints might be retaliatory; particularly those she has made against CW, AP, JC, JH and FJ, where it is possible to draw a connection between C not liking an outcome or a seemingly reasonable course of action and C submitting a formal complaint against that person, but then failing to engage with the proper process to resolve the issue.**
>
> **202 C's failure to engage in the normal Trust processes to address her concerns and instead continually escalating her concerns, including emails to the Chief Executive, is unhelpful and there is evidence that this has eroded the relationships she has with the management team where she is substantively employed, who have raised formal concerns in terms of their trust and confidence to work with C in the future.**

241. In light of the material we have seen, Ms Wood's observations do not appear unreasonable.

242. Mrs Bromage-Llewellyn carefully considered Ms Wood's report and decided to adopt her findings. She wrote to the Claimant providing an outcome to the dignity at work / grievance process on 26 April 2021. None of the Claimant's complaints were upheld.

243. The Claimant's appeal against this outcome was heard on 31 May 2022. Whilst this was not upheld, the appeal officer, Dave Baker, Chief Strategy Officer, explored various measures which might assist the Claimant at work. By that stage, she was undertaking a role in the Microbiology Department.

244. Whilst there are many other matters about which the parties disagree, these fall outwith the claims we are required to determine.

Law

Direct Discrimination

245. In the employment field and so far as material, section 39 of **the Equality Act 2010** ("EqA") provides:

> **(2) An employer (A) must not discriminate against an employee of A's (B) -**
>
> **(a) as to B's terms of employment;**
>
> **(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;**
>
> **(c) by dismissing B;**
>
> **(d) by subjecting B to any other detriment.**

246. As to the meaning of any other detriment, the employee must establish that by reason of the act or acts complained of a reasonable worker might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment for these purposes; see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL**.

247. EqA section 13(1) provides:

> **(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.**

248. The Tribunal must consider whether:

248.1 the claimant received less favourable treatment;

248.2 if so, whether that was because of a protected characteristic.

249. The question of whether there was less favourable treatment is answered by comparing the way in which the claimant was treated with the way in which others have been treated, or would have been treated. This exercise may involve looking at the treatment of a real comparator, or how a hypothetical comparator is likely to have been treated. In making this comparison we must be sure to compare like with like and particular to apply EqA section 23(1), which provides:

> **(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.**

250. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless by of assistance since it may help to inform a finding of how a hypothetical comparator would have been treated.

251. As to whether any less favourable treatment was because of the claimant's protected characteristic:

251.1 direct evidence of discrimination is rare and it will frequently be necessary for employment tribunals to draw inferences from the primary facts;

251.2 if we are satisfied that the claimant's protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason;

252. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case is may be sufficient to answer the "reason why" question - why did the claimant receive the treatment complained of.

253. The burden of proof is addressed in EqA section 136, which so far as material provides:

> **(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision occurred.**

254. When considering whether the claimant has satisfied the initial burden of proving facts from which a Tribunal might find discrimination, the Tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent; **see Laing v Manchester City Council [2006] IRLR 748 EAT**.

255. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden; see **Madarassy v Nomura [2007] IRLR 246 CA**.

256. The burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see **Martin v Devonshires Solicitors [2011] IRLR 352 EAT**, per Underhill P:

> **39. This submission betrays a misconception which has become all too common about the role of the burden of proof provisions in discrimination cases. Those provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination generally, that is, facts about the respondent's motivation (in the sense defined above) because of the notorious difficulty of knowing what goes on inside someone else's head "the devil himself knoweth not the mind of man" (per Brian CJ, YB 17 Ed IV f.1, pl. 2). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law […]**

Harassment

257. Insofar as material, EqA section 26 provides:

> **(1) A person (A) harasses another (B) if—**
> **(a) A engages in unwanted conduct related to a relevant protected characteristic, and**
> **(b) the conduct has the purpose or effect of—**
> **(i)violating B's dignity, or**
> **(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**
>
> **(2) A also harasses B if—**
> **(a) A engages in unwanted conduct of a sexual nature, and**
> **(b) the conduct has the purpose or effect referred to in subsection (1)(b).**
>
> **(3) A also harasses B if—**
> **(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,**
> **(b) the conduct has the purpose or effect referred to in subsection (1)(b), and**
> **(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.**
>
> **(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—**
> **(a)the perception of B;**
> **(b)the other circumstances of the case;**
> **(c)whether it is reasonable for the conduct to have that effect.**

258. Whilst the unwanted conduct need not be done 'on the grounds of' or 'because of', in the sense of being causally linked to, a protected characteristic in order to amount to harassment, the need for that conduct be 'related to' the protected characteristic does require a "connection or association" with that; see **Regina (Equal Opportunities Commission) v Secretary of State for Trade and Industry [2007] ICR 1234 QBD**. Notwithstanding it was decided under the prior

legislation including the formulation "on the grounds of", the observations made by by the EAT in **Nazir v Asim [2010] ICR 1225** may still be of some relevance:

