EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss M Kopec	**- V -**	British Academy of Jewellery Ltd

Heard at: London Central **On**: 9-18 September 2024

Before: Employment Judge Baty
Ms T Shaah
Mr T Liburd

Representation:

For the Claimant: In person
For the Respondent: Mr C Ocloo (employment consultant)

RESERVED JUDGMENT

1. The claimant's complaints of wrongful dismissal and of unauthorised deduction from wages were withdrawn by the claimant and dismissed by the tribunal.

2. The claimant's complaints of being subjected to a detriment by reason of having made a protected disclosure were presented out of time and it was reasonably practicable to have presented those complaints in time. The tribunal does not therefore have jurisdiction to hear those complaints and they are therefore dismissed. If the tribunal had had jurisdiction to hear those complaints, they would have failed.

3. The claimant's complaints of harassment related to religion or belief and/or race and of direct discrimination because of religion or belief and/or race at paragraphs 11.1.1-11.1.10 and 12.1.1-12.1.10 of the agreed list of issues and her complaints of a failure to make reasonable adjustments for disability at paragraphs 13.5.1-13.5.3 of the agreed list of issues were presented out of time and it is not just and equitable to extend time. The tribunal does not therefore have jurisdiction to hear those complaints and

they are therefore dismissed. If the tribunal had had jurisdiction to hear those complaints, they would have failed.

4. The claimant's complaint of a failure to allow the claimant to be accompanied for the purposes of section 10 of the Employment Relations Act 1999 was presented out of time and it was reasonably practicable to have presented it in time. The tribunal does not therefore have jurisdiction to hear this complaint and it is therefore dismissed. If the tribunal had had jurisdiction to hear this complaint, it would have failed.

5. The claimant's complaints of unfair dismissal, of automatically unfair dismissal by reason of having made a protected disclosure, of harassment related to religion or belief and/or race and of direct discrimination because of religion or belief and/or race at paragraphs 11.1.11-11.1.12 and 12.1.11-12.1.12 of the agreed list of issues, for a failure to make reasonable adjustments for disability at paragraphs 13.5.4-13.5.6 of the agreed list of issues, and for breach of contract were presented in time and the tribunal does have jurisdiction to hear them. However, all of these complaints fail.

REASONS

The complaints

1. On 1 April 2023, the claimant presented three claim forms to the employment tribunal (claim numbers 2204786/2023; 2204787/2023; and 2204788/2023). The three claims are identical in substance and contain various complaints. The respondent defended the complaints.

Previous case management of the claims

7 July 2023 preliminary hearing

2. At a preliminary hearing on 7 July 2023 before Employment Judge E Burns ("the July 2023 preliminary hearing"), it was identified that the reason why the claimant brought three separate claims was purely because she was unsure which of three addresses, which she had for the respondent, was the correct one. It was decided at the July 2023 preliminary hearing that the proceedings should continue under all three claim numbers to avoid any potential confusion arising if the claimant were to withdraw any of the claims. The claims were, therefore, consolidated and listed to be heard together. Any further reference in these reasons to "the claim" or "the claimant's claim" is a reference to all three claims.

3. The precise nature of the complaints under the claim forms was not clear. The complaints brought which EJ Burns identified and for which the tribunal might have jurisdiction were of: harassment related to religion or belief/race under section 26 of the Equality Act 2010 ("EQA"); direct discrimination because of religion or belief/race under section 13 of the EQA; unfair dismissal under

section 98 of the Employment Rights Act 1996 ("ERA"); for a failure to allow the claimant to be accompanied under section 10 of the Employment Relations Act 1999; various complaints of breach of contract (including a complaint of wrongful dismissal/for notice pay), several of which were allowed on amendment; and unauthorised deductions from wages. EJ Burns discussed and set out at the end of her note of the July 2023 preliminary hearing a list of issues of those complaints.

24 November 2023 preliminary hearing

4. The claimant sought to make further amendments to her claim. A further preliminary hearing for case management purposes took place before a different employment judge on 24 November 2023 ("the November 2023 preliminary hearing"). At that hearing, amendments were allowed to include complaints of automatically unfair dismissal by reason of having made a protected disclosure under section 103A ERA; detriment (victimisation) by reason of having made a protected disclosure under section 47B ERA; and a failure to make reasonable adjustments for disability under sections 20 and 21 EQA. The totality of the heads of claim brought and the list of issues to be determined in relation to those complaints was set out in the judge's note of that preliminary hearing which was ultimately sent to the parties (at pages 20-32 of that note). That section of the note, setting out the agreed complaints and issues, is annexed in full to these reasons for ease of reference.

5. It is a feature of this case that the claimant in particular has over the course of the proceedings sent a large amount of documentation and applications to the tribunal, both before and after the November 2023 preliminary hearing. That correspondence has, in turn, and as is commonplace, been dealt with by a number of different employment judges.

6. Unfortunately, for reasons unknown to this tribunal, the note of the November 2023 preliminary hearing was not sent to the parties for several months after the hearing. The claimant made a complaint about this. The note was in due course sent to the parties on 22 June 2024. The claimant then made a further complaint, alleging that the employment judge who signed off and sent the note of the November 2023 preliminary hearing was not in fact the judge who presided over that hearing and alleged that the judge who presided over the hearing was one of the many judges who responded to parts of the claimant's other correspondence/applications to the tribunal over the course of the proceedings. It is not for this tribunal to deal with that complaint, although it is worth noting that, as the note of the November 2023 preliminary hearing runs to 32 pages and involves a considerable amount of detail that would have been gleaned at the hearing, it would be extremely difficult, if not impossible, for a judge who had not attended the hearing to produce it. However, we mention it because, in the course of the many applications made by the claimant at this final hearing, she referenced this and asked the tribunal to reconsider decisions made in relation to these complaints, which the tribunal refused to do.

7. In addition, in the summer of 2024 the claimant made a judicial review application in the High Court about the London Central Employment Tribunal in connection with these matters.

Respondent's representation

8. Another feature of this case, and one which has been particularly unhelpful in terms of managing it, has been the deficiencies in the representation which the respondent has had. The respondent has throughout been represented by Peninsula, an employment consultancy firm. There have been numerous occasions on which the respondent's representatives did not comply with orders of the tribunal over the course of these proceedings. To be clear, although Mr Ocloo, who represented the respondent at this hearing, is employed by Peninsula, he had only had conduct of the case from the period starting a week prior to the commencement of this final hearing; he cannot, therefore, of course be responsible for the actions of Peninsula prior to that.

Ongoing case management prior to the final hearing

9. At various points during the proceedings, for example her application of 11 April 2024, the claimant accused the respondent of fabricating evidence. To be clear, as we were subsequently able to identify from hearing the evidence of the case, there was no substance to that allegation. However, on 6 June 2024, Employment Judge Nicolle made an order for the respondent to disclose all versions of the documents in question in connection with this allegation.

10. On 1 August 2024, and in response to an ongoing failure by the respondent to comply with various tribunals orders, Employment Judge Nash issued a strike out warning to the respondent for failing to comply with various tribunal orders made at the November 2023 preliminary hearing.

11. On 14 August 2024, the claimant replied, in further lengthy correspondence, objecting to the strike out proposal, and she requested a postponement of the final hearing until the judicial review process was concluded. She also raised the matter as part of her judicial review application, seeking urgent interim relief in connection with this; a High Court judge, refusing the application on 19 August 2024, pointed out to the claimant that the strike out warning issued by EJ Nash was in fact to the claimant's benefit. Although there was no response from the respondent's representatives to the tribunal's strike out warning, the response was ultimately not struck out.

12. As there had been no response from the respondent to his earlier order of 6 June 2024, and following a further application from the claimant of 22 August 2024, EJ Nicolle on 27 August 2024 issued an unless order to the respondent to comply with that order of 6 June 2024. Unfortunately, the date for compliance which was ultimately set out in the order which EJ Nicolle had made was 13 September 2024, which was part way through the final hearing, which commenced on 9 September 2024.

13. In light of the position generally, the large volume of correspondence and of the claimant's indication that she wanted the final hearing postponed, Regional Employment Judge Freer wrote to the parties on 2 September 2024 (a week before the final hearing was due to commence) as follows:

"Regional Employment Judge Freer has considered the latest position in this matter. The full merits hearing due to commence on 09 September 2024 will remain as listed. The parties are to attend prepared to proceed. It will then be at the absolute discretion of the hearing judge/panel to consider the outstanding matters and to decide how the matter will proceed having regard to the overriding objective and the interests of justice."

14. On the last working day before the hearing, Mr Ocloo, now representing the respondent, made an application to postpone the hearing on the basis that it was not trial ready. That application was outstanding at the beginning of the hearing itself.

15. The above represents only a fraction of the correspondence generated over the course of these proceedings and is set out only because it is relevant to issues or decisions made by this tribunal at the final hearing. The tribunal's file in relation to this claim is therefore vast. As noted, it is the claimant who was responsible for producing or generating the vast majority of this correspondence. There is very little correspondence from the respondent which, as noted, did not comply with or respond to many of the tribunal's orders and directions. However, that failure in itself is a significant contributory cause of the excessive correspondence, because compliance with the tribunal's orders and directions would have removed the need for much of the correspondence from the tribunal. It is not, therefore, only the approach to litigation taken by the claimant which is responsible for the huge amount of correspondence and the disproportionately high need for judicial involvement in managing these proceedings.

The final hearing

16. This final hearing took place in person at London Central.

Beginning of the final hearing

17. It took until 2:15 PM on the first day of the hearing to deal with all the preliminary matters. Many of these are referenced below. The tribunal took the view that it was necessary to deal with several of these matters before deciding whether it was possible to proceed with the hearing and to determine the postponement application. The order of matters set out below does not therefore reflect the order in which all of the individual matters were dealt with at the hearing, but is set out as it is for ease of reference.

Adjustments

Breaks

18. The judge asked the parties about adjustments at the start of the hearing. The judge had noted that this was a disability discrimination case in part and that

there had been some correspondence from the claimant in advance of the hearing in relation to adjustments.

19. The judge asked the claimant what adjustments might be necessary to enable her properly to participate in the hearing. On discussion, the only adjustment identified was for the claimant to be able to take breaks when needed.

20. For the claimant's benefit, the judge explained what the normal timings were for a tribunal day, starting at 10 AM and ending at around 4:30 PM, with roughly an hour for lunch in the middle and a short break mid-morning and a short break mid-afternoon. However, he explained that the tribunal could take more breaks than that if needed. The claimant indicated that, whilst the pattern outlined was not in principle problematic, she would like to be able to ask for more breaks as and when she needed them. The judge said that this would be fine.

21. The claimant did on occasion ask for an additional break or an extended break and this was always permitted. However, for the most part, it was possible for the hearing to be conducted within the time framework outlined above.

Paper

22. The claimant also asked if she could have a blank piece of paper with her during her evidence in order to take notes. There was no objection to this from Mr Ocloo and the tribunal allowed it. The claimant did have paper with her during her evidence although, in practice, she did not use it a great deal. The claimant did, however, have a number of friends present at the tribunal during the hearing and several of them took notes, presumably at least in part for the claimant's benefit.

Language

23. The claimant was a litigant in person. At the start of the hearing, for the claimant's benefit, the judge explained that it was very common for litigants to represent themselves in employment tribunal proceedings and that the tribunal was well used to adjusting for that; that he would try to avoid using legal language to the greatest extent possible; that, where he did need to use legal language, he would explain it; but that, if there was anything which the claimant did not follow or understand, she should ask and the judge would explain. The judge adopted this approach throughout the hearing. On the rare occasions when the claimant asked for a term or a word to be explained, the judge immediately explained it.

24. The claimant is a Polish national. However, her command of English is excellent. She was very well prepared and organised in the presentation of her case. She was able to cross-examine in English numerous witnesses of the respondent over a number of days. At no stage did the tribunal have any concern that the claimant could not fully and properly participate in the hearing because of

any language difficulties, nor did the claimant at any stage suggest that that was the case.

Recordings

25. Towards the start of the hearing, Mr Ocloo raised the point that the claimant had covertly recorded a large number of internal meetings at the respondent (see below for further details) and he expressed concern as to whether or not she might seek to record the employment tribunal hearing.

26. The judge therefore explained that it was not permitted for a party to record an employment tribunal hearing and that doing so could amount to a contempt of court and a criminal offence. He said that this hearing was, however, being recorded by the tribunal service and that, after the hearing, a party could request a transcript of the hearing, although a fee was normally payable.

The issues

27. As noted, the issues to be determined at the final hearing had been set out in the note of the November 2023 preliminary hearing.

28. At the start of the hearing, the judge explored with the parties whether or not these remained the issues for the tribunal to determine. The parties confirmed that they were save in a number of respects.

29. First, the claimant said that she was not bringing a complaint of wrongful dismissal and had never intended to do so. The judge explained for the claimant's benefit as a litigant in person what a wrongful dismissal/breach of contract/notice pay complaint was. He noted that the claimant was bringing a complaint of unfair dismissal and suggesting that the reason for her dismissal was other than the potentially fair reason of gross misconduct which the respondent said was the reason for dismissal. He noted that, in the absence of a reason for terminating the claimant's employment contract without notice such as gross misconduct, a wrongful dismissal complaint was likely to succeed. He explained that, in terms of evidence, it would not require additional time to hear a complaint of wrongful dismissal as the factual matters were essentially the same as those which would need to be explored for the unfair dismissal and automatically unfair dismissal complaints in any case. He asked her if she was, therefore, really sure that she wanted to withdraw the wrongful dismissal complaint. Although she did not give a specific reason why, the claimant was adamant that she did not want to pursue a wrongful dismissal complaint and that she was withdrawing it. On that basis, the judge noted the withdrawal and the tribunal dismissed the wrongful dismissal complaint.

30. Furthermore, on the second day of the hearing, the claimant withdrew her complaints for unauthorised deductions from wages. These complaints, set out in paragraph 15 of the list of issues, were about allegations that the claimant had not been paid for additional hours which she worked and was not paid full pay when on sick leave. The claimant acknowledged that, while she still thought it was unfair, her contract did not provide for her to be paid additional hours which

she may have worked above her contractual hours and provided that she was paid only statutory sick pay when she was on sick leave. On that basis, there would be no contractual entitlement to the sums claimed. The claimant therefore withdrew these complaints and the tribunal dismissed them.

31. Therefore, the complaints listed at paragraphs 130.2 and 130.9 and the issues set out at paragraphs 7 and 8 (Wrongful dismissal/Notice pay) and paragraph 15 (Unauthorised deductions from wages) of the attached list of issues fell away and did not fall to be determined by the tribunal.

32. Furthermore, it was agreed that this final hearing should be on issues of liability only and not issues of remedy. The judge did, however, explain that the tribunal would determine those remedy issues in relation to the unfair dismissal complaint concerning contributory conduct and reductions to compensation under the principles in Polkey v AE Dayton and in relation to any unreasonable failures to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures. Those issues are set out in the list of issues at 6.7.4 – 6.7.13 and 6.9. For the claimant's benefit, the judge explained what these issues were about and that it was sensible to determine them at the liability stage because the evidence relating to them was considered at the liability stage. The parties agreed that these issues should therefore be determined at the liability stage.

33. The issues for the tribunal to determine were therefore agreed between the parties and the tribunal, on the basis set out above.

34. The judge asked the claimant if she would like him briefly to go through and summarise the law in relation to the various complaints. She said that she would and he duly did so.

35. At this stage, the claimant also indicated that she was not sure whether she wanted to proceed with the complaints of a failure to make reasonable adjustments in relation to disability. The judge said that, if she did not want to pursue them, she should let the tribunal know, and he gave her some time to reflect.

36. When the hearing reconvened the following day, the judge asked the claimant what the position was. The claimant said that she wished to proceed with the reasonable adjustments complaints. They therefore remained issues for the tribunal to determine.

Claimant's amendment application

37. Notwithstanding the substantial amendments granted at the November 2023 preliminary hearing, the claimant had made a further application to amend the claim on 26 February 2024. This ran to some 30 pages. It was noted at the start of this hearing that it was still outstanding.

38. The judge asked the claimant whether she was still pursuing it. The claimant initially indicated that she was. The claimant had also indicated that she was very keen that the hearing went ahead (which we return to below). At this

stage, the tribunal had not yet taken the decision as to whether or not to proceed with the hearing or postpone it, and there were many factors, in particular the poor preparation for the case, which might have influenced that decision. The judge said to the claimant that, if the tribunal heard her application to amend and allowed substantial amendments, it was almost inevitable that the hearing would have to be postponed so that the parties could prepare properly for a substantially changed set of issues of the claim. The claimant reiterated that she was very keen that the hearing should proceed and therefore decided on that basis not to pursue her application to amend.

The claimant's complaints/judicial review application

39. The claimant started talking about the complaints which she had made about the tribunal and in particular about the production of the note from the November 2023 preliminary hearing, the details of which are outlined above. She appeared to be seeking rulings from this tribunal about those matters and effectively asking for the tribunal to reconsider those matters. The judge told her that it would not be appropriate nor indeed practicable for the tribunal to rule on these matters or reconsider any of the decisions made in relation to them, as complaints were dealt with via a different process, and asked the claimant to move on from this.

The Evidence

Witness evidence

40. Witness evidence was heard from the following:

For the claimant:

The claimant herself; and

Ms Joana Pinto da Cunha, who has been a tutor at the respondent since November 2020 and who accompanied the claimant at her disciplinary and appeal hearings. .

For the respondent:

Ms Lisa Marie Hallewell, an independent HR consultant to various companies, who worked for the respondent from June 2022 until September 2023 in the position of Interim HR Director;

Ms Shirley Eden, who is the Principal of the respondent's sister company and who was asked to and did conduct the disciplinary hearings in relation to the claimant and took the decision to dismiss the claimant;

Ms Kate Rieppel, who was the "Head of the Academy" at the respondent at the times relevant to this claim;

Ms Monica Cozma, who has worked for the respondent since 1 March 2022 as Head of Operations and who conducted an investigation into two grievances raised by two separate employees of the respondent about the claimant; and

Ms Nina Dimitrova, the current HR director of the respondent, who has been employed by the respondent since 1 September 2023.

41. Copies of the respondent's witness statements had only been sent to the claimant by Mr Ocloo the weekend before the hearing (which started on a Monday).

42. At the start of the hearing, Mr Ocloo indicated that he had not yet received copies of the witness statements of the claimant and Ms da Cunha. The claimant had, however, prepared those many months before the hearing and copies of them were contained within the bundle which she produced for the hearing (see below).

Documents

43. At the start of the hearing, both parties informed the tribunal that they had prepared their own bundles.

44. The respondent's bundle had been prepared by Mr Ocloo who, as noted, had only had charge of the case for a week prior to the final hearing. A copy of that bundle had been sent to the claimant the weekend prior to the hearing. It numbered pages 1-353. As the tribunal in due course did its reading, it was notable that a number of documents which one would have expected to have been included in the bundle were missing; one example was Ms Eden's dismissal letter setting out the rationale for her dismissal of the claimant, which the tribunal ultimately only found in the claimant's bundle. Mr Ocloo had provided copies of the respondent's bundle in paper form for the tribunal and witness desk. The judge asked several times throughout the hearing if it could also be sent to the tribunal in electronic format as well, which would assist the tribunal; however, despite having asked on numerous occasions and Mr Ocloo's efforts to send it, it was never received by the tribunal in a format which the tribunal was able to access.

45. The claimant's bundle numbered pages 1-1146. The claimant had prepared this bundle many months before the hearing. It contained the witness statements of the claimant and Ms da Cunha at pages 803-824. However, as a result of the respondent's representatives' failure to engage with the tribunal and the claimant, the claimant had never sent it to the respondent. Furthermore, the claimant only had one copy of her bundle in paper format and was working from an electronic version herself. It was agreed that the claimant would send the bundle to the tribunal and Mr Ocloo in electronic format and provide one hard copy for the witness desk, which she duly did.

46. Notwithstanding the fact that both parties received the other parties' bundles very late in the day, the parties agreed that both bundles could be used and they duly were and were referred to during the hearing.

47. Once the preliminary matters were dealt with, the hearing adjourned for the tribunal to do its preliminary reading. The tribunal read the witness statements and any documents in the bundle to which they referred together with lists of certain documents which the parties specifically asked it to read.

48. Part way through the hearing the claimant disclosed a bundle of her medical records, numbered pages 1-67, for the purposes of the issue as to whether she was a disabled person at the relevant time. Mr Ocloo did not object to its being adduced to the tribunal and it was.

The unless order

49. As noted, the tribunal had previously made an unless order, which was not due to expire until 13 September 2024 (part way through the hearing). The claimant raised this at the hearing, particularly in relation to her concern about allegedly "fabricated" documents. There was some discussion between the judge and the parties as to the scope of the unless order. The parties agreed that the scope of the documents to be disclosed under the unless order did not go wider than the order for specific disclosure set out in order 69 of the note from the November 2023 preliminary hearing. That provided for four categories of documents to be disclosed. In addition, in relation to the "fabricated documents" referred to by the claimant, it was clear that that related to the two original grievances made by the two separate employees of the respondent against the claimant.

50. Mr Ocloo was of the view that at least some of this material had already been disclosed. However, over the course of the hearing (and prior to the 13 September 2024 deadline), the respondent provided the documentation which it had in its possession in relation to those orders. Whilst the claimant was of the view that there must be other versions of the grievance statements (hence her allegation that they were "fabricated"), both grievances had been sent by email and the original emails were sent to the claimant. Some of the confusion had perhaps arisen on the claimant's part because originally the respondent had sent the text of those complaints, cut and pasted, but without the original emails containing the email addresses, and, in the circumstances, had done so for understandable reasons in relation to the safeguarding of the two employees who made the complaints.

51. However, it was clear that there were no "fabricated" documents. Furthermore, the claimant was provided with copies of the original emails before the expiry of the deadline in the unless order.

52. The respondent did, therefore, fully comply with that unless order.

Transcripts

53. The claimant had covertly recorded at least six internal meetings in the period leading up to her dismissal and the subsequent appeal.

54. These were: her investigation meeting of 7 September 2022 with Ms Hallewell and Ms X; the claimant's meeting of 13 September 2022 with Ms Rieppel and Ms X regarding recruiting an assistant for the claimant; the meeting of 15 September 2022 at which the claimant was suspended by Ms Rieppel and Ms Hallewell; the claimant's investigation meeting of 27 September 2022 with Ms Cozma and Ms Hallewell; the first disciplinary hearing of 19 October 2022; the second disciplinary hearing of 8 November 2022; and the appeal hearing of 23 November 2022.

55. Transcripts, produced by the claimant, of the first two of these were in the claimant's bundle.

56. The original recordings of the six meetings were never disclosed by the claimant to the respondent nor, surprisingly, had the respondent's representatives ever asked for these recordings to be disclosed by the claimant to them, notwithstanding that they were made aware during the course of the tribunal proceedings that the claimant had indeed covertly recorded these meetings.

57. However, no objection was made by Mr Ocloo to the transcripts in the claimant's bundle being adduced as evidence to the hearing.

58. Furthermore, during the course of the hearing, and after she had given her own evidence, the claimant decided that she would like to adduce as evidence transcripts of the two disciplinary hearings. Mr Ocloo did not object. On that basis, the tribunal permitted the claimant to do so provided that she could provide copies for the witness desk and for the tribunal and Mr Ocloo, which she duly did. These were long meetings and the transcripts were extremely lengthy, but the tribunal read them in full.

59. Although nobody (other than the claimant) had the benefit of having listened to the original recordings, it is clear that those recordings cannot have been clear throughout because the transcripts are peppered with references to *"[inaudible]"*.

60. Furthermore, although Ms Eden did not have a lot of time to familiarise herself with the transcripts as they were disclosed so late during the course of the hearing, she made the point that she did not think that they were in all respects complete; as an example, she said that she had specifically told the claimant at the 19 October 2022 disciplinary hearing that it was not permitted to record the disciplinary hearing, but that reference was not in the transcript.

61. However, against that background, they were produced as evidence.

The claimant's applications for witness orders

62. The claimant also made several applications for witness orders at the start of the hearing.

Ms Terry Paterson

63. First she applied for an order for in relation to Ms Terry Paterson. The tribunal heard submissions from the claimant in relation to why she sought a witness order. Mr Ocloo also made the point that Ms Paterson no longer worked for the respondent and it was not therefore within the respondent's control to call her; he said that the respondent had asked her about the case but that she had said that she did not want to be involved.

64. The tribunal adjourned briefly to make its decision. When it returned, the judge informed the parties that the tribunal had refused the claimant's application to make a witness order in relation to Ms Paterson.

65. The sole relevance which Ms Paterson had to the issues to be determined was in relation to one comment which she made at the meeting of 13 September 2022. The claimant has expressed a preference that the person to be appointed as her assistant should be older rather than younger. Ms Paterson, who was not part of the meeting in question but was in the room at the time and overheard, told the claimant that making recruitment decisions based on that criterion could be illegal discrimination (which, of course, it could). Ms Paterson then left the room. It was the claimant's subsequent behaviour at that meeting which formed the basis of one of the three allegations against her at her subsequent disciplinary hearing. Ms Paterson's relevance to the proceedings was therefore only by way of the background to what happened and was not crucial. Furthermore, there was a transcript of the meeting provided by the claimant anyway and there was no dispute about what Ms Paterson actually said at that meeting. It was therefore not in any way necessary to call her as a witness. Finally, as she was no longer an employee of the respondent, there was every chance that, if a witness order was made at this late stage, it would be difficult to ensure that Ms Paterson attended the present hearing and consequently there was a risk that the hearing might have to be postponed to a time when she could attend.

66. For all these reasons, the tribunal refused the application.

67. The claimant then immediately applied for reconsideration of the tribunal's decision. However, her grounds for reconsideration contained nothing further which was a of relevance.

68. The tribunal briefly adjourned again to consider the decision.

69. When it returned, the judge informed the parties that the tribunal would not reconsider its decision. This was because the claimant had provided no grounds for doing so and there was therefore no prospect of that decision being varied or revoked.

Ms Michelle Springer

70. The claimant then immediately made an application for a further witness order, this time Ms Michelle Springer, an employee at the respondent.

71. The tribunal heard submissions from the claimant and again briefly adjourned to consider its decision. When it returned, the judge informed the claimant that the tribunal had decided to reject the application for a witness order for Ms Springer.

72. The claimant had maintained that she had informed Ms Springer about the issue which she said formed the basis of the information in one of her alleged protected disclosures and that Ms Springer could therefore give evidence about whether what she alleged had happened or not. However, the judge explained that the tribunal's task in a protected disclosure complaint was not to establish whether or not there actually had been any illegality as regards the subject matter of the disclosure but merely whether or not the person making the disclosure had a reasonable belief that the information they disclosed tended to show that illegality had happened or was happening. Therefore, even if Ms Springer had been told by the claimant about this issue, it is unlikely that any information which she could give could assist the tribunal in determining whether the claimant had the requisite reasonable belief. Therefore she could not give evidence which was relevant to the issues which the tribunal had to determine and it was in no way necessary to make a witness order in relation to her.

73. For these reasons, the tribunal rejected the application.

Timetable

74. A timetable for cross-examination and submissions was agreed between the tribunal and the parties at the start of the hearing. This was agreed on the basis that, notwithstanding the time lost through the additional case management required at the start of the hearing, it would enable the evidence and submissions on liability to be completed and for there to be at least some time for the tribunal to deliberate on its decision on what was a long list of issues.

75. The tribunal was able to timetable in such a way as to accommodate availability issues in relation to various of the witnesses.

76. There were some delays, mainly as a result of additional applications made by the claimant, but the timetable did not slip substantially. It was in the end possible for the evidence and submissions to be completed by the end of the seventh day of the hearing, leaving one day for the tribunal to deliberate.

77. It was acknowledged from the start that the tribunal's decision was likely to be a reserved decision, which it duly was.

The postponement application

78. As noted, the claimant had made an application to postpone the final hearing on 14 August 2024. Similarly, Mr Ocloo made an application to postpone the final hearing on the last working day before the hearing began.

79. As noted, the tribunal did not determine the application at the start of the hearing because many of the case management decisions made at the start of the hearing and referenced above were likely to impact upon the practicability and fairness of whether to proceed with the final hearing as listed or to postpone it.

80. At the start of the hearing, Mr Ocloo stated that his postponement application remained live, as the matter was not trial ready. The claimant then stated that the application to postpone had already been refused and that REJ Freer had said that this hearing would go ahead. The judge was surprised at this and asked the claimant what the basis for her assertion was. The claimant referenced the letter of 2 September 2024 from REJ Freer, which is quoted in full above. However, that letter neither grants nor refuses a postponement and simply leaves it up to the tribunal hearing the case to decide how to proceed. This was the first indication at this hearing (but not the last) of how the claimant can seriously misinterpret documents (and indeed things said to her). We drew no conclusions at this stage as to whether such misinterpretations were deliberate or inadvertent; however, they happen.

81. The claimant nevertheless indicated that she was very keen that the hearing should proceed as listed and that there should not be a postponement.

82. After the tribunal had then spent the considerable amount of time dealing with the preliminary matters referred to above, it returned to the postponement application from the respondent. At that point, however, Mr Ocloo informed the tribunal that his position had changed and that his client was similarly very keen that the hearing should proceed and not be postponed.

83. By that stage, a mechanism had been put in place by which each party would have the other parties' documents and witness statements. In that sense, the preparation for the hearing in terms of documents was in all material respects complete. The tribunal's main concern was that both the claimant and Mr Ocloo had received the bundle and witness statements from the other party the weekend before the hearing commenced (and, in the case of Mr Ocloo, he had not at that point even received the claimant's lengthy bundle). However, Mr Ocloo indicated that he would be able to prepare properly despite the circumstances and, even at that stage, it appeared that the claimant was very well organised, articulate and well prepared in terms of knowledge of her own documents, which would reduce the impact on her of receiving the respondent's documents late. Crucially, both parties were very keen to proceed and for the hearing not to be postponed.

84. For these reasons, the tribunal took the decision to proceed with the hearing.

85. Once the preliminary matters had been dealt with, by 2:15 PM on the first day of the hearing, the tribunal adjourned to do its reading, with the hearing due to commence again at 2 PM on the second day.

Claimant's applications on day 2 of the hearing

86. However, at the beginning of the second day of the hearing, the claimant emailed three further applications to the tribunal.

87. In the end, it took half of the afternoon of the second day of the hearing for the tribunal to deal with these applications. They are summarised below.

Medical evidence/disability

88. The first application concerned the claimant's objection to the respondent's position regarding disability and an application for reconsideration of the tribunal's decision (made at the November 2023 preliminary hearing) about medical experts. It was therefore split into two parts.

89. The first really amounted to the claimant objecting to the fact that the respondent's position remained that it did not concede that she was a disabled person and did not concede that it had knowledge of any disability. The judge spent some time explaining that that was just the respondent's position and it was a question for the tribunal to decide as part of the issues which it needed to determine. It would make a determination after it had heard the evidence.

90. The second part involved the claimant seeking to revisit a discussion that had taken place at the November 2023 preliminary hearing about whether or not it was necessary for a joint medical expert to be instructed on the issue of disability. The note of that hearing indicates that it was decided that there should not be a joint medical expert and that it was expected that the claimant would rely upon existing medical evidence, a position which is not uncommon. The judge explained that it was not open to this tribunal to reconsider the decision of another judge's case management order from more than 9 months ago and, had there been a dispute, the proper approach would have been for the claimant to seek reconsideration of the decision at the time. Furthermore, there was no material change in circumstances which indicated that the decision should be overridden by a subsequent order from the tribunal. There appeared to the tribunal to be no good grounds for ordering a joint medical expert. Furthermore, the judge explained that if that was done, the hearing would inevitably need to be postponed, which he understood was exactly what both parties did not want to happen. The claimant acknowledged this and did not proceed with the application further.

91. It was at this point that the claimant, who had at that stage not produced a bundle of medical evidence to the tribunal, sought to do so. The respondent had no objection to the claimant doing so and the judge told the claimant that, if she wanted to produce that evidence, she should produce enough copies of a

paginated bundle containing that evidence for the tribunal, the witness desk and the respondent. The claimant in due course did this.

92. Mr Ocloo confirmed that he had already seen the medical evidence. The judge asked Mr Ocloo if he was planning to ask the claimant any questions about her medical evidence, conscious as he was that the claimant was about to start giving her evidence and that it was expected that her evidence would be completed the following day, which meant that if Mr Ocloo wanted to ask any questions about the medical evidence, the bundle of medical evidence would need to be provided before the claimant's evidence was finished.

93. Mr Ocloo confirmed that he was not planning to ask the claimant any questions about the medical evidence. In any event, the judge asked if the claimant could provide the bundle of medical evidence by the end of the following day, which claimant duly did.

Alleged witness interference

94. The claimant's second application alleged that her witness, Ms da Cunha, was approached at some point on the first day of the hearing by a member of staff from the respondent. She stated, without expressing any grounds for this assertion or evidencing what she believed was said to Ms da Cunha, that she believed that the interaction was inappropriate and was concerned that it may have been an attempt by the respondent to influence or intimidate her prior to providing her testimony. She asked the tribunal to take the matter into consideration and provide appropriate guidance to ensure that Ms da Cunha was not subjected to any further discussions or interference.

95. Ms da Cunha remains employed as a tutor by the respondent. Mr Ocloo said that his understanding of what happened was that Ms da Cunha's line manager had spoken to her to ask which days she was attending the tribunal (which, if that was the case, would be a reasonable thing for a line manager to do given the potential impact on whether and when Ms da Cunha could attend work or not); that the contact was limited to that; and that there was certainly no attempt to persuade Ms da Cunha not to attend.

96. At that point, the judge stated that he would not make any judgment on the matter. He made clear that, if there had been any pressure on a witness not to attend the tribunal, that was clearly entirely unacceptable. However, as Ms da Cunha had been present for parts of the hearing at that point (and indeed attended for large parts of the hearing after that, in addition to those times when she was actually giving evidence herself), she appeared not to have been put off attending. The judge stated that, in the circumstances, he did not consider that it would be a proportionate use of tribunal time, in a hearing with an already tight timetable, to conduct a mini trial as to the facts of what was or wasn't said in the interaction between Ms da Cunha and her line manager. The judge did not, therefore, take the matter further.

97. Having subsequently heard Ms da Cunha give evidence and read the lengthy transcripts evidencing her extensive participation at the two disciplinary

hearings, it is clear that she is a forceful and assertive individual who would not have been put off attending an employment tribunal if she had wished to attend. For that reason and the telling fact that the claimant gave no information at all about what is said to have been said to Ms da Cunha by her line manager, it appears in retrospect far more likely that Mr Ocloo's account is accurate, that there was no attempt to persuade Ms da Cunha not to attend the tribunal, and that the claimant's application in this respect was in fact, at best, somewhat exaggerated.

Ms Paterson

98. At this point of the hearing, the claimant asked to adduce as evidence a set of minutes of a meeting of 13 December 2022 between Mr Sharjeel Nawaz, who heard the claimant's appeal against dismissal, and Ms Paterson. Mr Ocloo did not object to these minutes being adduced as evidence and they were.

99. The claimant also began to reiterate her views about the importance of hearing evidence from Ms Paterson. The judge said that this was essentially just repeating what had been said the previous day in relation to the application for a witness order for Ms Paterson, which the tribunal had already refused.

Whistleblowing notification

100. The final application made by the claimant that day was a request that the tribunal forward *"the relevant information regarding my whistleblowing (protected disclosure) claim… to a prescribed person (regulator) on my behalf…"*. The claimant, as she acknowledged her application, did not originally tick the box in section 10.1 of the ET1 form to request this.

101. The judge explained that the process of informing a prescribed person was a function of Her Majesty's Courts and Tribunals Service ("HMCTS") rather than a function of a judge. Nonetheless, in one of the breaks, he spoke with the tribunal's administrative staff to ascertain what the position was. He was informed that, whilst HMCTS would contact a prescribed person if a request was made in the ET1, it would not do so if there was no such request in the ET1; in other words, it would not do so if there was a request at a subsequent stage of the proceedings.

102. The judge subsequently relayed this information to the claimant and took no further action in relation to this application.

103. The claimant's evidence was supposed to commence at the beginning of the afternoon of day 2 of the hearing. However, it took half of the afternoon to deal with the various applications brought by the claimant. This was one area where the timetable for the hearing slipped. As a result, the tribunal allowed Mr Ocloo some additional time to complete his cross-examination of the claimant; however, this did not mean that he was in total allowed more time to cross-examine the claimant and Ms da Cunha than he had estimated when the timetable was initially agreed at the beginning of the hearing; it represented a

delay in completing their evidence rather than an increase in the total time allowed for Mr Ocloo to cross-examine them.

Day 3 of the hearing

104. Around half an hour at the start of day 3 of the hearing was taken up in dealing with further matters in relation to documents and the claimant's applications, including discussions about the claimant's transcripts and the production of them, as already referenced above.

105. Furthermore, around half an hour's tribunal time was required at the end of day 3 to deal with further matters to do with the management of the hearing, including arrangements for witnesses to attend and the order of witnesses; and ongoing progress with the respondent's compliance with the unless order (as already referenced above).

Day 4 of the hearing

106. Half an hour was required at the start of day 4 of the hearing to deal with further matters, mainly applications by the claimant.

107. First, the claimant had that morning made a further written application regarding supplying details of the whistleblowing complaint to a prescribed person. It was at this point that, as already referenced above, the judge relayed to the claimant what HMCTS's position was in this respect and the matter was taken no further.

108. The other matters were to do with the claimant's production of the transcripts from the disciplinary hearings (and trying to ensure that she produced them in a paginated format which was accessible to all, given the length of those transcripts); ongoing information about the respondent's attempts to comply with the unless order; and the claimant's application to adduce a further document as evidence, which Mr Ocloo did not object to and which was allowed.

Day 5 of the hearing

109. On the morning of day 5 of the hearing, the claimant sent two further emails to the tribunal regarding compliance with the unless order. This resulted in time being spent at the beginning of that day discussing the unless order. However, having seen the documents produced by the respondent, the judge made clear to the parties that the unless order had been complied with.

110. There was also further discussion about the claimant's production of her transcripts, as the claimant had had technical issues dealing with them. Ms Eden, the witness for the respondent to whom the transcripts of the disciplinary meetings would most relate, was due to give evidence later that day. However, because of the claimant's inability to get copies of the transcripts to the tribunal at that point, the tribunal agreed that Ms Eden's evidence could continue into day 6 of the hearing (which would be the Monday following the weekend) so that the claimant could cross-examine her on the transcripts. However, to enable this, the

tribunal ordered the claimant to provide to the respondent and the tribunal no later than the following day (Saturday 14 September 2024) copies of the transcripts in paginated form. The parties agreed to this order being made. It was not ideal, as there was not a lot of time for the respondent and Ms Eden to familiarise themselves with what were two lengthy transcripts, and it meant that Ms Eden would be "on oath" over the weekend, but it was as good a compromise as the parties and the tribunal were able to agree in the circumstances. The claimant in due course did provide the paginated transcripts to the respondent at the weekend and she was therefore able to cross-examine Mr Eden in relation to them on day 6 of the hearing. As it happened, the claimant overran with her cross-examination on day 5 and there would not have been enough time to have completed Ms Eden's cross-examination on day 5 anyway; she would, therefore, have been "on oath" over the weekend in any case.

111. There was also further discussion regarding the respondent's production of an electronic version of the bundle to the tribunal and the claimant. This had not been received by that point. The claimant said that she had not received it either. To be clear, the claimant was not prejudiced through not having the electronic copy of the bundle because she had had a hard copy of that bundle since the previous weekend.

112. Around 15 minutes of time was therefore spent dealing with these matters at the start of day 5.

Day 6 of the hearing

113. In advance of day 6 of the hearing, the claimant made a number of further applications. These were considered at the start of day 6. Over half an hour of time was required to do so.

114. The start of the hearing on day 6 had been delayed by half an hour anyway because a lot of new hearings were starting that day and it took the parties a long time to get through security at the tribunal. The judge therefore reminded the parties that they needed to ensure they arrived at the tribunal sufficiently early to enable them to get through security for a prompt start to the hearing at 10 AM.

115. The claimant had made an application to adduce further documents, specifically certain WhatsApp messages between her and Ms X. The respondent did not object and those documents were adduced.

116. Mr Ocloo also sought to adduce certain documents which he indicated had been referenced in the evidence the previous week. The claimant objected to this. The judge said that it would be time consuming to go through all of these documents and make a decision about them all at this point, in a situation where there was a tight timetable for the hearing anyway. He noted that some of the documents appeared to be ones that the tribunal had seen already. The claimant's objection was partly because she had not had a chance to look at them. The judge therefore asked the parties to discuss the matter amongst themselves in the break and that, if there was still disagreement, the tribunal

could hear the application, and asked the parties to have that discussion at some point that day (day 6). However, the respondent never reverted to the tribunal to pursue that application further.