> **69 We wish to emphasise this last question. The provisions to which we have referred find their place in legislation concerned with equality. It is not the purpose of such legislation to address all forms of bullying or anti-social behaviour in the workplace. The legislation therefore does not prohibit all harassment, still less every argument or dispute in the workplace; it is concerned only with harassment which is related to a characteristic protected by equality law—such as a person's race and gender.**

259. In relation to the proscribed effect, although C's perception must be taken into account, the test is not a subjective one satisfied merely because C thinks it is. The ET must reach a conclusion that the found conduct reasonably brought about the effect; see **Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT**.

260. Guidance on the threshold for conduct satisfying the statutory definition was given by the EAT in **Betsi Cadwaladr University Health Board v Hughes [2014] 2 WLUK 991**; per Langstaff P:

> **10. Next, it was pointed out by Elias LJ in the case of Grant v HM Land Registry [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:**
>
> > **"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."**
>
> **11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:**
>
> > **"..not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."**
>
> **12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.**

<u>Victimisation</u>

261. So far as material, EqA section 27 provides:

> **Victimisation**

> **(1) A person (A) victimises another person (B) if A subjects B to a detriment because—**
>
> **(a) B does a protected act, or**
>
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act—**
>
> **(a) bringing proceedings under this Act;**
>
> **(b) giving evidence or information in connection with proceedings under this Act;**
>
> **(c) doing any other thing for the purposes of or in connection with this Act;**
>
> **(d) making an allegation (whether or not express) that A or another person has contravened this Act.**
>
> **(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.**
>
> **[…]**

262. Guidance on separability in victimisation cases was provided in **Martin v Devonshires Solicitors [2011] ICR 352 EAT**, per Underhill P:

> **22 We prefer to approach the question first as one of principle, and without reference to the complex case law which has developed in this area. The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the manner of the complaint. Take the case of an employee who makes, in good faith, a complaint of discrimination but couches it in terms of violent racial abuse of the manager alleged to be responsible; or who accompanies a genuine complaint with threats of violence; or who insists on making it by ringing the managing director at home at 3 am. In such cases it is neither artificial nor contrary to the policy of the anti-victimisation provisions for the employer to say "I am taking action against you not because you have complained of discrimination but because of the way in which you did it". Indeed it would be extraordinary if those provisions gave employees absolute immunity in respect of anything said or done in the context of a protected complaint. (What is essentially this distinction has been recognised in principle–though rejected on the facts–in two appeals involving the parallel case of claims by employees disciplined for taking part in trade union activities: see Lyon v St James Press Ltd [1976] ICR 413 ("wholly unreasonable, extraneous or malicious acts": see per Phillips J at p 419C—D) and Bass Taverns Ltd v Burgess [1995] IRLR 596.) Of course**

> **such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.**

Vicarious Liability

263. An employer will be vicariously liable for the discriminatory acts of its employees where they are done in the course of employment. Whereas at one time the test appeared to depend upon whether or not the acts complained of amounted to an improper or unauthorised mode of doing that which the wrongdoer was employed to do, the House of Lords in **Lister v Hesley Hall Ltd [2001] ICR 665** ruled the correct test was whether the wrongful acts were so closely connected with the employment that it was fair and just to hold the employer vicariously liable, per Lord Steyn:

> **25. In my view the approach of the Court of Appeal in Trotman v North Yorkshire County Council [1999] LGR 584 was wrong. It resulted in the case being treated as one of the employment furnishing a mere opportunity to commit the sexual abuse. The reality was that the county council were responsible for the care of the vulnerable children and employed the deputy headmaster to carry out that duty on its behalf. And the sexual abuse took place while the employee was engaged in duties at the very time and place demanded by his employment. The connection between the employment and the torts was very close. I would overrule Trotman v North Yorkshire County Council.**
>
> **[…]**
>
> **28. Employing the traditional methodology of English law, I am satisfied that in the case of the appeals under consideration the evidence showed that the employers entrusted the care of the children in Axeholme House to the warden. The question is whether the warden's torts were so closely connected with his employment that it would be fair and just to hold the employers vicariously liable. On the facts of the case the answer is yes. After all, the sexual abuse was inextricably interwoven with the carrying out by the warden of his duties in Axeholme House. Matters of degree arise. But the present cases clearly fall on the side of vicarious liability.**

264. One issue that has arisen in the earlier cases is vicarious liability for wrongs done at work-related social functions; see **Chief Constable of Lincolnshire Police v Stubbs and Others [1999] ICR 547 EAT** per Morison J:

> **We turn to the second point. We also reject Mr. Bowers's submissions on the proper interpretation of "course of his employment." We concur with the findings of the industrial tribunal, that the two incidents referred to, although "social events" away from the police station, were extensions of the work place. Both incidents were social gatherings involving officers**

> **either immediately after work or for an organised leaving party. They come within the definition of course of employment, as recently interpreted by the Court of Appeal in Jones v. Tower Boot Co. Ltd. [1997] I.C.R. 254 and Waters v. Commissioner of Police of the Metropolis [1997] I.C.R.1073 . It would have been different as it seems to us had the discriminatory acts occurred during a chance meeting between Detective Sergeant Walker and the applicant at a supermarket, for example, but, when there is a social gathering of work colleagues such as there was in this case, it is entirely appropriate for the tribunal to consider whether or not the circumstances show that what was occurring was an extension of their employment. It seems to us that each case will depend upon its own facts. The borderline may be difficult to find. It is a question of the good exercise of judgment by an industrial jury. Whether a person is or is not on duty, and whether or not the conduct occurred on the employer's premises, are but two of the factors which will need to be considered. […]**

265. The dividing line in such cases may not always be easy to draw. In **Livesey v Parker Merchanting [2004] UKEAT/0755/03/DA** the EAT overruled a first instance decision, where the Tribunal had made a distinction between harassment committed at the Respondent's Christmas party (for which liability was established) and harassing conduct during a car journey home, immediately afterwards; per HHJ Ansell:

> **20 As we have indicated above in the context of constructive dismissal, we are quite satisfied that the Tribunal were in error in seeking to draw a distinction between the events which occurred at the Christmas party and in the car immediately afterwards. […]**
>
> **21 Whilst we are loath to interfere with the good exercise of judgment by an industrial jury, as we have already indicated, we can find no justification for the distinction they sought to draw between events at the party and in the car immediately afterwards, bearing in mind the course of conduct that Mr Newton was clearly pursuing.**

<u>Vulnerable Parties and Witnesses</u>

266. The Presidential Guidance on Vulnerable Parties and Witnesses includes:

> **13.In any relevant case, and where and as appropriate, the tribunal and the parties should consider the vulnerability of a party or witness as part of the tribunal's case management powers. It would be sensible to consider whether a party's participation in the proceedings generally is likely to be diminished by reason of vulnerability. If so, and subject to the views of the parties, the tribunal might decide whether to make appropriate directions or orders to facilitate participation. It would also be sensible to consider whether the quality of the evidence given by a party or witness is likely to be diminished by reason of vulnerability. If so, and subject to the views of the witness and the parties, the tribunal might decide whether to make appropriate directions or orders to facilitate participation.**

267. The guidance identifies factors which may be relevant to the participation in proceedings of a vulnerable witness or party and gives examples (non-exhaustive) of measures which might be adopted to address particular difficulties which can arise. Necessary steps should be addressed at the case management

stage and a ground rules hearing may be appropriate. There will, however, be an ongoing need on the part of the Tribunal to consider such matters, including in the course of a final hearing.

268. In this area as many others, helpful guidance also provided in the **Equal Treatment Bench Book** ("ETBB"). Chapter 2 addresses the position of vulnerable adults and Chapter 4 mental disability. There is no universal definition of vulnerability for these purposes. In the family Court, factors pointing toward vulnerability are those which "are likely to diminish a party or witness's ability to participate in the case". Accordingly, the correct approach is a broad one, many different circumstances may cause or contribute to a party finding it difficult to participate effectively in the proceedings. The Tribunal must do what it can, reasonably and proportionately, to address and reduce or eliminate such difficulties, so as to ensure a fair trial.

269. The Tribunal must be alert to the demeanour of a party of witness, as this may be a signifier of vulnerability; per the **ETTB**:

> **The judiciary should be alert to vulnerability, even if not previously flagged up. Indicators may arise, for example, from someone's demeanour and language**

270. The Tribunal must also be careful not to rely upon such signifiers as reasons to doubt the credibility of a witness. The ETBB includes in the examples of reasonable adjustments that might be made:

> **• Not relying on demeanour / mode of expression such as apparent hesitation, pauses, avoidance of eye contact.**
>
> **• Being cautious about drawing adverse inferences from unusual or round-about use of words.**

Conclusion

Harassment Related to Sex & Direct Discrimination

> 2.1.1 From around October 2017 Y started to whistle from the corridor outside the claimant's room at work to attract her attention. There were daily phone calls and texts from Y to C, some at work. There were also visits from Y to C at work.

271. The Claimant and Y saw each other at work and spoke frequently. They became friends and this developed into an intimate personal relationship. They exchanged calls and messages, inside and outside of work. Whilst no particular occasion was shown on the evidence, Y may also have whistled. None of this was unwanted conduct. Nor did it have the proscribed purpose or effect. The harassment claim fails.

272. Y's approach to the Claimant may have been because of sex. There can, however, have been no objective detriment per **Shamoon** as a result of such conduct, given it was not unwanted by her. The direct discrimination claim fails.