117. The claimant produced the transcripts of the disciplinary hearings, in paginated form, as ordered.

Claimant's application to extend the hearing

118. The claimant had also made a written application to extend the length of the hearing by 1-2 days.

119. The basis of her application was that she felt that she needed more time to cross-examine the remainder of the respondent's witnesses and was concerned that without additional time, the proceedings might be rushed which she said could affect the fairness of the hearing and her ability to present her case effectively. Mr Ocloo objected to the application.

120. The tribunal heard submissions from both parties and adjourned briefly to consider the application. When the hearing reconvened, the judge informed the parties that the tribunal had decided to refuse the application, for the following reasons.

121. The judge noted that the tribunal itself could not extend the eight-day hearing because not all members of the tribunal panel were available on the days which immediately followed the end of the scheduled eight-day listing; therefore, if there was an extension, the matter would go part heard and would have to be relisted, probably for some point the following year. That in itself would be prejudicial to both parties in terms of delay and in terms of the fairness of the hearing, because the tribunal would lose the benefit of the immediacy of having heard the evidence just before its deliberations in relation to its decision.

122. The judge also noted that the claimant had already completed cross-examination of one of the respondent's five witnesses and was a substantial way through her cross-examination of the second of those five witnesses. As the claimant had herself acknowledged, there were three of the five witnesses for whom she was likely to have a lot of questions, namely Ms Hallewell, Ms Eden and Ms Rieppel. As noted, Ms Hallewell's evidence was already completed and the claimant was already a substantial way through Ms Eden's evidence. The claimant herself had acknowledged that she had very few questions for either Ms Cozma or Ms Dimitrova (which indeed in due course proved to be the case). She still had day 6 to complete her cross-examination and the tribunal was happy to extend the timetable so that she had half of day 7 to do so as well, with submissions delayed until the afternoon of day 7. She therefore had sufficient time properly to complete her cross-examination within the existing hearing listing.

123. Furthermore, if time had been lost up until now, this was predominantly due to the way the hearing had been conducted by the claimant and, to a lesser extent, by the respondent. In particular, the claimant had a tendency to ask the

same thing of witnesses repeatedly, which unnecessarily extended the time required for cross-examination.

124. It was, therefore, neither necessary nor proportionate to extend the hearing. The application was therefore refused.

125. As it turned out, there was more than enough time for the claimant properly to complete her cross-examination of Ms Eden, to cross-examine Ms Rieppel extensively for the rest of day 6 and part of day 7, and for her to ask her limited number of cross-examination questions of Ms Cozma and Ms Dimitrova on the morning of day 7.

Day 7 of the hearing

126. Other than the claimant producing paginated versions of the WhatsApp messages between her and Ms X which she had adduced the previous day, there were no applications at the start of day 7 and the tribunal was able promptly to continue hearing the evidence.

127. The claimant completed her cross-examination of Ms Rieppel by mid-morning, and of Ms Cozma and Ms Dimitrova by lunchtime.

General management of the hearing

128. During the hearing, and particularly in the early part of the hearing, the claimant had a tendency to cut across others when they were speaking, including the judge. This extended to cutting across Mr Ocloo's questions when he was cross-examining her and cutting across the answers given by the respondent's witnesses when she was cross-examining them. As a result, on numerous occasions, the judge interjected to tell the claimant not to cut across others and to wait until they had finished what they were saying or finished the answer they were giving before starting to speak again herself.

129. When the claimant was giving her evidence, she had a tendency at times not to answer the question which was put to her and to go off on a tangent of her own, telling the tribunal information which she wanted to tell it rather than information which answered the question. As she was a litigant in person and, conscious of not wanting to put her off stride, the judge let a lot of this go initially. However, as it persisted, he subsequently interjected on a number of occasions to ask the claimant to focus on the questions she was being asked and answer them and not to go off on a tangent of her own.

130. Mr Ocloo had a tendency repeatedly to go over again areas of cross-examination which he had already done. This extended the time he needed for cross-examination, although, as already noted, he did not require more than the amount of time he originally estimated to complete his cross-examination of the claimant and Ms da Cunha. However, after this had happened a few times, the judge did interject on a few occasions to tell Mr Ocloo that he had already been over that particular area previously and to move on in his cross-examination.

131. At one point during the claimant's cross-examination of Ms Hallewell, one of the tribunal members, Ms Shaah, noticed that Ms da Cunha, who by that stage had completed her own evidence but was still in attendance at the tribunal and was sitting quite close behind Ms Hallewell, was giving notes to the claimant from where she was sitting and putting Ms Hallewell off whilst she was giving her evidence. The judge explained to the claimant and Ms da Cunha that it was fine for her to give notes to the claimant, but not in a way which might put the witness off. The judge made clear that there was no suggestion that Ms da Cunha was deliberately trying to put off or unsettle the witness. However, the judge asked Ms da Cunha to move so that she was either sitting directly behind the claimant or next to the claimant, but well away from Ms Hallewell. Ms da Cunha duly moved.

132. As noted, the judge had to interject on a number of occasions because the claimant cut across the answers given by the respondent's witnesses. The claimant also had a tendency to ask the same question repeatedly, perhaps partly because she appeared not to agree with the answers that she was being given. Again, so as not to put the claimant off her stride, the judge allowed a lot of this initially; however, when it became repeated, the judge did interject on several occasions to tell the claimant that she had already put the point to the witness in question and did not need to keep repeating it, and to ask her to move on.

133. Furthermore, at times, the claimant would phrase a question in a way which did not reflect either established facts or the evidence given previously by that witness or by another witness at the tribunal. This had the effect of misleading (albeit possibly inadvertently) the witness who was being asked the question. On these occasions, the judge interjected to make this clear and to remind the claimant to be careful about how she phrased her questions.

134. During her cross-examination of the respondent's witnesses, the claimant also had a tendency to make statements, as if she was giving evidence to the tribunal rather than the witness. The judge interjected on some of these occasions to remind the claimant that it was not her evidence but that of the witness she was asking questions of, and to ask her to focus on asking questions of the witness rather than making statements herself to the tribunal.

135. Although the agreed list of issues was an extensive one, both the claimant and Mr Ocloo appeared on occasions to be departing from the issues for the tribunal to determine in their cross-examination of witnesses and otherwise. On occasions during the hearing, therefore, the judge interjected to remind each of them what the issues of the claim were which the tribunal had to determine and to encourage them to focus on them rather than extraneous matters.

Submissions

136. For the claimant's benefit, the judge had explained on more than one occasion during the hearing what submissions were. He had also asked in advance that the parties should have any written submissions ready for the

tribunal by the beginning of day 7 and had reminded the parties of this at points during the hearing.

137. When the evidence was completed on day 7, the claimant handed up to the tribunal and Mr Ocloo her written submissions, which were 6 pages long. Mr Ocloo did not produce written submissions.

138. The tribunal read the claimant's submissions over the lunchtime period. Towards the end of her written submissions, the claimant stated: *"I want to thank the Judge and tribunal panel for your attention to this complex case."*.

139. When the hearing recommenced in the afternoon, both parties made oral submissions.

140. At the end of the hearing, the claimant said that she wanted to thank the tribunal for its patience. Mr Ocloo said that he echoed that and thanked the tribunal for its patience.

Reserved decision

141. As anticipated, the decision was reserved.

Findings of Fact

142. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues. We begin with an overview of the facts before going on to make our more detailed findings of fact.

Overview

The respondent

143. The respondent is the British Academy of Jewellery Limited. It is a relatively small organisation. The respondent is based in London, but has another smaller operation in Birmingham.

144. There are two other companies owned by the same individual who owns the respondent. These have been described as "sister companies" by the respondent's witnesses in these proceedings. However they are separate organisations, albeit that they have a common owner. Ms Eden is and was at the times relevant to this claim the "Principal" of one of these sister companies.

145. At the time of the events which are the subject of this claim, the respondent had grown and had a total of around 40 staff members (across all its sites). Around 15 of these 40 members of staff were tutors, in other words those engaged by the respondent to give classes to the students enrolled with the respondent on its jewellery courses. Most of the tutors worked on a part-time basis. Examples of tutors include Ms da Cunha, who is and was at the times

relevant to this claim a tutor at the respondent; and Ms Y, whom we refer to later on.

146. The respondent had about 200 students at the time, all of whom attended on a part-time basis for around two days a week.

147. Most but not all of the staff other than the tutors at the respondent were not student facing.

148. At the times relevant to the claim, Ms Rieppel was the "Head of the Academy" at the respondent.

149. There have been about five different employees engaged to deal with HR matters during Ms Rieppel's time at the respondent. The respondent generally had only one person at a time to deal with HR matters, and that person generally also dealt with HR matters at the sister companies. The person with HR responsibility at the respondent from June 2022 until September 2023 was Ms Hallewell. She is an independent consultant providing services to various companies; her work for the respondent was therefore only one part of her day-to-day work.

150. Around that time, there was a further HR employee, Mr Rocco Marziali, who at one point left the respondent and then came back to work for it. The only point at which the respondent ever had more than one person available to deal with HR matters was the limited period when there was some overlap between Ms Hallewell and Mr Marziali. Mr Marziali was not, however, as senior or experienced in HR matters as Ms Hallewell.

The claimant

151. The claimant was employed by the respondent as a jewellery workshop technician from 9 March 2020 until 10 November 2022, at which point she was dismissed without notice by the respondent.

152. Her role was wide-ranging, but a large part of it involved preparing materials for tutors for the purposes of the classes they were to give to students.

Summary

153. In summary, grievances were raised against the claimant in August and September 2022 by two individuals, Ms Y (a tutor) and then Ms X (who had at times been the claimant's line manager). There had also been an incident involving the claimant at a meeting on 13 September 2022 between the claimant, Ms Rieppel and Ms X. The grievances were investigated by the respondent.

154. The claimant was suspended on full pay with effect from 15 September 2022. Disciplinary hearings were conducted, held by Ms Eden, and the respondent dismissed the claimant, it says by reason of gross misconduct, with effect from 10 November 2022.

155. The claimant appealed against the dismissal. An appeal meeting was held on 23 November 2022 by Mr Nawaz, with his outcome being delivered to the claimant on 14 December 2022. The dismissal was upheld at appeal.

156. The claimant commenced ACAS early conciliation on 1 February 2023 and the ACAS certificate was issued on 1 March 2023. As noted, the claim was presented on 1 April 2023.

157. There was considerable sensitivity in relation to the grievances raised by Ms X and Ms Y, as will become clear in our later findings of fact. Neither of them appeared as witnesses before this tribunal; there is no public interest in their names being made public; anonymisation of them does not in any way impair an understanding of the reasons for our judgment; and the parties are of course fully aware of their identities; there would be no detrimental impact upon the principle of open justice or the Convention right of freedom of expression if their names were not disclosed in this judgment; however, there would be a considerable impact on their Convention right to a private life if their names were published in a judgment searchable by name online in connection with, as we shall see in due course, serious health issues relating to Ms X and, in relation to Ms Y, allegations (ultimately unfounded) about serious misconduct. For these reasons, and in the light particularly of the sensitivity of information relating to them, we have chosen of our own initiative under Rule 50 of the Employment Tribunal Rules 2013 to refer to them in these reasons only by initials, as “Ms X” and “Ms Y”.

Respective reliability of evidence

158. Before going on to make our more detailed findings of fact, we make some findings about the respective reliability of evidence of the witnesses for the claimant and the respondent. We do so because it is relevant to our determination of some disputed facts, particularly in instances where there are no contemporaneous documents available and it is a matter of one person’s word against another’s.

The claimant

159. We did have concerns about the reliability of the claimant’s evidence.

160. We have already noted that the claimant was not a straightforward witness when she came to give her evidence; she frequently didn’t answer the question that was put to her; she often went off on a tangent and tried to tell the tribunal about matters which she wanted to tell the tribunal rather than which answered the question put to her. Furthermore, in her cross-examination of the respondent’s witnesses and in her submissions and otherwise, the claimant frequently misrepresented evidence that had been given. It may be that she did this inadvertently, but it is still something which gives rise to concern as to the reliability of what she was saying to the tribunal. What she sees and hears is sometimes very different from what was really said and what really happened. There are many examples and we mention just a few.

161. First, the claimant misrepresented the email of 2 September 2024 from REJ Freer when she asserted to the tribunal at the beginning of the hearing that he had made clear that the hearing would go ahead; this was not correct; rather, he had simply left matters to the tribunal to decide at the hearing.

162. Secondly, the claimant asserted that she did not in fact resign from the respondent's employment in March 2022. However, there is an email of 14 March 2022 from Ms Rieppel to the claimant which references the telephone conversation in which the claimant told Ms Rieppel that she was resigning in order to take up another job and which goes on in some detail to set out handover and other arrangements in connection with the termination of her employment. The claimant later told Mr Marziali in HR that she wanted to withdraw her resignation, so these arrangements were never put in place. However, it is not credible that there would be no contemporaneous documentation from the claimant expressing her surprise at the email of 14 March 2022 if she had not in fact told Ms Rieppel that she was resigning and if this email was therefore a total fabrication by Ms Rieppel. It is further not credible that the respondent's Head of the Academy would, for no reason whatsoever at that time, invent a resignation by one member of her staff in this way. The claimant did resign and later withdrew it. Her assertion to the contrary at this tribunal casts doubt on the reliability of her evidence.

163. The claimant asserted at this tribunal that Ms Rieppel told the claimant of her Covid vaccination status soon after a particular meeting of 29 January 2021. However, the Covid vaccination was not rolled out to those in Ms Rieppel's age group until April 2021. It was, therefore, not possible that she could have been vaccinated in January 2021 and therefore not possible that she could have told the claimant of this in January 2021. The claimant's assertion cannot have been correct.

164. When asked about whether she used the expression *"plandemic"* to describe the Covid pandemic, the claimant admitted that it was an expression which she used in private and that it was used because of the belief that the pandemic was not real but was something that was somehow planned. She was asked whether she used the expression at work. She said that she did not and that she did not use the expression in work emails. However, in an email she sent on 14 September 2022, which was the first document in her bundle and one which she placed a lot of reliance on at this hearing, there is a clear reference to *"plandemic"*. The claimant's assertion that she did not use the expression in work emails was not therefore correct.

165. The claimant repeatedly asserted that Ms Rieppel *"removed her statement"* from the investigation which ultimately led to the disciplinary proceedings against the claimant. What happened and what is absolutely clear from the contemporaneous documentation, as well as the respondent's witness evidence, is that, shortly after the investigators had taken a statement from Ms Rieppel in September 2022, Ms Rieppel went on maternity leave and did not return to the business until well after the claimant's dismissal. The respondent was, for reasons it is not necessary for us to relate, unable to contact Ms Rieppel in order to get permission to use her statement in the disciplinary proceedings.

Because the respondent did not have her permission, Ms Hallewell decided that it would not be appropriate to use Ms Rieppel's statement in those proceedings and it was not provided to the disciplinary hearing at all. However, it was not the case that Ms Rieppel decided to "remove her statement" from the disciplinary proceedings. Notwithstanding that this was so clear, the claimant repeatedly referenced Ms Rieppel herself deciding to "remove her statement", even though it was obviously not a true assertion.

166. In connection with this, the claimant in very strong terms in her submissions submitted that her dismissal was orchestrated by Ms Rieppel, whom she described as *"the ringleader of this group"*. However, as noted, Ms Rieppel's involvement with the claimant ceased in September 2022, when she went on maternity leave. The claimant's assertion that Ms Rieppel was the ringleader and somehow *"orchestrated"* her subsequent dismissal, smacks of conspiracy theory and flies in the face of the facts. It further casts doubt on the reliability of the claimant's evidence.

167. These are just a few examples, although there are many more. For these reasons, we have serious concerns about the reliability of the claimant's evidence.

The respondent's witnesses

168. By contrast, we have no concerns about the reliability of the evidence of the respondent's witnesses. They all sought to answer the questions which were put to them and, whilst they gave important context to their answers (primarily in an attempt to make the claimant understand), their answers were directed to the questions they were asked. They were open and they were prepared to accept areas where they felt they could have done things better. Importantly, their evidence was consistent in all material respects, both with their own witness statements and the evidence of the other witnesses for the respondent, and with the contemporaneous documents.

Summary on reliability of evidence

169. Therefore, where there is a conflict in the evidence of the claimant and the respondent's witnesses which is not evidenced by contemporaneous documentation, we are inclined to accept the evidence given by the respondent's witnesses.

<u>Detailed findings of fact</u>

170. We now go on to make our more detailed findings of fact.

The claimant's employment contract

171. Around the start of her employment with the respondent, the claimant entered into a contract of employment with the respondent. She signed it on 3 March 2020.

172. Her contract provided that any payments made in respect of absence due to sickness or injury would be made only in accordance with the statutory sick pay scheme (clause 11 of the contract).

173. Her contract provided that, in order to undertake an investigation into any allegations of a disciplinary nature, the claimant might at any time be suspended on full pay, or excluded from the respondent's premises, or both (clause 17 of the contract).

174. Her contract did not make any provision about providing training for the claimant as a first aider.

175. Around the same time as she signed her contract of employment, the claimant also entered into a brief "deductions from pay agreement" with the respondent, which she signed on 9 March 2020.

176. The claimant has alleged at this tribunal that the respondent unilaterally imposed changes in terms and conditions on her through the introduction of a statement of main terms of employment on or around 4 May 2021 and/or 16 June 2021. In the claimant's bundle, we have seen what looks like a replacement "deductions from pay agreement" (at page 266) which the claimant describes in the index to her bundle as "deductions from pay agreement May 2021". It is an unsigned document. We have not been taken to or seen a replacement contract of employment.

177. This matter was only loosely touched on at the tribunal hearing. However, the respondent's position is that certain replacement terms were produced and proposed in May 2021; however, they were in fact never introduced and there was no variation to the claimant's contract and the claimant remained employed, throughout her employment, on the original terms and conditions as set out in her original contract of employment and deductions from pay agreement.

178. In light of the documentation which the claimant has produced, we consider that, on the balance of probabilities, it was the replacement deductions from pay agreement produced in the claimant's bundle which the respondent sought to introduce in May 2021. However, in light of our concerns about the reliability of the evidence of the claimant, and the fact that, unlike the copies of the claimant's original contract and deductions from pay agreement, the replacement deductions from pay agreement is an unsigned document, we prefer the respondent's evidence; we therefore find that, whilst the document was produced, it was not imposed unilaterally on the claimant; the claimant was not forced to sign it and indeed did not sign it; and there was therefore no change to her terms and conditions of employment at any point.

Line management of the claimant

179. When the claimant initially joined the respondent in March 2020, Ms Rieppel was initially her direct line manager. That responsibility was later transferred to Ms X, as Ms X had also just joined the respondent in March 2020.

At all relevant times, Ms Rieppel directly line managed Ms X, with whom she worked closely.

180. Ms Rieppel reported to Mr Nawaz, who at the time was the "Principal" of the respondent.

181. Ms Rieppel generally speaking had a good and friendly professional relationship with the claimant. However, in terms of managing her, Ms Rieppel has had to step in on occasion to mediate and ask the claimant to calm down or leave a meeting at which the claimant began to swear or yell; this has happened three or four times.

The claimant's beliefs

182. The claimant held strong opinions about alternative medicine. This became particularly apparent to staff at the respondent throughout the global Covid pandemic. Ms Rieppel gave evidence, which we accept, that the claimant was very vocal in her views on this subject, including using the word *"plandemic"* in work email correspondence. As already noted, the claimant at this tribunal denied using that expression in work email correspondence; however, it is there in a work email she sent on 14 September 2022 which she submitted to the tribunal in her bundle. We therefore accept that the claimant did have very vocal views on the Covid pandemic and that she did use the word *"plandemic"* in work email correspondence.

January 2021

183. On 18 January 2021, Ms Rieppel was at the respondent's building with her husband. Ms Rieppel's evidence was that, whilst they were there, the claimant spoke to Ms Rieppel's husband (within earshot of Ms Rieppel) about the Covid vaccine and stated that it was actually Bill Gates attempting to implant microchips in people in order to track them and that it was a poisoned substance belonging to the devil; that her husband engaged in conversation with the claimant out of politeness; and that she (Ms Rieppel) then interjected saying that they did not wish to receive any further information about the claimant's opinions about the vaccine. The claimant accepts that there was a conversation but denies the Bill Gates comment. However, we note that the content of the claimant's alleged reference to Bill Gates was a common conspiracy theory circulating on the internet at that time and, for the reasons of respective reliability of evidence set out above, we prefer Ms Rieppel's account and accept it.