> 2.1.2 In or around November 2017 Y made a comment to C that he had always liked her and liked to watch her go past his window as a child. He also made

reference to her wearing floral skirts and fetching toffee apples. These comments were made at work.

273. This alleged conduct did not occur. None of Y's actual conduct at this time was unwanted by the Claimant. The harassment claim fails. The direct discrimination claim fails.

2.1.3 In or around November 2017 C's colleagues in Ward Services, E Brennan and C Dawes started rumours about C and Y. Ms. Dawes said "you will never guess who Y is banging" whilst speaking to Ms. Davies in Ward Services in C's presence. Ms. Brennan said to C "is it true that he is banging you" and that "everyone knows". She was laughing and joking. C said it was untrue and she would report Ms. Brennan. Ms. Brennan then said Ms. Dawes would come after her.

274. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails.

2.1.4 In or around December 2017 Y's behaviour to C became more persistent. He invited her to his home and to parties. He started referring to her as "Babe" in messages and calls. Some of the invites were made at work and some of the messages and calls were made at work.

275. Y did invite the Claimant to his home and parties. He did refer to her as "babe" in messages and calls. None of this was unwanted conduct. Nor did it have the proscribed purpose or effect. The harassment claim fails.

276. Whilst Y's approach to the Claimant may have been because of sex, there was no objective detriment as the conduct that was not unwanted. The direct discrimination claim fails.

2.1.5 In or around April 2018 C was talking to distribution colleague, David (who was the manager of the distribution department) at work. Y stood next to C until David left as he was intimidated. David then shook his head at C.

277. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails.

2.1.6 In or around April 2018 C's colleagues, Ann Davies and Lisa Billingham made comments to her at work about Y, they were laughing and saying "He is in the room again".

278. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails.

2.1.7 In or around August 2018 Y's phone calls, messages and visits continued. Some of the calls, messages and visits took place at work. He left messages such as "bloody pick up your phone" (on 28 August 2018); "why aren't your answering me"; "you have had enough time to pick up your phone". C says she was living in fear by this stage.

279. Y did send text messages and leave voice messages in or similar to the terms alleged. His tone was modest. Even if unwanted by the Claimant, there is

nothing to show this related to sex or was conduct of a sexual nature. Nor was it because of sex. Separately, these messages amounted to mild chasing for a response and could not, objectively, have the proscribed purpose or effect, nor could they amount to a detriment.

280. Further and in any event, none of these messages were sent or left by Y in the course of his employment with the Respondent. We will set out our reasoning on this point more fully below.

281. The harassment claim fails. The direct discrimination claim fails.

2.1.8 On 19 August 2018 Y raped C at his home.

282. By August 2018, the Claimant and Y had been in a sexual relationship for approximately 8 months. The Claimant frequently stayed overnight at Y's home, in his bed. Beyond the mere fact of them both being employed by the Respondent, there is nothing whatsoever to link the events of that day with the workplace, whether the Claimant was raped as she alleges or had consensual sex with Y, as he maintains. Whilst the case law demonstrates the scope for an employer's potential vicarious liability does not end at the workplace door, there must be a close connection with work for such liability to be established. A number of the authorities deal with difficult borderline cases. What happened here, on either version of events, was very far removed from such circumstances. Even if the Claimant's version of events that day were accepted, Y's actions would not have been so closely connected with his employment such that it was just and fair to hold the Respondent vicariously liable for this.

283. There being no scope for the Respondent to be vicariously liable, both the harassment and direct discrimination claims fail.

2.1.9 On 28 August 2018 C left work and tried to attend her doctors but Y prevented her from attending. A further rape took place that night. Y sent C highly offensive text messages to her around this time. There were messages sent on that day at work when both she and Y were on duty. Y found out C was leaving work and so he left too. Even though Y was still on duty he got somebody to cover for him.

284. The alleged cover provided for Y so he might leave work, was not established. Even if it had been, there is nothing to show this was related to or because of sex. Nor could it, objectively, cause the proscribed effect or amount to a detriment.

285. Further and separately, one colleague providing cover for another so he might leave work would not begin to establish that a rape committed thereafter was so closely connected with Y's employment that it was just and fair to hold the Respondent vicariously liable for it. What happened here, on either version of events, was very far removed from Y's employment by the Respondent. Whilst messages were sent by Y, again this could not be something he did in the course of his employment. This was done pursuant to what was then a long-established intimate personal relationship between the Claimant and Y. There being no scope for the Respondent to be vicariously liable, both the harassment and direct discrimination claims fail.

2.1.10 From around September to December 2018 members of Portering staff (Glen Bragnett; W; G Higgins; S Smith) were avoiding her at work and making comments such as they did not like her and that she was the one who had been harassing Y and that they believed Y about the rape. They were smirking, looking down on her and judging her.

286. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails.

2.1.11 Between around October and December 2018 letters of support/statements in support of Y were made by W and Emma Lovsey and a catering member of staff in proceedings concerning a non molestation order against Y. These were sent to C in December 2018 and the content upset her.

287. This conduct was done. Whilst it may have been unwanted by the Claimant, it was not related to sex, of a sexual nature. Nor was this because of sex.

288. Even if this had the proscribed purpose or effect and the other elements of EqA section 26 had been shown, or this had been because of sex, it was not something done by W or Ms Lovesey in the course of their employment with the Respondent. These statements were made in Family Court legal proceedings. This had nothing to do with the workplace. Y resisted the Claimant's application for a non-molestation order. We were satisfied both witnesses gave these accounts honestly and to the best of their recollection at the time. We make no finding as to their accuracy. Once again, this is all very far removed from the workplace. We could not say the making of these statements was so closely connected with the employment or W and Ms Lovesey such that it was just and fair to hold the Respondent vicariously liable for this.

289. For these various reasons, the harassment claim fails. The direct discrimination claim also fails.

2.1.12 In around October 2018 Ms. Brennan was talking to a maintenance worker named John about C and in front of her. She was discussing Y and rape and smirking. C does not know John's surname but he worked with Stuart McGrainger. Ms. Brennan accused C of harassing Y and of having a relationship with another employee, Craig Smith.

290. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails.

2.1.13 In around October 2018 there was an incident involving Christine Jukes (the sister of W) in a changing room at work where she mentioned C reporting Y to police and it having caused problems.

291. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails.

2.1.14 From around December 2018 to 2021 maintenance workers (Stuart McGrainger, Martin and John) stopped talking to C and smirked and laughed at her as she passed.

292. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails

2.1.15 In around August 2019 there was an incident involving Glen Bragnett making statements on Newton 5 ward about C that she had not been raped but that she had been harassing Y and that there were images of C performing sexual acts. C says she was informed of this incident by a colleague, T Beckett.

293. This alleged conduct did not occur. The harassment claim fails. The direct discrimination claim fails.

2.1.16 On 9 March 2020 C attended a meeting with S Brettle, A Payne and E Fanos (union representative). During the meeting S Brettle told C her life was a mess. C subsequently complained, an apology was issued and F Jackson replaced S Brettle as HR adviser.

294. This conduct was done and was unwanted by the Claimant. It was not, however, related to sex or of a sexual nature. Nor was it because of sex. This comment was born of frustration on the part of Ms Brettle in dealing with the Claimant and referred to the apparent complexity of her circumstances within and without the workplace. Whilst it was rude and unprofessional no link with sex has been shown.

295. Separately, in connection with harassment, that claim would also have failed because the conduct did not have the proscribed purpose or effect. There is no evidence to show the requisite purpose and as far as the effect is concerned, we are mindful of the guidance provided by the higher courts. EqA section 26(1)(b)(i) and (ii) are cast in strong terms. We are not satisfied that an isolated loose remark, for which an apology was given almost immediately can, reasonably, have the proscribed effect.

296. The harassment claim fails. The direct discrimination claim fails.

2.1.17 Fail to protect the claimant from Y and the conduct identified above.

297. The Claimant has not shown a failure on the part of the Respondent to protect her from the conduct of Y or others.

298. As far as Y concerned, the Claimant did not make any complaint to the Respondent about his conduct prior to his arrest on allegations of rape. Thereafter, Y did not return to work for the Respondent. Although the Claimant referred to Y stalking her outside of the workplace, even if that were so (about which we make no finding) this is not something her employer could be expected to regulate or prevent. The Respondent did take measures to prevent Y from entering its premises to harass the Claimant. In particular, a safety plan was drawn up and agreed with the Claimant. This was implemented, with relevant information being provided to the Respondent's security department. There was an information breach, in that an email containing information about the need to look out for Y and / or his vehicle, was sent to Y. Even if this was done deliberately (about which we make no finding) it did not amount to a failure to protect the Claimant. It is not the case, for example, that Y having been made aware of the measures to prevent him from entering the hospital and harassing

the Claimant was, thereby, able to circumvent the same. Furthermore, it is apparent the disclosure of information in this regard was something about which Y complained and brought or intimated legal proceedings, which the Respondent settled. The only exception to the bar on Y attending the hospital, was when he did so as a patient. We did not understand the Claimant to complain about this. We are not, therefore, persuaded there was any failure by the Respondent to protect the Claimant from Y. They took the immediate step of barring him from hospital and although they discussed removing this bar with the Claimant, in the event it remained. Absent a criminal conviction or finding by the Respondent in disciplinary proceedings that Y was indeed guilty of rape, a permanent bar on him working for or attending the Respondent's premises (other than as a patient) was a strong response. Individuals are not usually denied further employment on the basis of unproven allegations.