184. In her witness statement, the claimant stated that, on 18 January 2021, she *"took the opportunity to discuss the vaccination programme with [Ms Reippel], expressing [her] concerns and seeking reassurance"*. However she gives no details of any information she provided in this respect. Our findings in relation to the content of the conversation are therefore limited to those set out in the paragraph above.

185. For the same reasons of respective reliability of evidence, we do not accept the claimant's assertion that Ms Rieppel issued a blanket instruction to

her not to discuss vaccines at work at all. Rather the context of what Ms Rieppel said was as set out above.

PCR tests

186. As was common during the Covid pandemic and in accordance with government guidance, the respondent had Covid 19 PCR tests at work which could be used by employees. Initially, when the tests were delivered, they were stored in the claimant's technician's office. However, in due course, the PCR tests were removed from the claimant's office and stored in the office of Ms Michelle Springer, who was the respondent's safeguarding officer. Ms Rieppel was asked about this and said that they were moved because Ms Springer's office was the most sensible place to keep them, as she was the one who would distribute them if they were requested by employees. The claimant suggests that they were removed from her office because she had highlighted what she considered to be risks associated with the tests. However, for reasons of respective reliability of evidence, we prefer and accept Ms Rieppel's evidence in this respect, and not the claimant's.

187. At some point, the claimant appears to have highlighted her perceived concern about the PCR tests to Ms Rieppel. It is not clear when she did this (whether before or after the tests arrived at the respondent or before or after the tests were moved to Ms Springer's office). Furthermore, Ms Rieppel was not asked about any alleged conversation which the claimant had with her about the tests. The claimant maintains that, at an unspecified time, she told Ms Rieppel that the tests were sterilised with ethylene oxide (which the claimant considers is a highly toxic and carcinogenic substance). However, given that Ms Rieppel was not asked about this conversation and given our concerns about the reliability of the claimant's evidence, whilst we are prepared to accept that there was mention by the claimant at some point to Ms Rieppel that she had concerns about the tests (in amongst all the other opinions which the claimant gave about the Covid pandemic in general), we are not prepared to accept that she specifically told Ms Rieppel that the tests were sterilised with ethylene oxide and/or that that made them (in the claimant's opinion) dangerous.

188. As noted, it is not clear when the conversation referred to above took place. However, given the point at which PCR tests became available generally, it is likely to have been at some point in 2021 and we therefore find that the conversation did take place at some point in 2021.

Autumn 2021

189. At some point in the early autumn of 2021, Ms Rieppel disclosed to the claimant that she was undergoing IVF treatment, as an explanation as to why she was occasionally unavailable due to medical appointments. Whilst Ms Rieppel cannot recall exactly what the claimant said, the claimant implied to Ms Rieppel that fertility issues were linked to the Covid vaccine. Ms Rieppel said that she did not wish to discuss her personal choices and they did not discuss her treatment again.

Claimant's sickness absence in December 2021/January 2022

190. On 26 November 2021, Ms X informed Ms Rieppel that the claimant had come to her with complaints of stress and to inform her that the claimant had been staying very late each night at work. Management had not been aware of this, nor had these additional hours either been requested by the respondent or authorised as overtime.

191. On 29 November 2021, Ms Rieppel held a meeting between herself, Mr Marziali of HR, and the claimant to discuss the claimant's workload and mitigating her stress, along with why she was staying so late each night at the respondent. When asked why she stayed so late, the claimant gave the reason as being that she did not have a good living situation and was unable to feel comfortable and safe in her shared accommodation. She alleged that her bike had been stolen or damaged by a flatmate and said that she was very stressed as well that she was unable to find more suitable accommodation. She did not suggest to Ms Rieppel that her stress was caused by the workplace.

192. The claimant was then signed off work from 9 December 2021 until mid-January 2022. The fit notes which we have seen relating to this period of absence referenced *"stress-related problems"*. However they did not state the cause of those stress-related problems.

193. We have seen a letter in the claimant's bundle at page 7 dated 17 December 2021 and addressed to *"Dear Management of BAJ"*. In that letter, the claimant references an interaction which she says she had in November 2021 with a security guard at the respondent called Lee in relation to her bike, where she alleges that he raised his voice and shouted at her and *"completely lost it on me and began shouting in an aggressive manner"*. She also references a previous alleged incident involving Lee being verbally aggressive towards her and having challenged her "mask exemption" in the lobby in front of other people. The date of the letter, 17 December 2021, is during the period when the claimant was off sick. It would be surprising, if Ms Rieppel received that letter, if no action was taken and we have not seen any evidence that any action was taken in relation to the contents of that letter. However, the claimant never asked Ms Rieppel in cross-examination about this letter, nor any of the other witnesses of the respondent. It is, therefore, impossible for us to know whether or not that letter was sent to or received by Ms Rieppel and, as it was never put to Ms Rieppel, we find on the balance of probabilities that the claimant has not proven that it was received by Ms Rieppel.

194. However, and this is the main point of relevance in relation to the issues which we have to determine, even if it was received by Ms Rieppel, there is nothing in it which indicates that the reason for the claimant's sickness absence was because of any interaction with Lee as opposed to the sources of stress to do with her domestic situation which the claimant had identified to Ms Rieppel at the meeting of 29 November 2021.

Ms X's cancer diagnosis

195. Sometime after Christmas 2021, Ms X informed Ms Rieppel that she had been diagnosed with cancer. She specifically asked her not to tell anyone, apart from Mr Nawaz.

The claimant's return to work

196. The respondent agreed a phased return to work from sick leave with the claimant. In connection with this, a meeting between the claimant, Ms Rieppel, Ms X and Mr Marziali was held on 25 January 2022. It was agreed that the claimant could have a flexible start time to her work day for a temporary period of time because, as a result of her stress, she had had difficulty sleeping and might have difficulty getting up early enough to be at work for 9 AM. This flexible work pattern continued for several months.

197. The claimant appears to have confused this return to work meeting with a later meeting between her, Ms Rieppel and Mr Marziali in March 2022 (which we will return to below) and asserted at this tribunal that what was discussed at the later meeting was actually discussed at the return to work meeting. However, the claimant is clearly incorrect in this respect as the reasons for the second meeting could not have arisen in the short period between her return to work and the return to work meeting, not least of all because the claimant was not aware of Ms X's cancer diagnosis at that point. Furthermore, Ms Rieppel was clear that the two meetings were separate and, for the reasons of respective reliability of evidence referred to above, we accept Ms Rieppel's evidence.

198. It is noteworthy that we never saw any minutes of either meeting which, if there were any, would obviously have been of assistance to us in our fact finding in this respect. However, we do not assume either that there were no minutes taken or that the respondent has deliberately withheld them; given our earlier observations about the fact that other important documents which do exist were missing from the respondent's bundle prepared by the respondent's representatives, Peninsula, it is equally likely that the fault for any omission lies with Peninsula.

The claimant's interactions with Ms X

199. At the end of January 2022, Ms X informed Ms Rieppel about the chemotherapy and radiation treatment which she was about to start in mid-February 2022. She also informed four of her direct reports about the diagnosis for reasons of transparency and understanding, in case it affected her ability to be present at work the day after each treatment session. She did not inform the claimant. However one of the individuals to whom Ms X did disclose this information then shared it with the claimant.

200. At some point in the first two weeks of February 2022, the claimant told Ms X that she knew about her diagnosis and treatment plans and then proceeded to tell her that she had made the wrong decision and to criticise her for deciding to undergo chemotherapy and radiation treatment. She told Ms X

that the doctors were evil and only wanted money and suggested that Ms X washed her body and drink hydrogen peroxide. The claimant also told Ms X that she had more information for her and wanted her to go for dinner with her so that she could share this information with her. Ms X declined and thanked her and said that she already had a lot of information and then left the office.

201. Ms X then immediately called Ms Rieppel. She was noticeably shaken and upset by the encounter and did not want to stay in the building in case she had to see the claimant again that day. Ms Rieppel advised her that, should this happen again, she should firmly but politely tell the claimant that she did not wish to receive any advice or information on her personal choices and health as this was not appropriate in a professional setting, to which Ms X agreed that she would.

202. The account in the above two paragraphs is Ms Rieppel's account, but we have no reason to doubt her evidence and we accept it. Furthermore, what Ms X told Ms Rieppel was said immediately after Ms X's interactions with the claimant and we therefore consider that, as those interactions were so fresh in her mind, what she told Ms Rieppel is likely to have been accurate. The claimant herself admitted many of the details and she did not challenge Ms Rieppel on this account in her cross-examination of her. For these reasons, we accept it in full.

203. Ms Rieppel also witnessed the claimant bringing Ms X a book called *"Curing cancer with carrots"*. Ms X put it in a drawer at her desk with other things which the claimant had given her in this connection. Ms X showed Ms Rieppel the drawer, which contained a variety of photocopied documents, books and jars of liquids. Ms X told Ms Rieppel that she had not specifically told the claimant not to give her books or other forms of treatment after the first encounter.

204. Ms Rieppel could see that Ms X was visibly losing weight rapidly and, in her view, was very stressed, and Ms X told Ms Rieppel that she was stressed. Ms X regularly asked Ms Rieppel for permission to leave a few minutes early from work so that she could ensure that she was not ever alone with the claimant as she was frightened of her and of any confrontation that might occur. Ms Rieppel observed that Ms X began to shake and look very uncomfortable when she had to speak to the claimant about work-related issues, and on numerous occasions Ms X asked Ms Rieppel to be present in the room. Ms X also told Ms Rieppel that the claimant had told her that the reason that she had cancer was because of the Covid vaccine.

205. Around the same time, in early March 2022, Ms X asked Ms Rieppel if she could take over her role as the claimant's line manager, as Ms X wanted to reduce her interaction with the claimant. Ms Rieppel duly did so. However, despite her taking over the management of the claimant, it was still necessary for the claimant and Ms X to work together on projects, so Ms Rieppel's involvement did not entirely shield Ms X from unwanted encounters. Ms Rieppel discussed the situation with Mr Nawaz and with HR. This resulted in the meeting in March 2022, which we have already referred to above, taking place between Ms Rieppel, Mr Marziali of HR and the claimant.

206. Ms X had told Ms Rieppel that she did not wish to make a formal complaint against the claimant, as she was concerned about the implications of that and that that could make her encounters with the claimant even worse. Ms Rieppel and Mr Marziali specifically did not therefore mention Ms X by name at the meeting. At the meeting, they told the claimant, in general terms, that it was inappropriate to offer any personal opinions on an individual's private health or choices in the workplace and that anything like that should cease. The claimant has maintained that they told her not to have any contact with Ms X at all. However, that assertion is contrary to the assertion of Ms Rieppel that, in accordance with Ms X's wishes, they did not mention her by name (albeit it was obviously likely that the claimant might infer that her behaviour towards Ms X was the main factor which brought about the meeting). Furthermore, as the claimant still needed to work with Ms X in the future, it would have made no sense to have told her not have any contact at all with Ms X. Finally, we again note the claimant's tendency, whether inadvertently or otherwise, to misrepresent what she is told and again reference our findings on the respective reliability of the evidence of the claimant and the respondent's witnesses. For all these reasons, we accept Ms Rieppel's version of events.

207. At the meeting, the claimant agreed to adhere to professional behaviour in the future and asserted that any information which she tried to give was done out of concern and care. Ms Rieppel genuinely believed that the claimant had taken the actions which she took out of concern and care (notwithstanding the detrimental impact which they had had on Ms X). However Ms Rieppel made clear to the claimant that it was still inappropriate to give unsolicited advice in a professional setting.

PCR tests - Ms X

208. Amongst the various communications which the claimant sent to Ms X, she sent a WhatsApp message on 15 March 2022 which contained a link which, from its brief title, appears to be about ethylene oxide and cancer. We have not seen the contents of the link, only the WhatsApp message which the claimant sent to Ms X which contains that link. In subsequent WhatsApp messages that day, the claimant sent Ms X pictures of Covid Antigen Rapid tests and a set of what appeared to be instructions for one of those tests which contains a reference to *"Sterilised using ethylene oxide"*. She went on in her next WhatsApp message to state *"I have lots of info about it"*, to which Ms X replied *"Hi Gosia I don't need any more information thank you"*.

209. These WhatsApp messages were at page 9 of the claimant's bundle. In her witness statement, the claimant states that, because Ms X had cancer, she *"felt compelled to inform her about the potential harmful effects of the PCR tests"* and she references the WhatsApp messages referred to at page 9 of her bundle as being her means of doing this.

The claimant's resignation and retraction of resignation

210. As already noted, the claimant told Ms Rieppel on 14 March 2022 that she had received another job offer and was resigning from the respondent. This

resulted in the email of 14 March 2022 from Ms Rieppel to the claimant, which we have already referenced above. Several days later, however, the claimant spoke to Mr Marziali and rescinded her resignation. The claimant's erratic behaviour in this respect was concerning for Ms Rieppel, for Ms X and for HR. However, they allowed the claimant to rescind her resignation and continue in her employment.

211. In general terms, there is no obligation on an employer, once an employee has handed in their resignation, to allow that employee to change their mind. If, as the claimant has suggested throughout this case, Ms Rieppel was indeed out to get the claimant, she could have refused to allow the claimant to retract her resignation. However, she did not. That is not indicative of someone who is trying to remove an employee from an organisation. If Ms Rieppel had been so minded, this would have been the perfect opportunity to do so; however, Ms Rieppel did not do so.

The claimant's ongoing interaction with Ms X

212. Ms Rieppel thought that matters had improved and that Ms X's own stress levels seemed to improve. However on 27 or 28 June 2022, Ms Rieppel saw the claimant give Ms X a jar containing some form of liquid covering mushrooms, which the claimant recommended that Ms X drink. Ms Rieppel therefore asked Ms X if the claimant was continuing to give her recommendations for treatment. Ms X said that she had and that it been going on for at least a month, but that this time she was not allowing it to affect her personally.

Gas issue

213. Sometime in July 2022, Ms Rieppel was informed that one of the tutors, Ms Y, reported a strong smell of gas in one of the workshops. Ms Rieppel personally investigated the workshop and was also able to smell gas. The workshop in question did not have adequate ventilation, an issue which Ms Rieppel raised several times. A small amount of gas is released every time a torch is used and this build up can become quite prevalent if there is inadequate ventilation. Ms Rieppel moved the class and the tutor in question (Ms Y) to a different workshop for the duration of the course whilst the issue was investigated. Ms Rieppel also asked the claimant and several competent members of the teaching team to have a look at the torches to assess if there were any damaged or leaking torches or if the matter was simply due to poor ventilation.

Ms Y

214. Ms Y was a new tutor that academic year and required a great deal of assistance in the general administration required in a teaching role. She also had difficulties with technology and was not confident in using the systems which the respondent required. She was given training sessions and several staff members were tasked to support her in this.

215. The claimant and Ms Y did not have a good relationship. They had independently stated that it was difficult to work with the other and that there was poor communication.

216. At some point at the end of July 2022, Ms Rieppel had a meeting with the claimant and Ms X to put procedures in place to ease the working relationship between the claimant and Ms Y. During the meeting the claimant referred to "other concerns" she had regarding Ms Y and said that she felt that she, the claimant, was "sabotaged" but she was not clear on specific details and was very vague when asked for them.

217. This lack of specificity in relation to allegations made was something the tribunal noted in relation to the claimant's modus operandi generally, both in terms of allegations she made during her employment and, for example, the allegation which she made at the tribunal in strong terms about the respondent allegedly having interfered with her witness, Ms da Cunha, but without giving any detail of what was supposedly said to Ms da Cunha. That she made allegations at the July 2022 meeting that were very vague is therefore consistent with her behaviour elsewhere. Furthermore, countering by making serious but unspecified allegations in a meeting where potential fault on the claimant's part is being discussed is also consistent with the claimant's later approach in the investigation meeting of 7 September 2022 at which Ms Y's subsequent grievance against the claimant was discussed (which we refer to below). For these reasons too, therefore, we accept Ms Rieppel's account of what happened in the July 2022 meeting, as set out above.

218. No action was taken because there was no evidence given by the claimant against Ms Y, nor did the claimant make a formal complaint against Ms Y.

Ms Y's grievance against the claimant

219. On 20 August 2022, Ms Y submitted by email a formal complaint against the claimant, alleging that she had been bullied and mistreated by the claimant and that her mental and physical well-being was being jeopardised. Unlike the claimant's allegations, Ms Y did set out specifics of the alleged treatment of her by the claimant. This included alleged bullying behaviour in their interactions (Ms Y needed to interact with the claimant because the claimant as technician provided the materials for her classes) and the claimant insinuating that, when an item went missing, that Ms Y was a thief. Ms Y stated that *"The prospect of seeing and having to interact with [the claimant] at work fills me with dread and [I] only feel more at ease when she's on annual leave"*.

220. Ms Hallewell, who had started providing HR services to the respondent from June 2022, was involved in the initial investigation.

221. An investigation interview with the claimant took place on 7 September 2022, conducted by Ms Hallewell and Ms X, who was the hearing manager for Ms Y's grievance.

222. During the investigation meeting of 7 September 2022, Ms Hallewell and Ms X asked the claimant about the allegations made by Ms Y in her grievance and the claimant's responses to these allegations are reflected in the notes of the meeting.

223. At that meeting, the claimant made the following allegations about Ms Y: that Ms Y was stealing and specifically that the claimant had caught her stealing (but without providing any evidence of this beyond her assertion); that Ms Y did not like her classroom and that she had therefore been deliberately turning the gas taps on so that there would be a smell of gas and so that she could be moved to a different classroom (but again without providing any evidence of this beyond her assertion); that Ms Y had inappropriately touched a female student (again, without providing any details or names); and that Ms Y had inappropriately touched the claimant (again without providing any details of context).

224. These are very serious allegations and it is noteworthy that the claimant did not provide any evidence or detail or context to support them. Having observed the patterns of behaviour of the claimant at various points, we consider that this is another example of the claimant's modus operandi of, when she is faced with allegations which reflect badly on her, countering by making allegations (often without evidence) about others.

13 September 2022 meeting

225. The claimant had for some time been requesting that the respondent hire an assistant to assist her in her role as technician. Ms Rieppel considered that the claimant did need an assistant and she had wanted to hire an assistant for her and she had on several occasions requested her superiors that this should be done. However, she was consistently told that the respondent was not in a financial position to add another member of staff. Ms Rieppel did not have any control over, nor was even privy to, the respondent's finances or the overall budget.

226. This was one area of the claimant's cross-examination of Ms Rieppel where she asked Ms Rieppel over and over again why she had not had an assistant provided for her at an earlier stage and where Ms Rieppel repeated the same answer, set out above. The claimant appeared unwilling or unable to accept that, and kept on asking the same question until, in the end, the judge had to ask her to move on. However, we have no reason to doubt Ms Rieppel's evidence and accept it.

227. However, having asked her superiors many times, Ms Rieppel was in early September 2022 finally given authorisation to advertise for and hire a Technician Intern to assist the claimant in her role.

228. A meeting was held on 13 September 2022 between Ms Rieppel, Ms X and the claimant. As already noted, Ms Terry Paterson, another member of staff who was also a member of the management team, was in the room as it was a shared office, although she was not intended to be a participant in the meeting.

229. The purpose of the meeting was to share with the claimant the shortlist of candidates that Ms X and Ms Rieppel had determined after the first round of interviews for the Technician Intern position. It was not the respondent's normal policy for employees of the claimant's seniority to be involved in recruitment decisions. However, despite this, Ms Rieppel voluntarily chose to hold this meeting to involve the claimant more in the final stage of that process.

230. The claimant also gave evidence that Ms X had previously told her that she would be involved with the recruitment process for her assistant; however, to the extent that Ms X did indicate that to the claimant, she was wrong because it was not the respondent's normal policy to allow employees of the claimant's seniority to participate in recruitment decisions at all. However, we accept that the claimant felt aggrieved at not having been involved earlier in the process, because she had perceived that Ms X had indicated to her that she would have been involved earlier in the process.

231. At the meeting of 13 September 2022, the claimant expressed a preference for another candidate whom Ms X and Ms Rieppel had not even shortlisted and gave the reason that that candidate was an older person and therefore would be better in the role than the other candidates who were younger. In this context, the claimant made certain assertions that younger employees were always on their mobile phones.

232. Ms Paterson interjected, saying that it was inappropriate and unfair to comment on a candidate's age and that this could be seen as discrimination. Ms Paterson left the room shortly after that.

233. However, as a result of Ms Paterson's comments, the claimant then lost her temper and raised her voice in the remainder of the meeting. As the claimant left the meeting, she swore and slammed the door on the way out. This was witnessed by other members of staff as well as students.

234. The claimant accepts that she became angry at that meeting and that she slammed the door on the way out. However, at this tribunal, she denied that she swore at the meeting.