299. As far as the conduct of her colleagues is concerned, we are satisfied the Respondent dealt with this insofar as it was, reasonably, able to. The arrest of Y by the police in the workplace on allegations of rape, would inevitably lead to some discussion of this and to expect otherwise is unrealistic. It does not follow, however, that colleagues were spreading "malicious rumours". The Claimant was asked, time and time again, by various officers of the Respondent, to provide specific information about her complaints in this regard, when this had happened, who had spoken and what they said. Very rarely did the Claimant provide any meaningful detail. Her complaints tended to be vague and without any witness or other evidence in support. More often than not, she appeared to be referring to what she had assumed or learned from others, rather than what she herself heard being said. We are satisfied, the Respondent made reasonable endeavours to investigate the Claimant's complaints in this regard and discourage its employees from discussing the matter.

300. Further and separately, the manner in which the Respondent dealt with these matters was not related to the Claimant's sex or of a sexual nature. Nor was this because of sex.

301. The conduct did not have the proscribed purpose or effect. Whilst we have no doubt that at times, the Claimant did at times, subjectively, feel intimidated or that the environment was hostile, this was not, objectively, reasonable. The vast body of complaints made by the Claimant, often in vague terms and pursued by her inconsistently, presented the Respondent with a formidable challenge in terms of both day-to-day management of the Claimant's employment and resolving her grievances. We are satisfied the Respondent did its best in these difficult circumstances. Whilst the Claimant was undoubtedly dissatisfied with this, it does not follow that it was reasonable for the conduct to have the proscribed effect.

302. The harassment claim fails. The direct discrimination claim fails.

2.1.18 Fail to take adequate steps to prevent the discrimination/harassment of C by Y and as identified above.

303. This allegation appears to overlap if not duplicate that which immediately preceded it. We repeat the observations made in connection with 2.1.17.

304. The harassment claim fails. The direct discrimination claim fails. As set out above, in almost all respects the less favourable treatment or conduct alleged did not occur. Where it did, this was not related to or because of sex. Finally, it did not, objectively, have the proscribed effect. The Claimant's perception that it did have that effect was not reasonable.

Protected Acts

4.1.1 In around November 2017 C reported the comments of Ms. Brennan and Ms. Dawes (see 2.1.3 above) to Ms. Williams verbally and asked her to speak with them.

305. There was no such report. The Claimant did not make any complaint of this sort until after Y was arrested for rape in August 2018.

4.1.2 In around November 2017 C also made reports to A Payne verbally

306. There was no such report. The Claimant did not make any complaint of this sort until after Y was arrested for rape in August 2018.

4.1.3 On or around 29/30 August 2018 C attended a meeting with the Trust Bank Manager and Sue Brettle from HR. This was at the Trust Bank offices in Trinity House, possibly on the 1st floor. The claimant reported what had happened with Y verbally and she showed some of the offensive text messages.

307. On or about 30 August 2018, the Claimant told Mrs Fenner and Ms Brettle that she had been raped. She did not show any text messages. We are not satisfied the Claimant did a protected act on that occasion or that the Respondent believed she had or may do so. She was not bringing proceedings under the Act, giving evidence or information in connection with such proceedings, doing any other thing for the purposes of or in connection with the Act, or alleging a contravention of the Act. What she did was to report a criminal offence that had taken place away from the workplace, at Y's home. The Claimant did not frame this as a complaint against her employer or as workplace discrimination. The circumstances did not remotely suggest it was something done by Y in the course of his employment. This nothing pointing toward Tribunal proceedings or even a grievance in this regard. A police investigation and criminal court would have seemed the obvious destination for this matters the Claimant disclosed.

4.1.4 In around September 2018 C verbally reported the actions of the Portering staff (see 2.1.10 above) to the Portering Manager, J Bradley.

308. The Claimant did complain about the porters. She said they were avoiding her and making comments, including that she was harassing Y.

309. This was a protected act. Mr Bradley is likely to have believed the Claimant either had done something under EqA by bringing this matter to him or may complain in that way if there was such untoward conduct. He was mindful of the need for sensitivity and gave guidance to his staff about avoiding discussion of this topic. Whilst we heard no evidence from Mr Bradley, we draw an inference he would have feared there may be an EqA complaint of some sort if the

Claimant believed she was being punished at work for having reported this matter.

4.1.5 On 23 August 2019 C raised a grievance in writing about the Glen Bragnett incident (see 2.1.15 above) and handed it to the Portering Manager and HR by hand.

310. The Claimant handed in two written grievance letters on this date. These included allegations that Y was using the Respondent's employees to harass her in the workplace. These involved her doing protected acts. It is likely that both Mr Bradley and officers in the Respondent's HR department construe this as the Claimant making an EqA complaint or that she may do in the future.