235. The transcript of the meeting provided by the claimant, which she says was produced from the covert recording of the meeting which she took, does not have any references to swearing in it. However, that transcript ends quite abruptly and Ms Rieppel's evidence was that the swearing was right at the end of the meeting, so it is possible that the swearing was not captured on the recording. More particularly, in light of the concerns raised by witnesses of the respondent, particularly Ms Eden, about the completeness of transcripts produced by the claimant, and our concerns about the claimant's evidence in general, we do not accept that the transcripts are necessarily a complete and accurate record of what was said. Furthermore, Ms Rieppel was asked about the swearing and she was clear that there was swearing. Furthermore, during the subsequent disciplinary hearings, the claimant admitted to Ms Eden that she did swear at the 13 September 2022 meeting. For these reasons and for the reasons

of respective reliability of evidence referred to above, we accept Ms Rieppel's account and find that the claimant did swear towards the end of that meeting.

236. Because of the claimant's unprofessional behaviour, which was witnessed by other members of staff as well as students, Ms Rieppel contacted HR and raised with Ms Hallewell her concerns about the claimant's behaviour.

Ms X's grievance

237. By an email sent at 9.54 AM on 13 September 2022, Ms X raised a grievance against the claimant. It is not clear whether or not Ms X sent that email before or after the meeting with the claimant on 13 September 2022. However, there is a considerable amount of detail in the email and it clearly took some preparation in advance of the time it was sent.

238. In summary, the grievance was about the claimant's behaviour, including her ongoing behaviour in sending her products and information and suggested treatments for her cancer. Ms X complains about the claimant's aggressive language and unprofessional statements, and gives examples. Ms X expresses her concern that this behaviour will only continue if she does not say something about it. Furthermore, she expresses her concern about managing the situation going forward when Ms Rieppel is on maternity leave, at which point she would have to manage the claimant again. Ms Rieppel was due to go on maternity leave shortly and indeed, as it turned out, her last working day before maternity leave was 30 September 2022.

239. Although the problems with the claimant which Ms X outlined had been going on for a long time, we find that the trigger for her raising her grievance at that point was her serious concern about the implications for herself of imminently having to manage the claimant again herself when Ms Rieppel went on maternity leave.

The claimant's email of 14 September 2022

240. At 16.32 on 14 September 2022, the claimant sent an email to Ms Paterson and Ms Hallewell, copied to Ms Rieppel and Ms X (this is the email referred to earlier in which the claimant references the *"plandemic"*).

241. The email is about the process for recruitment of the Technician Intern. In it, the claimant complains about the process, including that she herself was not more involved in it. Although this was not put to the claimant, one might infer that it was yet another example of the claimant hitting back with criticisms of others immediately after a situation where her own behaviour (this time her behaviour at the meeting of 13 September 2022) was or was likely to be called into question.

242. The claimant made lots of references to this email during the hearing and spoke about it as if it was one of her alleged protected disclosures for the purposes of her protected disclosure dismissal and detriment complaints. However, to be clear, that is not part of the claimant's case. She sets out five

alleged protected disclosures at paragraph 4.1.1 of the list of issues in some detail; however, this email is not one of them.

The claimant's suspension

243. There were now two grievances brought against the claimant in addition to the issue of the claimant's unprofessional behaviour at the meeting of 13 September 2022. Ms Rieppel sought Ms Hallewell's advice on whether to suspend the claimant until the investigation had concluded. They were concerned about the claimant's emotionally charged responses at work and they considered that there was a duty of care both to the claimant and to those who had raised grievances as well as to the students. They therefore decided that they would suspend the claimant until the investigation had concluded. This was a joint decision by Ms Rieppel and Ms Hallewell, following their discussion.

244. Whilst the precise timing of their discussions with each other was not clear, it is likely that they were in discussions about suspending the claimant on 14 September 2022 at the latest, in advance of holding the meeting with and providing the suspension letter to the claimant on 15 September 2022. We therefore find, on the balance of probabilities, that Ms Rieppel and Ms Hallewell were having discussions about suspending the claimant before the claimant sent her email of 14 September 2022, which was sent late in the day on 14 September 2022 at 16.32.

245. Ms Rieppel and Ms Hallewell arranged a call with the claimant on 15 September 2022. This was done virtually as the claimant had not returned to the office after leaving following the meeting of 13 September 2022. They explained to her the reason for her suspension and followed this up in writing by letter to her of 15 September 2022.

246. As already noted, the claimant covertly recorded the meeting on 15 September 2022 at which Ms Rieppel and Ms Hallewell suspended her.

247. The suspension letter of 15 September 2022 specifically stated that, during the period of suspension, the claimant should not communicate with any of the respondent's employees (unless authorised by Mr Nawaz). However, notwithstanding this, during the period of suspension the claimant sent a WhatsApp message to Ms X late at night, containing a number of random symbols. This caused further concern for Ms X.

Ongoing investigation

248. As Ms X herself had now raised a grievance against the claimant, it was obviously not appropriate for her to continue the investigation in relation to Ms Y's grievance against the claimant. The investigation of that grievance and of the grievance brought by Ms X against the claimant was therefore conducted by Ms Cozma, the respondent's Head of Operations, together with Ms Hallewell.

249. During their investigation, Ms Cozma and Ms Hallewell had the bag of items, including books and bottles, which the claimant had at various points given to Ms X.

250. On or around 27 September 2022, Ms Cozma and Ms Hallewell held a grievance meeting with Ms X. During the meeting, Ms X said that she felt pressurised by the claimant and did not want to line manage the claimant although she said that, if she had to, she would continue to line manage the claimant. She also said that she was going through a lot and did not want to have to deal with the claimant's persistence in pushing her alternative treatments. She said that she felt cornered. She also mentioned that she and the claimant were out on an event to do with work and that on the way back the claimant had kept asking her whether she had read what the claimant had given to her. She also said that the claimant called her and sent her text messages on her personal phone and kept trying to persuade her to use the claimant's alternative treatments. Whilst giving her version of events, Ms X was shaking and was quite obviously upset and was crying. She was clearly frightened of the claimant.

251. On 27 September 2022, Ms Cozma and Ms Hallewell held an investigation meeting with the claimant. The meeting lasted about two hours and in that time Ms Cozma and Ms Hallewell asked the claimant about the allegations made by Ms Y and Ms X and about the 13 September 2022 meeting.

252. In the meeting, the claimant kept saying that Ms Y had mental health problems, describing her as a *"psychopath"*. Ms Cozma said that the claimant shouldn't talk about people like that and asked her to stop saying such things. However, the claimant kept repeating these comments about Ms Y. Furthermore, the claimant again accused Ms Y of stealing. Ms Cozma asked the claimant if she took stock; the claimant said that she did not; Ms Cozma wanted to know how the claimant had concluded that Ms Y was stealing; however, the claimant provided no evidence beyond her assertion that Ms Y was stealing. The claimant also said that Ms Y was not a competent teacher. However, the claimant did not produce any evidence to support her accusations against Ms Y.

253. In relation to Ms X, the claimant said that she felt that she and Ms X were friends and said that she did not understand why Ms X was upset.

254. During the meeting, the claimant at times got very animated and angry. Furthermore, she cut across Ms Cozma when Ms Cozma was speaking, closing her down and talking over her.

255. On or around 27 September 2022, Ms Cozma and Ms Hallewell also took a statement from Ms Rieppel. As noted, Ms Rieppel commenced her maternity leave, slightly early than planned, on 30 September 2022, and did not return to work until the following year. Furthermore, as noted, and for reasons which we do not need to go into, Ms Hallewell was unable to contact Ms Rieppel. She was, therefore, unable to obtain her permission to use her statement in the subsequent disciplinary proceedings. Therefore, she decided that she could not include the statement and did not include the statement in the disciplinary

proceedings and a copy of it was never provided either to the claimant or to Ms Eden, who held the disciplinary hearings.

256. Having read the statement ourselves, we consider that its contents would not in any case have made any material difference to the issues which Ms Eden had to determine. The fact that it was not included would not have prejudiced the claimant's position at all; if anything, its contents would only have confirmed some of the conclusions which Ms Eden ultimately came to anyway.

257. In the course of taking the statement from Ms Rieppel, Ms Hallewell and Ms Cozma did reference the gas issue which the claimant had raised as an allegation against Ms Y and Ms Rieppel told them about her knowledge of the issue; she made no suggestion that Ms Y had intentionally left gas taps on; rather her account was consistent with what we have set out above regarding Ms Rieppel's involvement in investigating the gas issue in July 2022.

258. Ms Cozma and Ms Hallewell also held a grievance meeting with Ms Y. Ms Y said that she felt that she was being bullied by the claimant. She felt that the claimant was not supportive of her and was instead bullying her. She said that the claimant shouted at her and accused of stealing, and that that was sometimes in the presence of students. She said that she had mentioned the claimant's behaviour to Ms Michelle Springer, the safeguarding lead. Ms Y was emotional and appeared to be frightened of the claimant.

259. Ms Cozma and Ms Hallewell held an investigation meeting with Ms Michelle Springer, whom Ms Y had referenced as a possible witness to events, although Ms Springer was unable to confirm much other than that she considered that there was a personality clash between the claimant and Ms Y and that Ms Y was uncomfortable about asking the claimant for materials etc.. However, other than that, she provided no evidence to corroborate either the allegations which Ms Y made about the claimant in her grievance or the allegations which the claimant subsequently made about Ms Y.

260. Ms Y had also mentioned two other people (Steven and Jack) who might be able to provide more information in relation to these allegations. Ms Cozma and Ms Hallewell sought to contact them both but neither of them wanted to get involved so no interviews took place with either of them.

261. During both of her investigation interviews, the claimant had mentioned a employee of the respondent's sister company called Sabrina, who was a friend of Ms Y. The claimant said that Ms Y had been shouting at Sabrina in Sainsbury's. Ms Cozma and Ms Hallewell considered whether they should seek to interview Sabrina but they decided that, as this was an external personal situation between Ms Y and a friend, it was not of relevance to their investigation. They did not therefore interview Sabrina.

262. Ms Cozma and Ms Hallewell did not investigate the allegations which the claimant had made about Ms Y further, because there was no evidence, beyond the claimant's assertion, that there was any substance in these allegations.

263. Ms Cozma and Ms Hallewell produced an investigation report dated 14 October 2022. They concluded that the respondent should institute disciplinary proceedings against the claimant for potential gross misconduct, in particular for bullying and harassment in the workplace.

264. The alleged conduct which was to form the basis of the disciplinary proceedings was: firstly the claimant's alleged conduct in relation to Ms X; secondly her alleged conduct in relation to Ms Y; and thirdly her alleged conduct at the meeting of 13 September 2022.

Disciplinary proceedings

265. As noted, the respondent is a relatively small organisation. Ms Cozma had conducted the investigation and the only other senior manager at the respondent who was available at that time declined to chair the disciplinary hearing. Ms Hallewell therefore decided to ask Ms Eden, who was the Principal of the respondent's sister company, to chair the disciplinary hearing. Ms Eden agreed and duly did so. Ms Eden did not know the claimant nor did she know Ms X or Ms Y. She was, therefore, a senior manager who was at the same time independent from the events which were the subject of the disciplinary proceedings. It was, therefore, a sensible and reasonable decision to ask her to chair the disciplinary proceedings.

266. The claimant was invited in writing to a disciplinary hearing. She was advised of the charges against her and of the possible sanction of dismissal if they were proven and of her right to be accompanied at the hearing. As noted already, the claimant was accompanied by Ms da Cunha at all of the disciplinary hearings and at her subsequent appeal hearing.

267. In advance of the disciplinary hearing, the claimant was provided with the following documents: the investigation report; and the minutes of the investigation meetings. In addition, the claimant's own WhatsApp messages between her and Ms X, together with the various products and books etc which the claimant had given to Ms X, were available for the disciplinary (there was never any dispute that these WhatsApp messages were sent by the claimant or that the products and books etc were given to Ms X by the claimant).

268. Ms Hallewell, however, took the decision not to provide the original grievance emails from Ms Y and Ms X to the claimant or to the disciplinary hearing. This was because of her safety concerns about Ms X and Ms Y, who both appeared to be very frightened of the claimant. Ms X and Ms Y did not want their original grievances to be distributed further and Ms Hallewell had serious concerns about the impact upon two vulnerable individuals, Ms X and Ms Y, whom she herself had interviewed and had noted as being not only tearful and emotional but, as they appeared to her, genuinely frightened of the claimant, and that was why she decided that the original grievances should not be part of the documentation given to the claimant and Ms Eden. However, the points in those grievances had been put to the claimant during the investigation meetings to allow her to respond, and her responses to them were in the notes of those

meetings; the substance of the grievances had, therefore, been made known to the claimant.

269. Finally, as noted and for the reasons set out above, Ms Hallewell did not put forward the statement taken from Ms Rieppel to the claimant or the disciplinary hearing.

270. To be clear, the documents referred to in the two paragraphs above were not provided to the claimant, but nor were they provided to Ms Eden. They were not, therefore, considered as part of the disciplinary process.

271. The claimant asserted both during the internal proceedings and at this tribunal that she had not been provided with the relevant company policies and procedures. However, Ms Hallewell was asked about this and confirmed that the claimant was provided with the relevant company policies and procedures in advance of the disciplinary hearings. For reasons of respective reliability of evidence, we prefer the evidence of Ms Hallewell and accept that the claimant was provided with these policies and procedures in advance of the disciplinary hearings.

272. As she had been involved at the investigation stage, Ms Hallewell considered that it would be more appropriate if she was not involved at the disciplinary stage. As a result, Mr Marziali was the HR representative supporting the disciplinary hearing, which was chaired by Ms Eden.

273. As noted, there were two disciplinary meetings, on 19 October 2022 and 8 November 2022 respectively. The claimant covertly recorded both meetings and, part way through this tribunal hearing, produced transcripts of those recordings. As already noted, given the number of references to *"inaudible"* in the transcripts and Ms Eden's concerns, having seen them, that certain areas of them were missing, we find that they are not necessarily a complete record of what was said at the meetings. However, they are very lengthy (reflecting the fact that both meetings were lengthy, particularly the first one which was well in excess of two hours) and give a flavour of how the meetings were conducted.

First disciplinary meeting (19 October 2022)

274. It is clear from the transcripts, as well as from Ms Eden's own evidence, that both disciplinary meetings were very difficult meetings for her and Mr Marziali to manage, but particularly the first meeting on 19 October 2022.

275. First of all, it is evident that, particularly in the early part of that meeting, Ms da Cunha was effectively trying to run the meeting instead of Ms Eden and Mr Marziali. Ms da Cunha and the claimant frequently brought up procedural points and prevented Ms Eden from trying to ask questions which she wanted to ask in order to try and understand the claimant's view in relation to the actual substance of the allegations made against her.

276. Furthermore, when Ms Eden tried to ask the claimant questions, the claimant reacted aggressively and rarely answered the question directly. As is

consistent with the claimant's behaviour in other meetings and at this tribunal, the claimant talked over Ms Eden. She did not listen to what Ms Eden was asking her and Ms Eden found herself repeating questions numerous times in order to try and get the claimant's point of view on the allegations. However, the claimant was given every opportunity to put her side of the story, had she chosen to do so.

277. Furthermore, Ms da Cunha was trying to assist the claimant by answering the questions for the claimant. Ms Eden had to point out that she could ask questions, but was not permitted to answer questions on the claimant's behalf.

278. The transcript indicates that Ms Eden was very patient with the claimant and Ms da Cunha, despite what was clearly a very difficult meeting. Having heard Ms Eden's evidence at this tribunal where, despite the claimant repeatedly asking her similar things and seemingly failing to understand what Ms Eden was very clearly saying, Ms Eden patiently tried to explain in order to help the claimant understand what she was trying to say, we accept that it is likely that she was similarly patient with the claimant during the disciplinary meetings.

279. In their evidence to this tribunal, both the claimant and Ms da Cunha were very dismissive of the way Ms Eden handled the hearing and accused her of, amongst other things, frequently interrupting the claimant's responses, hindering her ability to address the allegations effectively and not giving her the chance to present evidence, and they accused her of not being impartial. We do not accept any of this. As we have already noted, the claimant and Ms da Cunha are both very assertive people who do not shrink from expressing their opinions if they want to. We have seen how they presented at the employment tribunal, in contrast to Ms Eden. Furthermore, with the benefit of the transcripts, which we have seen, it is clear to see that Ms Eden did not handle the hearing inappropriately; by contrast she remained patient and focused on her task, giving the claimant the opportunity to state her case and explain her actions; this was despite the hearing being a difficult one to manage, largely because of the approach of the claimant and Ms da Cunha.

280. Ms Eden considered that the allegations were very serious, in particular the allegations that the claimant had attempted to give her colleague Ms X substances to ingest. She wanted to give the claimant the opportunity to answer those allegations.

281. The claimant denied the allegations of bullying toward Ms Y and, as regards the meeting of 13 September 2022, the claimant admitted that she did swear in the meeting but said that she did not swear at people. Ms Eden tried to question the claimant about those other allegations, but the claimant brought the discussion continually back to the issue concerning Ms X. However, the claimant was given a full opportunity to give her side of the story.

282. As is evident from the transcript, Ms Eden had on several occasions during the meeting been trying to give the claimant the opportunity to explain her behaviour. In doing so, particularly in the context of the alleged bullying allegations, she suggested that the reactions of others might have been their

perception of the claimant's behaviour as being aggressive or bullying and sought to ascertain whether the claimant felt that she might be perceived as, for example, aggressive, when she was not in fact so. She was doing this to assist the claimant.

283. About 80% of the way through the transcript of that meeting, there is a passage which forms the basis of certain allegations of harassment and direct discrimination at this tribunal. It comes in the context of Ms Eden again trying to give the claimant the opportunity to explain how her behaviour might be adversely perceived. Context is important, and we therefore quote the passage in the transcript in full (which, notwithstanding our concerns about the completeness of the transcript, is the closest we are likely to get to what was actually said). Ms Eden states:

"I'm, Gosia, when I was talking to you, and I need to clarify something, sometimes people's behaviour is interpreted as aggressive because it's cultural. So when I asked you, when I said, look, this is coming across as aggressive to me, it's because, culturally, and this is why I was asking, is there anything in your behaviour that is cultural that people might? Because, you know, I am English and we're very polite. You know, other cultures are [crosstalk]…

You know, people, people… We-we-we queue, we queue, you know we nicely queue. And if anybody jumps in the queue, we think that's horrendous behaviour. So I'm not judging you, I'm trying, could this be part of the problem?"

The claimant replies:

"Well, definitely the cultural stuff, which I can see is in me is the fact I was brought up in a way that you don't follow the crowd, you make your own decision, and you're responsible for your actions. So-so basically, um, for me, millions can have one opinion, but if it doesn't resonate with me, I'll stick to my opinion. So, I'm not easily influenced. I will always analyse the situation and chose the best option. And I take responsibility for what I'm doing…

284. As noted, both the claimant and Ms da Cunha are very assertive individuals who in no way shrink from expressing any disapproval which they feel in response to events. There are numerous examples of this in the transcript and there were numerous examples at this employment tribunal hearing. However, although the above comments by Ms Eden formed one of the grounds of the claimant's subsequent appeal against dismissal and of certain allegations of harassment/direct discrimination at this tribunal, it is noticeable that neither the claimant nor Ms da Cunha made any objection to them at the time. There was no response at all from Ms da Cunha and, as for the claimant, she simply for once engaged with Ms Eden and answered the question about potential cultural differences. Both of them, however, were adamant at this tribunal that they found these comments very offensive.

285. Both the claimant and Ms da Cunha asserted in their evidence at this tribunal that, on hearing these comments, Mr Marziali, who is Italian, reacted adversely to these comments, for example, Ms da Cunha stated in her witness statement that he *"visibly expressed disapproval of Shirley's comments through facial expressions and swiftly attempted to change the topic"*. When Ms Eden was asked about this, she denied that he did so. We prefer Ms Eden's evidence, for the reasons of respective reliability of evidence referred to above and

because we also note that, whilst a "visible" expression of disapproval would not show on a transcript, an attempt to change the topic would; but there is nothing in the transcript which indicates that Mr Marziali said anything to "swiftly attempt to change the topic" or that he disapproved of the comments in any way. We therefore find that Mr Marziali made no disapproving remarks or gestures in relation to these comments and did not attempt to change the topic.

286. After about 2½ hours, Ms Eden considered that little progress had been made, because of the claimant's aggressive stance. She therefore adjourned the meeting and told the claimant that they would resume at a later date. The claimant had also told Ms Eden that, once she had been told to stop contacting Ms X with alternative methods for dealing with cancer, she had stopped (which was contrary to Ms X's evidence). The claimant had also said that Ms X had in fact asked her for advice. Ms Eden wanted to look at further evidence and investigate further.

287. Ms Eden then asked HR for copies of all of the WhatsApp messages between the claimant and Ms X so that she had all of the evidence in front of her. (By definition, the claimant also had all of these WhatsApp messages as she was a party to them.) Ms Eden also sought and obtained clarity on some of the procedural points raised by the claimant and Ms da Cunha which she was unable to answer at the hearing.

Rescheduling the disciplinary hearing

288. The respondent then tried to reschedule a further disciplinary hearing. The first attempt to reschedule was postponed because Ms da Cunha was not available to attend as the claimant's companion. It was therefore rescheduled a second time, this time to 1 November 2022.

289. However, this was also postponed because the claimant informed the respondent that she was not well enough to attend. Specifically, on 28 October 2022, the claimant had sent Mr Marziali, copied to Ms Eden, a brief email stating simply that her mental health deteriorated after the last meeting and that therefore she would not be able to come to the meeting scheduled for 1 November 2022 and that she would let Mr Marziali know when she was feeling better. We have not seen any evidence of any further conversations between the claimant and Mr Marziali following this email. However, the respondent rescheduled the meeting for 8 November 2022, on which date it did indeed take place, and it appears that there was no objection to this. We have seen no suggestion from the claimant or Ms da Cunha that the 8 November 2022 meeting could not go ahead when it ultimately did, because of stress on the part of the claimant or otherwise. Accordingly, we find that there was no reason, because of the claimant's health or otherwise, for the 8 November 2022 meeting not to proceed.

290. At this tribunal, the claimant repeatedly described her health situation which led her to request this postponement as a *"nervous breakdown"*. Furthermore, judging from the claimant's medical records (see below), she appears to have told her GP on 4 November 2022 that she had a nervous

breakdown. In the light of our concerns about the reliability of the claimant's evidence, we find that she has not proven that she in fact had a nervous breakdown at that time. In any case, she did not reference a *"nervous breakdown"* in her brief email to Mr Marziali which sought the postponement, so the respondent was not made aware of any suggestion by the claimant that she had had a nervous breakdown.

Second disciplinary hearing (8 November 2022)

291. The claimant was less aggressive at this meeting.

292. She was presented with the WhatsApp messages that had been sent by her after she had been told in March 2022 by Ms Reippel and Mr Marziali not to contact people about such matters.

293. The claimant continued to claim that Ms X had asked for information from her. That is a pattern which continued at this tribunal; however, whilst Ms X did on occasion say thank you to the claimant in the WhatsApp messages, she at no point actively asked for or sought information or treatments from the claimant. Throughout the disciplinary hearings, the claimant did not understand that Ms X felt bullied, was vulnerable due to her cancer, and was unable directly to tell the claimant to stop.

Disciplinary decision

294. After the second disciplinary meeting, Ms Eden adjourned to consider her decision. She reconvened a hearing on 10 November 2022 to communicate that decision to the claimant and confirmed that decision in a letter of the same date.

295. Ms Eden found that the misconduct was proven in relation to all three allegations.

296. She was particularly concerned about the misconduct in relation to Ms X. She noted that she did not doubt that initially the claimant's intentions may have been to help Ms X but that it was clear that there came a point where Ms X was extremely uncomfortable with the claimant sending her WhatsApp messages. She went through some of the large number of instances of the claimant contacting Ms X about such matters which she, quite reasonably, described as *"relentless and without care for how they might have impacted [Ms X] who was in a very vulnerable place, one of extreme distress and anxiety"*. She concluded that this was *"clearly harassment of [Ms X] on the basis that she had been diagnosed with Breast Cancer"*. She noted that, although the claimant said that she had stopped after she had been warned by Ms Rieppel and Mr Marziali, there were in fact messages from her to Ms X after that. She also noted her concern at the physical items that the claimant had given to Ms X, in particular a bottle of turpentine which she gave her to drink, the label of which describes it as *"harmful or fatal if swallowed"*. She noted that, when the claimant was asked about this, she did not seem to comprehend the seriousness of her actions. She considered that this was, in her view, not only reckless but extremely dangerous.

297. As to the allegations of bullying of Ms Y, Ms Eden noted that whilst there were no witnesses to the treatment described by Ms Y, her belief was that the claimant did in fact behave in a bullying way towards Ms Y on more than one occasion.

298. She also concluded, that the claimant's unprofessional behaviour at the meeting of 13 September 2022 amount to misconduct.

299. She also addressed the various procedural points raised by the claimant and Mr Cunha.

300. In terms of sanction, she concluded:

"I have not seen any evidence that you have considered the impact of your behaviours on either [Ms Y] or [Ms X]. Throughout our meetings with you, you have shown no remorse for your actions and the impact they have had on two members of the BAJ team. The fact that you continue to feel that your actions towards [Ms X], who was in an extremely vulnerable situation are acceptable, is deeply concerning and not something that cannot be tolerated."

The word "cannot" is clearly a typographical error and should read "can".

301. Ms Eden concluded that the claimant's conduct amounted to gross misconduct and decided to summarily dismiss the claimant. In her evidence before this tribunal, it was clear that the complete absence of any remorse from the claimant for her actions was a crucial factor as to why Ms Eden considered that dismissal was the appropriate sanction for the misconduct and not a lesser sanction.

302. The letter notified the claimant of her right to appeal the decision, to Mr Nawaz.

303. The claimant duly appealed against her dismissal.

The claimant's three grievances

304. On 11 November 2022, the claimant raised three separate grievances against Ms Eden, Ms Hallewell and Mr Marziali. These were essentially in relation to the investigation process and the disciplinary hearing. Most of the issues raised formed part of the appeal that the claimant had raised. As a result, Mr Nawaz, who chaired the appeal, asked the claimant if she was happy for these grievances to form part of the appeal and she agreed to this proposal. The appeal meeting therefore took these points raised into consideration.

Appeal

305. The claimant's appeal meeting took place on 23 November 2022, before Mr Nawaz. The claimant was accompanied by Ms da Cunha.

306. Ms Hallewell arranged a separate notetaker for the meeting because of the grievances which the claimant had raised against the only two members of HR at the respondent (Ms Hallewell and Mr Marziali).

307. Mr Nawaz no longer works for the respondent and is out of the country. He did not therefore attend the tribunal to give evidence. However, we have seen the documentation relating to the claimant's appeal. Again, the claimant covertly recorded the appeal meeting; however, she did not produce a transcript of this recording to the tribunal hearing.

308. The claimant appears to have been given every opportunity to make the points she wanted to make.

309. Mr Nawaz conducted some further investigations in the context of the appeal.

310. On 14 December 2022, Mr Nawaz issued an appeal outcome letter. He considered the various matters raised by the claimant's appeal, including the grievances raised against Ms Eden, Ms Hallewell and Mr Marziali. He did not allow her appeal and he upheld the decision to dismiss. Furthermore, he found no evidence to uphold the three grievances and did not uphold them. From the documentation we have seen, there is nothing to suggest that these decisions were unreasonable.

The claimant's grievance against Ms Rieppel

311. On 22 March 2023, the claimant raised a fourth grievance, this time against Ms Rieppel. This grievance was raised some four months after the claimant had been dismissed, so the claimant had long since ceased to be an employee of the respondent by this stage. The respondent took legal advice and decided that it would not hear the grievance. Given the timing of the grievance, that was not an unreasonable decision in the circumstances.

312. As noted, Ms Rieppel had been on maternity leave from 30 September 2022 through into 2023. She was unaware of the claimant's dismissal until she returned to the respondent for a keeping in touch today whilst still on maternity leave sometime in April 2023.

The claimant's medical evidence

313. The alleged disabilities relied on by the claimant are anxiety and/or stress and/or PTSD.

314. As noted, the claimant provided a bundle of medical evidence to the hearing running to some 67 pages. This comprises medical records going back as far as 2010 and covers a period running from then, through the period of her employment with the respondent (from March 2020 to November 2022) and beyond up to December 2023.

315. There are references in the medical records over the period from 2010 to mid-2014 to the claimant being referred for an ADHD diagnosis. However, there is no reference to PTSD anywhere in the records. In her evidence, the claimant stated that she did not think that she had ADHD; rather, she herself thought that she had PTSD; but she accepted that she had never been diagnosed with PTSD. The claimant is not a qualified medical practitioner. We do not, therefore, accept her self-diagnosis that she had PTSD without medical evidence to back that up. We therefore find that the claimant at no point had the impairment of PTSD.

316. The medical records reference a *"depressive episode"* in January 2018 (long before her employment with the respondent commenced). However, there is no evidence that this was ongoing. There are then no further references to anything which might amount to a mental health impairment until 10 December 2021. The GP records for that date state that the claimant rang to say that she had been under stress at work; there is a diagnosis of *"stress-related problems"*, but nothing more than that; and the claimant was signed off as being not fit for work from 9 December 2021. This ties in with the period when the claimant was absent from work and where she told Ms Rieppel in November 2021 that her problems were because of not having a good living situation and being unable to feel comfortable and safe in her shared accommodation (as opposed to her problems being work related). There is a further entry on the GP records for 30 December 2021 which also references *"stress-related problems"*.

317. There is nothing further in the GP records until 4 November 2022 (which was during the claimant's period of suspension and around the time she asked for the second disciplinary hearing to be postponed on the grounds that she was not well enough to attend). The GP records reference the claimant having told her GP that she *"had a nervous breakdown has been at home for last one week"* and references *"work-related stress"*. The entry is linked purely to the work situation. There is nothing to indicate that it is long-term as opposed to a temporary situation specific episode.

318. There are then no further entries of relevance until 9 October 2023, which is almost a year after the claimant's employment terminated.

319. There were, therefore, no references in the GP records for the relevant period to anxiety.

320. There are references to stress. However, they are to isolated situation specific episodes in December 2021 and November 2022 respectively. There is nothing to link those episodes. There is, therefore, no evidence in the medical records that the impairment of stress was ongoing or long-term. Although the claimant now asserts otherwise, we have serious concerns about the reliability of her evidence and, in the absence of any other relevant evidence, we find the position is as evidenced in the medical records. These were situation specific temporary instances of stress; they were not long-term.

321. Nobody at the respondent had seen the claimant's medical records during her employment; they were produced only for this tribunal.

The Law

Unfair dismissal

322. The tribunal has to decide the following.

323. Whether the employer had a reason for the dismissal which was one of the potentially fair reasons for dismissal within s 98(1) and (2) of the ERA and whether it had a genuine belief in that reason. The burden of proof here rests on the employer who must persuade the tribunal that it had a genuine belief that the employee committed the relevant misconduct and that belief was the reason for dismissal.

324. In conduct cases, the principles in British Home Stores v Burchell [1978] IRLR 379 apply, namely that, in dismissing the employee, the employer must have a genuine and reasonably held belief that the relevant misconduct took place, following such investigation as was reasonable.

325. Whether the tribunal is satisfied, in all the circumstances (including the size and administrative resources of the employer), that the employer acted reasonably in treating it as a sufficient reason to dismiss the employee. The tribunal refers itself here to a 98(4) of the ERA and directs itself that the burden of proof in respect of this matter is neutral and that it must determine it in accordance with equity and the substantial merits of the case. It is useful to regard this matter as consisting of two separate issues, namely:

> 1. Whether the employer adopted a fair procedure? This will include a reasonable investigation with, almost invariably, a hearing at which the employee, knowing in advance (so as to be able to come suitably prepared) the charges or problems which are to be dealt with, has the opportunity to put their case and to answer the evidence obtained by the employer; and
>
> 2. Whether dismissal was a reasonable sanction in the circumstances of the case. That is, whether the employer acted within the band of reasonable responses in imposing it. The tribunal is aware of the need to avoid substituting its own opinion as to how a business should be run for that of the employer. However, it sits as an industrial jury to provide, partly from its own knowledge, an objective consideration of what is or is not reasonable in the circumstances, that is, what a reasonable employer could reasonably have done. This is likely to include having regard to matters from the employee's point of view: on the facts of the case, has the employee objectively suffered an injustice? It is trite law that a reasonable employer will when making a decision bear in mind, if relevant to the circumstances of the case, factors such as the employee's length of service, previous disciplinary record, declared intentions in respect of reform and so on.

326. In respect of these issues, the tribunal must also bear in mind the provisions of the relevant ACAS Code of Practice on disciplinary and grievance

procedures to take into account any relevant provision thereof. Failure to follow any provisions of the Code does not, in itself, render a dismissal unfair, but it is something the tribunal will take into account in respect of both liability and any compensation. If the claimant succeeds, the compensatory award may be increased by 0-25% for any failures by the employer or decreased by 0-25% for any failures on the claimant's part.

327. Where there is a suggestion that the employee has by his/her conduct caused or contributed to his/her dismissal, further and different matters arise for consideration. In particular, the tribunal must be satisfied on the balance of probabilities that the employee did commit the act of misconduct relied upon by the employer. Thereafter issues as to the percentage of such contribution must be determined.

328. Under the case of Polkey v AE Dayton [1987] IRLR 503 HL, where the dismissal is unfair due to a procedural reason but the tribunal considers that an employee would still have been dismissed, even if a fair procedure had been followed, it may reduce the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment.

Protected Disclosures

329. The principal relevant law is set out in Parts IVA and X of the ERA.

330. For the detriment and dismissal complaints relating to protected disclosures, colloquially referred to as "whistle blowing", an employee must first prove on the balance of probabilities that he or she made a protected disclosure. To do this the employee must first prove that he or she made a qualifying disclosure under s.43B of the ERA. A qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of six categories set out at s.43B (a-f). The categories relevant to this case are:

> (a) That a criminal offence has been committed, is being committed or is likely to be committed;
>
> (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; and
>
> (c) That the health or safety of any individual had been, was being or was likely to be endangered.

331. The case of Cavendish Munro Professional Risks Services Ltd v Geduld [2010] IRLR 38 EAT indicates that there is a distinction between "information" and an "allegation". The ordinary meaning of "information" is "conveying facts" and that is what is required to fall within s.43B. A mere allegation will not suffice. However, the two are not mutually exclusive; a protected disclosure may contain both information and allegation (see Kilraine v London Borough of Wandsworth [2016] IRLR 422, EAT).

332. Crucially, it is not the happening of a matter within one of the above categories which is relevant to the establishment of the qualifying disclosure but merely whether the employee has a reasonable belief in its having happened, happening or the likelihood of its happening. A belief may still be objectively reasonable even where the belief is wrong or does not on its facts fall within one of the categories outlined about.

333. The same reasonable belief test applies to the public interest test incorporated into s.43B ERA and referred to above (see Chesterton Global Ltd and another v Nurmohamed [2015] UK EAT/0335/14). Nurmohamed established that the test is whether an individual has a reasonable belief that the disclosure is in the public interest. Further, on the facts in Nurmohamed, the EAT upheld a finding that the protected disclosures, which concerned the manipulation of the employer's accounts such as to affect adversely 100 senior managers, were in the public interest. The sole purpose of the amendment to section 43B(1) introducing the "public interest" test was to reverse the effect of Parkins v Sodexho Ltd [2002] IRLR 109. The words "in the public interest" were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. In Nurmohamed, the breach affected other people as well as the claimant.

334. In Norbrook Laboratories v Shaw [2014] ICR 540, the EAT held that more than one communication could be read together to amount to a qualifying disclosure when, taking the communications separately, each would not in itself be a disclosure.

335. If the employee establishes that he or she made a qualifying disclosure, he or she must then prove that it was a protected disclosure. This can be done in a number of ways in accordance with s.43C-43H of the ERA. A disclosure made to an employer, as set out in s.43C, is one such way in which a qualifying disclosure can be a protected disclosure as well. The requirement that such a disclosure must be made in good faith to become a protected disclosure no longer applies since the law changed in 2013.

336. If the above is established, the employee has made a protected disclosure.

337. S.47B(1) provides that: *"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure"*. Following the case of NHS Manchester v Fecitt and others [2011] EWCA Civ 1190, it is established that in terms of causation the disclosure must be a material influence (in the sense of being more than a trivial influence) in the employer's subjecting the claimant to a detriment. Under s.48(2) ERA, it is for the employer to prove on the balance of probabilities the ground on which the act, or deliberate failure, complained of was done.

338. For the automatically unfair dismissal claim under s.103A to succeed, the protected disclosure must be the sole or principal reason for dismissal. It is

for the employer to show the reason or principal reason for the dismissal. However, where a tribunal has rejected the reason put forward by the employer, it is not bound to accept the reason put forward by the claimant and it is open to the tribunal, on the evidence, to conclude that the true reason is one not advanced by either party (Kuzel v Roche Products Ltd [2008] ICR 799, CA).

Philosophical belief

339. In Grainger Plc and others v Nicholson UKEAT/0219/09, the EAT drew principles from existing case law and crystalised such principles into a legal test for philosophical belief. The EAT confirmed that in order for a view to be a philosophical belief which obtained the protection under the EQA, it must:

1. be genuinely held;

2. be a belief and not an opinion or viewpoint based on the present state of information available;

3. be a belief as to a weighty and substantial aspect of human life and behaviour;

4. attain a certain level of cogency, seriousness, cohesion and importance; and

5. be worthy of respect in a democratic society and not incompatible with human dignity and or conflict with the fundamental rights of others.

Direct discrimination because of race/belief and harassment related to race/belief

340. Under section 13(1) of the EQA, a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others (direct discrimination).

341. Under section 26(1) of the EQA, a person (A) harasses another person (B) if A engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

342. In deciding whether conduct has the effect referred to above (but not the purpose referred to above), each of the following must be taken into account: the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.

343. Both race and religion or other philosophical belief are protected characteristics in relation to both direct discrimination and harassment as referred to above.

344. For the purposes of the comparison required in relation to direct discrimination between B and an actual or hypothetical comparator, there must

be no material difference between the circumstances relating to B and the comparator. By contrast, there is no requirement for such a comparison in establishing harassment.

345. Under sections 39(2) of the EQA, an employer must not discriminate against an employee of his on various grounds, including dismissing him/her or subjecting him/her to any other detriment. Under section 40(1) of the EQA, an employer must not harass an employee of his. Where conduct constitutes harassment, it cannot also constitute a detriment as defined in the EQA and therefore cannot be direct discrimination as well as harassment.

346. In Richmond Pharmacology v Dhaliwal 2009 ICR 724 EAT Mr Justice Underhill, then President of the EAT, said: *'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'*. The EAT affirmed this view in *Betsi Cadwaladr University Health Board v Hughes and ors* EAT 0179/13. The EAT observed that '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'. Indeed, the Court of Appeal in HM Land Registry v Grant (Equality and Human Rights Commission intervening) 2011 ICR 1390 further stated in this context that *'tribunals must not cheapen the significance of these words since they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment'*.

347. In respect of the above provisions, the burden of proof rests initially on the employee to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the employer did contravene one of these provisions. To do so the employee must show more than merely that he was subjected to detrimental treatment by the employer and that the relevant protected characteristic applied; there must be "something more" to indicate a connection between the two (Madarassy v Nomura International plc [2007] IRLR 246). If the employee can establish this, the burden of proof shifts to the employer to show that on the balance of probabilities it did not contravene that provision. If the employer is unable to do so, we must hold that the provision was contravened and discrimination or harassment as applicable did occur.

348. However, if the tribunal can make clear positive findings as to an employer's motivation, then it need not revert to the burden of proof (Martin v Devonshires Solicitors [2001] ICR 352 (EAT)).

Philosophical beliefs and direct discrimination/harassment

349. In Higgs v Farmor's School [2023] EAT 89, Mrs Justice Eady gave guidance about direct discrimination and harassment in relation to philosophical beliefs.

350. She noted that, in that case, the tribunal was obliged to determine the employee's EQA claim in accordance with rights conferred by the European Convention on Human Rights, including Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression). It should therefore have approached the claim by considering whether the employee's actions amounted to a manifestation of a belief (the tribunal having decided that the belief in question was protected). This involved asking whether there was a sufficiently close and direct nexus between the employee's conduct and the belief.

351. If there had been a restriction on manifestation of belief or freedom of expression, that restriction would have to be prescribed by law, pursuant to a legitimate aim, and be necessary in a democratic society under Articles 9(2) and 10(2). This requires a proportionality assessment. In establishing the reason why the relevant decision-maker acted as they did, for the purpose of a direct discrimination claim under S.13 EQA, it will not be possible to rely on a distinction between an objectionable manifestation of a belief and the holding or manifestation of the belief itself if the action taken is not a proportionate means of achieving a legitimate aim. If, however, the action or response can be justified, and is found to be by reason of the objectionable manner of the manifestation, the tribunal can permissibly find that the reason why the respondent acted did not involve the belief but only its objectionable manifestation.