4.1.6 Between August and November 2020 C raised a further grievance complaining about the situation with Y and this was copied to Z's CEO.

311. The Claimant made various complaints during this period, some of which were copied to Mr Lewis. These included complaints that the Respondent was failing to protect the Claimant from harassment in the workplace by Y's colleagues who were being used by Y to this end. Again, these amounted to her doing protected acts and are likely to have been so construed by the Respondent.

Victimisation Detriments

4.3.1 No actions or outcomes were communicated to the claimant from the meeting on or around 29/30 August 2018.

312. The Claimant did no protected act at or prior to this meeting and her victimisation claim must fail for that reason. Further and alternatively, even if her report to Mrs Fenner and Ms Brettle had been a protected act or resulted in them believing the Claimant had done or may do a protected act, their response was not affected by that. The Claimant had not asked for any particular steps to be taken on this occasion and nor was she told or led to believe that an outcome would be communicated subsequently. The Respondent, not unreasonably, thought this was a matter for the police. Neither causation or detriment has been shown. The victimisation claim fails.

4.3.2 There was no response to the claimant's grievance of 23 August 2019.

313. There was a response to the Claimant's grievances of 23 August 2019. We have set out in our findings of fact, the various steps undertaken by the Respondent subsequent to this, by which it sought to investigate her many complaints and provide redress. For the reasons already given, this represented a considerable challenge. The Claimant's complaints were many and varied. Some of the things that she brought up were vague, inconsistent or otherwise difficult to understand. The Claimant changed her mind at times about whether she wished to pursue formal complaints. The response to her grievance was not a single step, rather there were many steps and several processes. At different times, this grievance and other grievances, were responded to orally or in writing. Explanatory correspondence, including detailed reports and formal outcome letters were provided. Where a matter was not taken forward or reopened, reasons were given for this. The response included numerous meetings, along with internal

and external investigations. The Claimant was also afforded a right of appeal, which she exercised, against the decision of Ms Bromage-Llewellyn. There was a response. The detriment is not shown. The victimisation claim fails.

4.3.3 On 29 November 2019 C returned to work and was called to a sickness review meeting with A Payne to discuss issues regarding “4 years sickness”. C was told she would be monitored. A Payne said they did not want to go along with this and it was driven by HR. The claimant says she felt the respondent wanted to get rid of her because she had made a complaint.

314. The Claimant was called to a 4-year sickness absence review meeting. This had nothing to do with any protected act. It was part of a broader process in which all employees with excessive sickness absence over the previous four years were called to such a meeting. The victimisation claim fails.

4.3.4 In around March 2020 the transition process started and C was informed that banding changes were in place and she was to be transferred to the Laundry area. This area was next to Portering and C felt this was putting her back in harm's way.

315. The Claimant was informed of the band 2 transition process. The change to her role necessary to upskill this did include work in the laundry area. This had nothing whatsoever to do with a protected act. Again it was part of a broader process affecting many employees, not just within the Respondent but nationally. The victimisation claim fails.

4.3.5 In around June 2020 F Jackson from HR prevented C from returning from work and kept her on sick leave so she self referred herself to Occupational Health to try to return to work.

316. The Claimant having been absent from 1 January 2020, by the end of June 2020 (i.e. six months) she wished to return very quickly. Mrs Jackson had met with the Claimant in order to understand her concerns and put in place appropriate measures, so that she might be able to return to work safely. Once a plan was arrived at, it had to be implemented. Unsurprisingly, the necessary steps took short time to complete and Mrs Jackson suggested putting back the Claimant’s return date by one-week. This could not be a detriment per **Shamoon**. Furthermore, this eminently sensible measure had nothing whatsoever to do with any protected act. The victimisation claim fails.

4.3.6 On 2 July 2020 C returned to work and was transferred to the ITU department. She was prevented from returning to her previous role by F Jackson from HR.

317. When the Claimant returned to work, this was not to her original position but to a temporary redeployment post. This arrangement was considered necessary as part of the safety plan, to ensure the Claimant returned to a safe place of work. Mrs Jackson also believed it was necessary because concerns had been raised by several managers, namely Mrs Clark, Mr Hughes, Mr Payne, Mrs Williams and Mrs Goodwin, which tended to suggest a breakdown in the working relationship with her existing management team. None of these individuals were party to the protected acts relied upon that we found were done or believed. No

causal link has been shown between Mrs Jackson's decision and the specific matters the Claimant has relied upon as showing protected acts. The Respondent wished to investigate whether there had been breakdown in relations between the Claimant and her managers. There was good reason to suppose this may be so, not only because of the complaints made by the managers but also because of the complaints coming in the opposite direction from the Claimant herself. There was a substantial history in this regard, which long predated any issue with Y. It is also true, the Claimant had previously raised complaints which were found to be without merit. A pattern of unmeritorious complaints is apt to damage trust and confidence. This factor is properly separable from whether or not such baseless allegations might fall under EqA. The redeployment of the Claimant was a temporary measure, for her protection and to allow for investigation.