352. In doing so, Eady P identified certain factors which, if relevant to the case in question, it would be necessary to ask about, namely (i) whether the objective the employer seeks to achieve is sufficiently important to justify the limitation of the right in question; (ii) whether the limitation is rationally connected to that objective; (iii) whether a less intrusive limitation might be imposed without undermining the achievement of the objective in question; and (iv) whether, balancing the severity of the limitation on the rights of the worker concerned against the importance of the objective, the former outweighs the latter.

Disability

353. Under section 6(1) of the EQA, a person has a disability if that person has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

354. The effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last for at least 12 months or it is likely to last for the rest of the life of the person affected.

355. An impairment is to be treated as having a substantial effect on the ability of the person to carry out normal day-to-day activities if measures are being taken to treat or correct it and, but for that, it would be likely to have that effect. "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

356. It is for the claimant to prove on the balance of probabilities that he or she has a disability.

Reasonable adjustments

357. The law relating to the duty to make reasonable adjustments is set out principally in the EQA s.20-22 and schedule 8. The EQA imposes a duty on employers to make reasonable adjustments in certain circumstances in connection with any of three requirements. The requirement relevant in this case is the requirement, where a provision criterion or practice of an employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

358. A failure to comply with such a requirement is a failure to comply with the duty to make reasonable adjustments. If the employer fails to comply with that duty in relation to a disabled person, the employer discriminates against that person. However, the employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know, that the disabled person has a disability and is likely to be placed at the disadvantage referred to.

359. In considering whether or not suggested adjustments are reasonable, some of the factors we might take into account include: whether taking any particular steps would be effective in preventing the substantial disadvantage; the practicability of the step; the financial and other costs of making the adjustment and the extent of any disruption caused; the extent of the employer's financial and other resources; and the type and size of the employer.

360. The burden of proof provisions set out above in relation to direct discrimination and harassment also apply in relation to the duty to make reasonable adjustments.

Breach of contract

361. As to the breach of contract complaints, the tribunal must first identify the contractual term, whether express or implied; if there is no contractual term, there can be no breach of contract.

362. The tribunal must then identify whether the employer breached that term and, if so, whether the claimant sustained any loss as a result of that breach.

Failure to allow a worker to be accompanied under the Employment Relations Act 1999

363. Under section 10 of the Employment Relations Act 1999, where a worker reasonably requests to be accompanied at a disciplinary hearing or a grievance hearing, the employer must permit the worker to be accompanied by a companion. That companion may be a trade union representative or a fellow worker.

364. The right does not apply unless first the worker is invited by the employer, or required by the employer, to attend a disciplinary or grievance hearing and the worker reasonably requests to be accompanied at the hearing.

365. The right extends to disciplinary and grievance hearings only. It does not extend to other sorts of meeting to which the worker may be invited, such as a meeting at which the worker is informed that they are suspended; an investigation meeting in relation to matters which subsequently form part of disciplinary proceedings against the worker; or an investigation meeting relating to a grievance brought by another worker.

Time extensions and continuing acts

Breach of contract, unfair dismissal, whistleblowing detriment, and section 10 Employment Relations Act 1999 time issues

Breach of contract

366. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, under which complaints of breach of contract are brought in the employment tribunal, provides at regulation 7 that *"Subject to article… 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented: (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or… (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within [this period], within such further period as the tribunal considers reasonable*."

367. However, the period of time spent on ACAS Early Conciliation impacts upon the length of the time limit set out above, as Article 8B of the Order provides as follows:

8B.— Extension of time limit to facilitate conciliation before institution of proceedings

(1) This article applies where this Order provides for it to apply for the purposes of a provision of this Order ("a relevant provision").

(2) In this article—

(a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by a relevant provision would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Order to extend the time limit set by a relevant provision, the power is exercisable in relation to that time limit as extended by this regulation.

368. Similar provisions in relation to adjusting the primary time limit for time spent in ACAS early conciliation apply in relation to the other complaints in this section below and to the EQA complaints and we do not repeat them in those sections.

Unfair dismissal

369. The ERA provides at section 111(2) in relation to complaint of unfair dismissal, *"… an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal: (a) within the period of three months beginning with the effective date of termination, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months*".

Protected interest disclosure detriment

370. The jurisdictional test in relation to complaints of being subjected to a detriment as a result of having made a protected disclosure is set out at section 48(3) ERA. It provides that: *"an employment tribunal shall not consider a complaint under this section unless it is presented – (a) before the end of the period of three months beginning with the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."*

Section 10 Employment Relations Act 1999

371. Section 11(2) of the Employment Relations Act 1999 provides that *"… an employment tribunal shall not consider a complaint under this section in relation to a failure… unless the complaint is presented: (a) before the end of the period of three months beginning with the date of the failure…, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months*".

372. In relation to all of the above complaints, the onus of proving that presentation in time was not reasonably practicable rests on the claimant. *'That imposes a duty upon him to show precisely why it was that he did not present his complaint'* (Porter v Bandridge Ltd 1978 ICR 943, CA).In Palmer v Southend on Sea BC [1984] 1 WLR 1129, the Court of Appeal conducted a general review of

the authorities and concluded that 'reasonably practicable' does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'. It also held that, although the pursuit of a domestic appeals procedure was a relevant circumstance for consideration by the tribunal, it was not by itself enough to make it "not reasonably practicable" for an employee's complaint to be presented within the prescribed period.

373. In Dedman v British Building & Engineering Appliances [1974] 1 WLR 171, the Court of Appeal held that the fact that a dismissed employee does not know of the time limit for presenting a complaint is irrelevant to the question as to whether it was practicable for him to do so within the time limit; nor was the fact that his solicitors failed to advise him of the time limit mean that it was not reasonably practicable to have presented the claim on time.

374. Where a claimant is generally aware of his or her rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on inquiry as to the time limit. Indeed, in Trevelyans (Birmingham) Ltd v Norton [1991] ICR 488, EAT, Mr Justice Wood said that, when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim.

EQA time issues

375. The EQA provides that a complaint under the EQA may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable.

376. It further provides that conduct extending over a period is to be treated as done at the end of the period and that a failure to do something is to be treated as occurring when the person in question decided on it.

377. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA, the Court of Appeal stated that, in determining whether there was "an act extending over a period", as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed, the focus should be on the substance of the complaints that the employer was responsible for an ongoing situation or a continuing state of affairs. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as the indicia of "an act extending over a period". The burden is on the claimant to prove, either by direct evidence or by inference from primary facts, that alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period".

378. As to whether it is just and equitable to extend time, it is for the claimant to persuade the tribunal that it is just and equitable to do so. There is no presumption that time will be extended, see Robertson v Bexley Community Centre [2003] IRLR 434 CA. The tribunal takes into account anything which it judges to be relevant. This is the exercise of a wide, general discretion and may include the date from which a claimant first became aware of the right to present a complaint.

Conclusions on the issues

379. We make the following conclusions, applying the law to the facts found in relation to the agreed issues. We generally follow the order of the list of issues, although we deal with the substantive issues first and leave the issue of time limits to the end. References to "LOI" below are to the agreed list of issues.

Disability (LOI 2)

380. The claimant relies upon PTSD, anxiety and stress as her alleged disabilities.

381. As we have found in our findings of fact above, the claimant at no time had the impairment of PTSD. She was not, therefore, at any time a disabled person by reason of PTSD.

382. Furthermore, there was no reference in the medical records, either during the period of her employment with the respondent or around that period, to the claimant having anxiety. There is, therefore, no medical evidence that the claimant had the impairment of anxiety at the relevant times. There remains, therefore, only the claimant's assertion that she was disabled by reason of anxiety. The claimant is not a medical professional and, as already indicated, we have concerns about the reliability of the claimant's evidence. We do not, therefore, accept that she has proven on the balance of probabilities that she had anxiety at the times relevant to this claim. She was not, therefore, at any time relevant to this claim a disabled person by reason of anxiety.

383. Finally, we have found that the claimant did have the impairment of stress for isolated periods, firstly in December 2021 – January 2022, and secondly in November 2022.

384. We accept that, whatever its cause, the period of stress in December 2021 - January 2022 had a substantial adverse effect on the claimant, as she was unable to attend work for a period of several weeks. However, we do not accept that the claimant has proven that the second period of stress, which was for roughly a week in November 2022, had a substantial adverse effect on her ability to carry out normal day-to-day activities. The claimant was not attending work at that time anyway because she had been suspended; the only evidence of the nature of the effect which we have is that she informed the respondent that she could not attend the rescheduled disciplinary hearing in early November 2022, with the result that that was again briefly postponed, this time to 8 November 2022; however, attending a disciplinary hearing the outcome of which

could be the loss of one's employment is inherently stressful anyway and is something which many individuals would find difficult to do regardless of any medical impairment; we therefore find that the claimant has not proven that her impairment of stress had a substantial adverse impact on her ability to carry out normal day to day activities in relation to the period in early November 2022.

385. Furthermore, as we have found, these periods of stress were not long-term. There is no medical evidence that their impacts had lasted for 12 months or were likely to last for 12 months. By contrast, their descriptions in the medical records indicate that these periods of stress were temporary and situation specific. As their effects were not long-term, the claimant was not at any time relevant to this claim a disabled person by reason of stress.

386. As the claimant has not proven that she was a disabled person because of any of the three alleged impairments upon which she relies, all of her disability-related complaints (her complaints for a failure to make reasonable adjustments because of disability) fail at the first stage.

Philosophical beliefs (LOI 3)

387. The alleged belief relied on by the claimant is a belief *"in a healthy natural way of living free from allopathic drugs and experimental injections"*.

388. First, there was never any dispute that the claimant held and indeed continues to hold such a belief. That much is evident from many of the assertions made by her which are recorded in our findings of fact above.

389. Furthermore, in his oral submissions, Mr Ocloo laboriously went through all of the questions at paragraphs 3.1.1 - 3.1.5 of the LOI, effectively conceding each point in turn. The judge asked Mr Ocloo if he was in fact conceding that the claimant's belief was indeed a philosophical belief for the purposes of the legislation; Mr Ocloo paused, and then said that he was.

390. We agree with Mr Ocloo and find that the claimant's belief is indeed a belief that falls within the protection of the legislation. It is genuinely held; it is a belief and not an opinion or viewpoint based on the present state of information available; it is a belief as to a weighty and substantial aspect of human life and behaviour; it has a certain level of cogency, seriousness, cohesion and importance; and it is not excluded by virtue of being an extreme belief.

391. To be clear, our finding extends to the belief as set out in the list of issues, including such matters as the claimant's unwillingness to have the Covid vaccine; it does not, however, extend to the peddling of conspiracy theories such as the one referred to above about Bill Gates; such beliefs are extreme beliefs, not worthy of respect in a democratic society.

Protected disclosure (LOI 4)

On 18 January 2021 to Kate Rieppel, in person - concerns about medical experiments with information about the ingredients of the vaccines (LOI 4.1.1.1 and 4.1.2)

392. We refer in full to our findings of fact above in relation to the conversation which the claimant had on 18 January 2021 with Ms Rieppel's husband and in Ms Rieppel's presence.

393. We do not consider that the claimant disclosed "information"; she merely gave her opinion about the Covid vaccine, in particular reiterating Internet conspiracy theories about Bill Gates. As there was no disclosure of information, this cannot have been a protected disclosure.

394. Furthermore, whilst the claimant may have believed these conspiracy theories, we do not consider that such a belief was a reasonable one. The claimant's denial at this tribunal that she did refer to the Bill Gates conspiracy theory is perhaps an acknowledgement on her part that such a theory would be seen as unreasonable and would not therefore reflect well on her if she acknowledged having referred to it in that conversation. For that reason too, this cannot have been a protected disclosure.

395. Furthermore, whilst matters to do with the vaccination programme would generally be matters in the public interest, we do not consider that reiterating an unreasonable conspiracy theory can amount to a reasonable belief on the part of the claimant that this was in the public interest (regardless of whether her belief that it was in the public interest was genuine). For this reason too, this was not a protected disclosure.

(Date not specified) to Kate Rieppel - concerns about the Covid PCR test, namely that the test that the respondent was distributing to its employee was sterilised with ethylene oxide which is very toxic and carcinogenic (LOI 4.1.1.2 and 4.1.2.2)

396. We cross-refer to our findings of fact in relation to this alleged disclosure in full. We found that, whilst the claimant expressed an opinion about the PCR tests to Ms Rieppel at some unspecified point in 2021, she did not disclose the information alleged in this alleged disclosure, namely that the test was sterilised with ethylene oxide which she considered was very toxic and carcinogenic. As there was no disclosure of information, there was no protected disclosure.

397. Furthermore, whilst the claimant may have genuinely believed that the tests contained an ingredient that was very toxic and carcinogenic (and were therefore a risk to health and safety), these tests were approved and supplied by the government, with the benefit of medical advice, to be used by employees across the country. We do not consider that is it is reasonable to believe that the government would distribute in this way something which was "very toxic and carcinogenic" and therefore a major and obvious risk to health and safety. We do

not, therefore, accept that the claimant's belief was a reasonable one. For this reason too, this was not a protected disclosure.

398. Furthermore, again whilst matters to do with the vaccination programme would generally be matters in the public interest and whilst the claimant may genuinely have believed that this was in the public interest, we do not consider that communicating an unreasonable belief of this nature can be something that the claimant reasonably believed was in the public interest. For this reason too, this was not a protected disclosure.

(Date not specified) to Ms X - information as to the harmful effects of the PCR test (LOI 4.1.1.3 and 4.1.2.3)

399. As set out our findings of fact above, this is a reference to the WhatsApp messages sent by the claimant to Ms X on 15 March 2022. The first of those messages contains a link which appears to be about ethylene oxide and cancer, the contents of which we have not seen. In her subsequent WhatsApp messages that day, the claimant sent Ms X pictures of Covid Antigen Rapid tests and a set of what appeared to be instructions for one of those tests which contains a reference to *"Sterilised using ethylene oxide"*. We accept that she was implying that the tests were sterilised with a substance which could cause cancer and that she was disclosing information which she herself believed tended to show that the health and safety of individuals was being endangered.

400. However, we have not seen the contents of the link or whether it actually suggests that ethylene oxide causes cancer and, even if it does, to what extent and in what circumstances it does. We have already noted the claimant's tendency to peddle conspiracy theories about Covid 19 and we reiterate our concerns about the reliability of her evidence generally. For these reasons and because, as we have already noted in the section above, we do not consider that is it is reasonable to believe that the government would distribute in this way something which was "very toxic and carcinogenic" and therefore a risk to health and safety, we do not consider that the claimant's belief (although it may have been genuinely held) was a reasonable belief. For this reason, this cannot have been a protected disclosure.

401. Furthermore, for the reasons set out in the section above, we do not consider that the claimant had a reasonable belief that the alleged disclosure was in the public interest (albeit she may have genuinely believed that it was in the public interest). For this reason too, this was not a protected disclosure.

On various dates, including on 8 and 21 July 2022, to Kate Rieppel and/or Ms X, in person as well as via Google Chat and phone calls - information as to the conduct of one of the respondent's tutors, Ms Y, relating to alleged sexual misconduct, intentional gas release, leaving students unattended for hours, mishandling equipment, causing the risk of fire, manipulation and stealing from the respondent (LOI 4.1.1.4 and 4.1.2.4)

402. This is a very wide-ranging assertion, involving multiple dates, multiple recipients of the alleged information and multiple means of alleged

communication of that information, and containing little detail as to what was alleged to have been said/written by the claimant beyond the bare assertions themselves. We have not been shown any of the alleged Google Chat messages. As was common during her employment and at this tribunal, the claimant was very vague about a lot of the alleged details and has not provided evidence beyond her own assertion to substantiate the large number of alleged disclosures set out under this heading. Furthermore, we have concerns about the reliability of the claimant's evidence. We do not, therefore, accept that the claimant has established any of the disclosures listed in this section.

403. The only issue set out above which came to Ms Rieppel's attention was the issue to do with the strong smell of gas in one of the workshop used by Ms Y. However, we do not know how the information about the smell of gas came to Ms Rieppel's attention and it may well have been from Ms Y herself, as she was the tutor using the classroom in question. We do not, therefore, find that the claimant has proven that she made a disclosure about "intentional gas release" to Ms Rieppel (or to anybody else prior to the investigation meeting of 7 September 2022). If such an allegation had been made to Ms Rieppel, it would be highly surprising that she has no recollection of it, as it is such a serious allegation, and as noted we have no reason to doubt the reliability of Ms Rieppel's evidence.

404. Furthermore, several of the other allegations, many of which are extremely serious (such as theft and sexual misconduct) are allegations which the claimant did subsequently make at the 7 September 2022 investigation meeting (to Ms Hallewell and Ms X). However, it would again be highly surprising that Ms Rieppel did not recall any of these being made to her, if the claimant had indeed made such serious allegations to her previously.

405. As regards Ms X, many of these allegations were made to her at the subsequent 7 September 2022 investigation meeting. The fact that the claimant is also alleging that she made these allegations to Ms X prior to that meeting may (on a charitable interpretation) be indicative of the claimant simply being confused as to when she made the allegations (as she did make them later to Ms X on 7 September 2022). Furthermore, the same point applies in relation to Ms X; if these allegations had been made to her earlier, it is surprising that there is no evidence or record of her speaking to anyone else about it (for example to her manager Ms Rieppel), given how serious such allegations would have been.

406. As the claimant has not proven that she made any disclosure of information under this heading, there was no protected disclosure.

On 7 September 2022, to Lisa Hallewell and Ms X, during a meeting on that date - information as to the conduct of one of the respondent's tutors, Ms Y, relating to alleged sexual misconduct, intentional gas release, leaving students unattended for hours, mishandling equipment, causing the risk of fire, manipulation and stealing from the respondent (LOI 4.1.1.4 and 4.1.2.4)

407. As we have found, at the investigation meeting of 7 September, the claimant made the following allegations about Ms Y: that Ms Y was stealing and specifically that the claimant had caught her stealing (but without providing any

evidence of this beyond her assertion); that Ms Y did not like her classroom and that she had therefore been deliberately turning the gas taps on so that there would be a smell of gas and so that she could be moved to a different classroom (but again without providing any evidence of this beyond her assertion); that Ms Y had inappropriately touched a female student (again, without providing any details or names); that Ms Y had inappropriately touched the claimant (again without providing any details or context).

408. These were all extremely serious allegations. If the claimant had any evidence that they had happened, she would have had a reasonable belief that they tended to show that both criminal offences had taken place and that a person had failed to comply with legal obligations and that the health and safety of individuals was likely to have been endangered.

409. However, what is so noticeable is that the claimant provided no evidence whatsoever to back up these serious allegations. Furthermore the context of these allegations is that the claimant was in an investigation meeting at which allegations that she had bullied Ms Y were being put to her. The claimant's reaction was to make these very serious allegations. They had not been made previously. At this hearing, Ms da Cunha, who suggested that she herself knew about these allegations (but similarly gave no details of them), admitted that she had never raised any of these matters with the respondent previously. Indeed, on our findings, the claimant had not raised any of these matters with the respondent previously. Both the claimant and Ms da Cunha are assertive individuals who would have no hesitation in raising matters of concern to them if they wished to do so (the transcript of the disciplinary hearings alone provides copious evidence of that). We do not accept Ms da Cunha's suggestion that she didn't raise any of these serious matters previously because the respondent would not have done anything about it; we have seen no evidence for such an assumption and indeed, as was evident before this tribunal, when serious allegations were brought to the respondent's attention, such as the grievances brought by Ms Y and Ms X, the respondent did investigate those allegations. In short, we do not believe either the claimant or Ms da Cunha in this respect.

410. We therefore conclude that the claimant's raising of these allegations was a response to the investigation of allegations of bullying against her and that she did not have a belief that the allegations which she was making tended to show criminality/illegality/health and safety risks, let alone a reasonable belief in the same.

411. For similar reasons, we find that the claimant did not have a reasonable belief (or any belief at all) that the disclosures were in the public interest.

412. For all these reasons, these were not protected disclosures.

Summary on alleged protected disclosures

413. The claimant has not, therefore, established that any of the alleged protected disclosures on which she relies were indeed protected disclosures. Therefore, her complaints of automatically unfair dismissal and of detriment

(victimisation) for making a protected disclosure or disclosures fail at the first stage.