318. The Claimant's victimisation claim fails. The temporary redeployment was not because the Claimant had done a protected act or because Mrs Jackson believed she had or may do one. Rather it was intended to allow for a safe return to work and because of the appearance of a breakdown in relations with her managers, which needed to be investigated. Redeployment was, therefore, a protective measure, as much for the Claimant as her managers. Nor was this step, objectively, a detriment.

4.3.7 In around November 2020 C was transferred to a role in the transport training department at City Hospital. This was unsuccessful as C was not provided with a laptop. F Jackson was responsible for this.

319. There appears to have been an issue with the Claimant not having a laptop in or about November 2020. This may have prevented her from doing her job, effectively or at all. Whilst the Claimant is under the impression it was the responsibility of the Respondent's HR department to provide her with such equipment, we can see no basis for that. There is nothing whatsoever to link this lack of IT with a protected act or it being believed by Mrs Jackson, or for that matter anyone else, that she had done or would do a protected act, as alleged. Mrs Jackson was no longer dealing with the Claimant's case by that stage in any event. The victimisation claim fails.

4.3.8 On 17 September 2020 C received a letter from F Mahmood about her grievances. The letter shows that the respondent was "picking and choosing" which grievances would be addressed.

320. The Claimant did receive a letter of this date. Mrs Mahmood summarised the Claimant's various complaints since July 2020 and how she proposed to deal with them. Mrs Mahmood did not restrict the scope of the investigation because she Claimant had done a protected act or Mr Mahmood believed she may do protected acts as alleged. This was not an arbitrary exercise, rather it was a reasonable attempt on the part of Mrs Mahmood to organise the matters complained of, identify any that would not go forward, whether because they had already been ruled upon or otherwise, and then put in place measures to investigate and adjudicate upon the remainder (the vast bulk).

321. Separately from the question of causation, Mrs Mahmood's decision did not constitute a detriment. The manner in which the Claimant raised complaints

made it difficult for the Respondent to deal with them. She made repetitive, overlapping complaints. She complained with vigour but without specificity. She directed her complaints to different personnel, across the management of the Respondent. As individuals sought to respond, invariably they would not do so to the Claimant's satisfaction and then they too would be the subject of complaints. She was inconsistent as to whether or not she wished to pursue matters. She would continue with matters already ruled upon. As matters proceeded, not only did she raise new complaints, she also reached further back into her employment history. Mrs Mahmood's attempt to deal with this complex body of material was a reasonable one. The Claimant could not as a result, reasonably, consider she was at a disadvantage in the workplace thereafter.

322. The victimisation claim fails.

4.3.9 On 29 October 2020 C complained about the F Mahmood letter and attended a meeting to discuss this. She was on funeral leave but was informed that if she did not attend then it would go ahead without her.

323. The Claimant did not make a request for the meeting of 29 October 2020 to be postponed because she was on funeral leave. The Respondent has no class of leave known as "funeral leave". The Claimant had been due to attend a meeting on 14 October 2020 and sought a postponement of this for several reasons, including that she had a funeral to attend. This postponement request was granted. The Claimant made a further postponement request on 27 October 2020, saying she had not been given enough notice. Ms Cowin did not agree. The Claimant said nothing about a funeral to Ms Cowin on this occasion. The Claimant did not seek a postponement at the meeting on 29 October or say she had been forced to attend.

324. The alleged detriment - I asked for a postponement to attend a funeral and was told if I did not attend the meeting would go ahead without me – did not occur. For the avoidance of doubt, however, it does not follow that such a position would have been unreasonable. Securing the Claimant's attendance at meetings was not always easy or successful. She frequently complained about not receiving correspondence, not having enough notice, her trade union representative being unavailable or having other commitments. Whilst an employer will be expected to make reasonable accommodations for an employee, a point may be reached when it can properly say if you do not attend the meeting will go ahead in your absence. Furthermore, there is no evidence to show that the arrangements made to meet with the Claimant in October 2020 were to any extent whatsoever affected by the Claimant having done a protected act or a belief on the part of Mrs Bromage Llewellyn, Mrs Cowin or anyone else, that she had or may do a protected act. The victimisation claim fails.

Burden of Proof

325. With respect to none of the claims set out above did the Claimant show facts from which in the absence of an explanation we could have found the contravention alleged. The burden of proof did not, therefore, shift. Further, separately and to the extent set out above, we made positive findings of fact about why the things complained of were done and these did not include to any extent whatsoever the unlawful reasons alleged.

Limitation

326. Given none of the Claimant's claims are well-founded, we do not need to address the jurisdictional questions with respect to time.

EJ Maxwell

Signed on: 8 December 2023