Unfair dismissal (LOI 5)

Protected disclosures

414. We turn first to the issue of whether the reason or principal reason for the claimant's dismissal was the making of any qualifying protected disclosure. We reiterate that this complaint fails from the start because the claimant has failed to prove that she made any protected disclosures.

415. However, there is in any case no evidence beyond the claimant's assertion that the alleged disclosures which the claimant has maintained were protected disclosures were any part of the reason for the claimant's dismissal. For reasons which we will come to, the evidence points to the claimant's conduct as being the sole reason for dismissal. It was Ms Eden who took the decision to dismiss the claimant. Her dismissal letter sets out very clearly that it was the three allegations of misconduct by the claimant which formed the reason for her decision to dismiss the claimant. There is nothing in that letter or in the lengthy transcripts of the disciplinary meetings covertly recorded by the claimant to indicate that any of the matters which were the subject of the claimant's alleged protected disclosures played any part in her reasoning.

416. For completeness' sake, we note that, although it was never part of the claimant's case that her email of 14 September 2022 was a protected disclosure, there is similarly no evidence to suggest that that email formed any part of Ms Eden's reasoning. Although the claimant never put this to Ms Eden, it is likely that Ms Eden had never even seen that email at the point when she took the decision to dismiss the claimant; we say this because we have seen the evidence of what documents were given to the claimant and to Ms Eden for the disciplinary hearings, and the claimant's email of 14 September 2022 was not amongst them. In any event, there is nothing in that email, which concerns the meeting of 13 September 2022, which is contrary to the broadly undisputed facts of that meeting (leaving aside the dispute about whether the claimant swore) that the claimant got angry and slammed the door on the way out of the meeting and that this was in front of staff and students. We find, therefore, that the claimant's email of 14 September 2022 played no part in the reasons for Ms Eden's decision to dismiss the claimant.

417. As none of the alleged protected disclosures played any part in Ms Eden's reasoning, the claimant was not dismissed wholly or principally because of the alleged protected disclosures. Her complaint of automatically unfair dismissal for making a protected disclosure or disclosures therefore fails for that reason too.

Reason for dismissal

418. As already indicated, the reason for the claimant's dismissal was her conduct, specifically the three allegations which were the subject of the

disciplinary proceedings. We have set out in our findings of fact above in some detail the investigation in relation to these allegations and the disciplinary process that followed. There is no question that these were very real concerns about the claimant's conduct. The documentation in relation to the investigation of the disciplinary proceedings reflects this. Furthermore, there is no scope for inferring that any other reason was the reason or any part of the reason for the claimant's dismissal. The respondent has, therefore, proven that the reason for the claimant's dismissal was conduct. That is a potentially fair reason for dismissal.

Genuine and reasonable belief

419. In the case of each of the three allegations, Ms Eden genuinely and reasonably believed that the misconduct had taken place.

420. There was no real dispute about the actions which amounted to the misconduct in the case of the allegations of bullying against Ms X and the claimant's conduct at the meeting on 13 September 2022.

421. In the case of the former, the products, books and WhatsApp messages which the claimant gave to Ms X were before the disciplinary hearing and there was no dispute about her actually having given/sent them to Ms X (the main dispute was about whether it was wrong for her to do so, with the claimant believing all the way up to this hearing that it was not).

422. As to the meeting of 13 September 2022, the main events which took place are not in dispute. Even the dispute at this tribunal about whether the claimant swore at that meeting (the claimant at this tribunal denied that she swore) was not in dispute at the time of the disciplinary hearing because the claimant admitted to Ms Eden that she did swear.

423. Finally, Ms Eden noted, in relation to the allegations about the claimant's conduct towards Ms Y, that it was one person's word against another and that there were no witnesses to what was alleged to have been done by the claimant. However, Ms Eden was perfectly entitled to take into account the claimant's other behaviour and surrounding circumstances, of which there was much in evidence over the course of the two lengthy disciplinary meetings, and to conclude that she preferred Ms Y's evidence to that of the claimant. For the purposes of an unfair dismissal claim, the belief need only be on the balance of probabilities to be reasonable and there was more than enough evidence for Ms Eden, without the need for a "smoking gun", to conclude that Ms Y's account was the correct one and that the claimant did bully Ms Y.

Reasonable investigation

424. We also find that Ms Eden came to these genuine and reasonably held beliefs after such investigation as was reasonable. The investigation involved interviews of all the main protagonists, namely the claimant, Ms Y and Ms X and, in relation to 13 September 2022 meeting, Ms Rieppel, as well as Ms Springer who had been mentioned by Ms Y is a possible witness. The investigators also

sought to obtain witness statements from “Jack” and “Steven”, but were unable to do so because those two individuals did not want to get involved and, in those circumstances, it was neither practicable for the investigators nor reasonable to expect them to do anything further.

425. We do not consider that it was unreasonable for the investigators not to try and obtain a statement from the alleged friend of Ms Y whom the claimant alleged Ms Y had shouted at in Sainsbury’s. This is because this, to the extent that it happened, was a private matter unrelated to the investigation, which was about alleged behaviours in the workplace. Such an interview would not have resulted in evidence relevant to the investigation.

426. The claimant effectively suggested that the investigators should have interviewed almost everyone in the organisation on the off chance that they might have relevant evidence. However, it would not be reasonable to do so. First, it is reasonable for the investigators to interview those whom they have reason to think might be able to give evidence relevant to the issues of the investigation; this is what the investigators did. It is not reasonable or proportionate to expect the investigators to go beyond that on the off chance that some information might be forthcoming. Furthermore, interviewing almost everyone in the organisation would mean highly sensitive matters (from the point of view not just of Ms X and Ms Y but from the point of view of the claimant as well) being discussed unnecessarily with a whole range of individuals within the organisation. It would not have been reasonable to do this.

427. The investigation also involved gathering what documentation there was which was relevant. As it happened, there was not a great deal because many of the allegations involved witness evidence only and, as noted, the allegations in relation to Ms Y involved one individual’s word against another’s. However, in relation to Ms X, those items such as WhatsApp messages and the various products and books which the claimant had sent and/or given to Ms X were gathered.

428. The investigation carried out was therefore reasonable. This is all the more the case in the context of what was a small employer in terms of size and resources and one with relatively limited HR resources.

429. We therefore find that the test in British Home Stores v Burchell is satisfied and that Ms Eden had a genuine and reasonable belief that the misconduct had taken place, following such investigation as was reasonable.

General procedural matters

430. Contrary to the claimant’s assertions, the claimant was provided with the relevant company policies and procedures in advance of the disciplinary hearings. It is accepted that the claimant was invited to disciplinary hearings, notified in advance of the allegations against her, notified of the possible sanction of dismissal if the allegations were substantiated and notified of her right to be accompanied at the disciplinary and appeal hearings (where she was duly

accompanied by Ms da Cunha). There are, therefore, no procedural flaws in this respect.

431. Both during the internal proceedings and at this tribunal, the claimant alleged that she had the right to be accompanied at her investigation meetings. However, there is no statutory right to be accompanied at investigation meetings and we do not consider that it was unreasonable for her not to be accompanied or given an opportunity to be accompanied at those investigation meetings.

Original grievances

432. The claimant complained both in the internal proceedings and at this hearing about the fact that she was not given the original grievance complaints made by Ms X and Ms Y. Although there is no rule of law which says that such complaints must be given to an individual facing disciplinary proceedings, it is unusual if those complaints are not given to the individual.

433. However, as Ms Hallewell stated in her witness statement and quite passionately elaborated upon in her evidence, Ms Y and Ms X did not want their original grievances to be distributed further and Ms Hallewell had serious concerns about the impact upon two vulnerable individuals, Ms Y and Ms X, whom she herself had interviewed and had noted as being not only tearful and emotional but, as they appeared to her, genuinely frightened of the claimant, and that was why she decided that the original grievances should not be part of the documentation given to the claimant and Ms Eden.

434. Furthermore, because the claimant was asked in her investigation interviews about the allegations made in the grievances and the notes of those interviews contained the answers which she gave, she was made aware of the contents of the grievances, even if she was not at the time provided with the original documents themselves. We do not, therefore, consider that she was prejudiced by not having copies of those original grievances.

435. For these reasons, we do not consider that it was unreasonable of Ms Hallewell to exclude the original grievances from the documentation for the disciplinary hearing.

Ms Rieppel's statement

436. As noted, the claimant repeatedly and erroneously asserted that Ms Rieppel "withdrew her own statement from the investigation". This was not true. Ms Hallewell tried to obtain Ms Rieppel's permission for the statement taken from her during investigation be used in the disciplinary proceedings but, because she could not contact her when she was away on maternity leave, she was unable to get that permission. She therefore concluded that she could and should not put that statement forward to the disciplinary and therefore withheld it from the disciplinary proceedings. Again, she was careful to ensure that, whilst it was not provided to the claimant, it was also not provided to Ms Eden. In the circumstances of Ms Hallewell not being able to obtain Ms Rieppel's permission, this was not an unreasonable decision.

The claimant's suspension

437. The claimant has alleged that it was unreasonable to suspend her in advance of the investigation. However, we do not consider that to be the case.

438. The respondent had a contractual right to suspend the claimant on full pay and there were good reasons for Ms Hallewell and Ms Rieppel taking the decision to suspend the claimant pending the investigation; these were because of the erratic way the claimant was behaving and the consequent potential impact on safety for both the claimant and for Ms X and Ms Y and their duty of care to those individuals and the students at the respondent.

439. We do not, therefore, consider that it was an unreasonable decision to suspend the claimant.

Stress

440. The claimant has alleged that the respondent unreasonably failed to take her stress issues into account in relation to the disciplinary process (albeit without stating what she considers that the respondent should have done which it didn't do).

441. First, we reiterate that the claimant was not a disabled person by reason of stress at any time. Secondly, there is no evidence that (prior to the second rescheduling of the second disciplinary meeting) Ms Eden knew that the claimant suffered from stress at all. The only evidence of employees knowing about the claimant's stress prior to that which is before us is what we have set out in our findings of fact above about Ms Rieppel's being aware of the claimant's absence for stress in December 2021/January 2022 (albeit Ms Rieppel reasonably believed that it was because of a non-work related matter). That, however, was a separate self-standing issue and was not something that Ms Eden was aware of. Furthermore, Ms Rieppel, who was aware of it, had gone on maternity leave and was not contactable from 30 September 2022, well before the disciplinary proceedings commenced, and was not the person running either the investigation or the disciplinary process.

442. The only other incidence was the fact that, after the second attempt to reschedule the second disciplinary meeting, that rescheduled meeting was also postponed, by about a week, because the claimant informed the respondent that she was not well enough to attend. Specifically, on 28 October 2022, the claimant had sent Mr Marziali a brief email stating that her mental health deteriorated after the last meeting and that therefore she would not be able to come to the meeting scheduled for 1 November 2022 and that she would let Mr Marziali know when she was feeling better. The respondent's reasonable response to this was to postpone the disciplinary meeting until 8 November 2022, to which there was no objection. There was no suggestion from the claimant or Ms da Cunha that the 8 November 2022 meeting could not go ahead when it ultimately did, because of stress on the part of the claimant or otherwise. It was

in those circumstances reasonable for Ms Eden to proceed; indeed, there was no reason for her not to proceed.

443. We do not, therefore consider that the respondent in any way failed unreasonably to take any stress issues relating to the claimant into account.

The claimant's allegations against Ms Y

444. The claimant has submitted that it was unreasonable for the respondent not to investigate further the allegations which she made about Ms Y at the investigation meeting of 7 September 2022. However, the reason why the respondent did not investigate further was because the claimant had provided no evidence to enable it to do so. We do not, therefore, consider that it was unreasonable for the respondent not to carry out any further investigation in this respect.

445. We would add that, even if the respondent had chosen to carry out a further investigation interview with Ms Y, who is the only person it could practically have interviewed based on the limited detail and bare assertions which formed the basis of the claimant's allegations against Ms Y, it would have made no difference to the ultimate decision to dismiss the claimant; it is implicit in Ms Y's original grievance and investigation interview that she would not have accepted the allegations made by the claimant; for example her grievance states that the claimant had already falsely accused her of stealing; the outcome in terms of Ms Eden's belief in relation to the claimant's alleged misconduct in relation to Ms Y would therefore have been the same; furthermore interviewing Ms Y again would have had no impact upon Ms Eden's belief that the misconduct in relation to the other two allegations took place.

The claimant's three grievances of 11 November 2022

446. The claimant has complained that the three grievances which she raised on 11 November 2022 against respectively Mr Marziali, Ms Eden and Ms Hallewell, were not properly investigated.

447. However, the claimant herself agreed with Mr Nawaz that they should be investigated as part of her appeal against dismissal. Mr Nawaz duly investigated them and addressed them in his appeal outcome letter, not upholding any of those grievances. Those grievances were, therefore, investigated and determined. The respondent did not act unreasonably in this respect.

The claimant's grievance against Ms Rieppel

448. The claimant has complained that the respondent did not investigate her grievance against Ms Rieppel.

449. However, this grievance was raised on 22 March 2023, over four months after the claimant's employment with the respondent terminated. As the claimant had long since ceased to be an employee of the respondent, the respondent decided not to investigate this grievance.

450. Given the length of time since the claimant ceased to be an employee of the respondent, this was not an unreasonable decision in the circumstances.

Summary regarding procedural points

451. in summary, we have not found that the respondent behaved unreasonably in any respect in relation to the dismissal. We believe that we have considered all of the points of alleged unreasonableness which the claimant made; however, if for any reason we have missed any of these, we are nonetheless clear that we have not seen anything in relation to the dismissal at all which we consider to be unreasonable or which would render the dismissal unfair.

Sanction

452. We consider the issue of whether Ms Eden's decision to impose the sanction of dismissal, as opposed for example to a lesser sanction such as a warning, was within the reasonable range of responses open to a reasonable employer.

453. We refer to what we have quoted from Ms Eden's dismissal outcome letter in our findings of fact above in full. However, in summary, these were very serious allegations of misconduct which were proven. Crucially, there was no remorse whatsoever on the part of the claimant, in relation to her conduct towards Ms Y and particularly in relation to her conduct towards Ms X, who was obviously particularly vulnerable as a person with cancer and deeply affected by the claimant's conduct to the extent that she was frightened of her. Yet the claimant could not see, either at the time of her dismissal or at any stage of these tribunal proceedings, the impact which her actions had had upon Ms X. It follows from that lack of remorse that there was every chance that, if the claimant remained an employee, this behaviour would continue.

454. In the circumstances, Ms Eden's decision to dismiss the claimant was therefore well within the reasonable range of responses.

455. The dismissal was not, therefore, unfair and the claimant's complaint of unfair dismissal therefore fails.

<u>Contributory conduct/Polkey/ACAS Code (LOI 6.7.4 – 6.7.13 and 6.9)</u>

456. As the unfair dismissal complaint has failed, it is not strictly necessary to consider these issues. However, we do so for completeness' sake.

457. We consider that, for the reasons set out in our findings of fact above, the claimant contributed entirely by her conduct to her own dismissal. Therefore, if the dismissal had been unfair, we would have made a reduction of 100% to both the basic and compensatory awards for unfair dismissal.

458. As noted, we have not identified any procedural flaws in the dismissal. However, whilst this is somewhat speculative, we consider that had there been any such flaws, it would not have prevented the dismissal from being carried out fairly at the same time in the event that such flaws had not taken place. Therefore, had the dismissal been unfair, we would have made a reduction of 100% to the compensatory award for unfair dismissal under the principles in Polkey.

459. Finally, we have not identified any breaches by the respondent of the ACAS Code on Disciplinary and Grievance Procedures, let alone any which amount to unreasonable breaches of that Code.

Protected disclosure detriment (LOI 9)

460. We reiterate that the protected disclosure detriment complaints fail at the first stage anyway because the claimant has not established that any of her alleged disclosures were indeed protected disclosures.

461. However, for completeness' sake, we nonetheless address the individual allegations of detrimental treatment.

Suspension on 15 September 2022

462. The reasons why Ms Rieppel and Ms Hallewell took the decision to suspend the claimant are set out in our findings of fact above. None of the claimant's alleged protected disclosures formed any part whatsoever of that reasoning; rather, the decision was taken because of the claimant's erratic behaviour and the reasonable and understandable concerns which Ms Hallewell and Ms Rieppel had about the safety of Ms Y, Ms X and the claimant herself and their duty of care to those individuals and the students at the respondent.

463. Furthermore, and although it was never an alleged protected disclosure for the purposes of the claimant's case, the claimant's email of 14 September 2022 similarly played no part in the decision to suspend her. First of all, although the suspension meeting took place on 15 September 2022 and the suspension letter was also issued that day, Ms Hallewell and Ms Rieppel had been discussing the possibility of suspending the claimant the previous day before the claimant sent her email of 14 September 2022, which was sent late in the day at 16.32. Chronologically, therefore, that email was unlikely to have influenced their decision as they were already discussing suspending the claimant. Furthermore, the contents of that email are limited to some discussion of the 13 September 2022 meeting and the process of appointing an assistant for the claimant; there is nothing in that email which would be likely to have any impact on a manager in terms of persuading them to suspend the claimant. Furthermore, when asked, Ms Rieppel denied that this email had any influence on the decision to suspend. We therefore find that the email of 14 September 2022 did not play any part in the reasoning of Ms Rieppel and Ms Hallewell for suspending the claimant.

464. This allegation of protected disclosure detriment therefore fails.

Subjecting the claimant to disciplinary proceedings

465. Furthermore, we also find that neither the claimant's alleged protected disclosures nor her email of 14 September 2022 played any part whatsoever in the reasoning of the respondent for subjecting the claimant to disciplinary proceedings. The reason for subjecting the claimant to disciplinary proceedings was that there were three allegations of serious misconduct which, following a reasonable investigation, the investigators considered ought to go forward to a disciplinary hearing.

466. This allegation of protected disclosure detriment therefore also fails.

Summary regarding protected disclosure detriment complaints

467. In summary, therefore, both allegations of protected disclosure detriment fail.

<u>Harassment related to belief and/or race and direct discrimination because of belief and/or race (LOI 11 and 12)</u>

468. 12 allegations have been brought by the claimant, as both harassment and direct discrimination. We address each of them in turn.

Being told by Kate Rieppel, on 29 January 2021, not to discuss vaccines at work

469. As set out in our findings of fact above, the conversation about vaccines appears to have taken place on 18 January 2021 rather than on 29 January 2021. As we have found, Ms Rieppel did not issue the claimant with a blanket instruction not to discuss vaccines at work; she said that they did not wish to receive any further information about the claimant's opinions about the vaccine (in light of the claimant's peddling of conspiracy theories about Bill Gates etc in a conversation with Ms Rieppel's husband). The factual basis of this allegation is not therefore established and these complaints fail at the first stage.

470. Furthermore, what Ms Rieppel said was not related to or because of the claimant's protected belief. As we have made clear in our conclusions, the claimant's protected believe extends to a belief in a "healthy natural way of living free from allopathic drugs and experimental injections"; it does not extend to peddling conspiracy theories such as the one about Bill Gates. As Ms Rieppel's request to the claimant was related to the claimant's peddling of these conspiracy theories, it was not related to the claimant's protected belief. Similarly, Ms Rieppel's request was not in any way because of or related to the claimant's Polish nationality. For these reasons too, the harassment and discrimination complaints fail.

471. Furthermore, for the purposes of the harassment complaints, Ms Rieppel's request was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was a perfectly

reasonable management request in the light of unreasonable behaviour from the claimant.

472. These complaints therefore fail.

Removing PCR tests from the claimant's office

473. The PCR tests were removed from the claimant's office, so the factual basis of these complaints is established.

474. However, as we have found, the reason why the PCR tests were removed from the claimant's office was so that they could be stored in Ms Springer's office, which was a more appropriate place for them to be stored, as Ms Springer was the safeguarding officer and was to be responsible for distributing the tests. That reason was neither related to nor because of the claimant's protected belief nor her Polish nationality. The harassment and discrimination complaints therefore both fail.

475. Furthermore, for the purposes of the harassment complaints, moving the PCR tests was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was a perfectly reasonable management decision about where the tests were best stored.

476. These complaints therefore fail.

Failing to engage in assistant to assist the claimant with her workload

477. Ultimately, the respondent did not engage an assistant for the claimant, albeit it was in the process of doing so at the point when the claimant was suspended and subsequently dismissed. The factual basis for this allegation is therefore established.

478. However, the reason why the respondent had not engaged an assistant for the claimant up until that point was that, despite Ms Rieppel's repeated requests that it should do so, the respondent did not have the budget for an assistant. That reason is not in any way related to or because of the claimant's protected belief or her Polish nationality. These complaints therefore fail for this reason.

479. Furthermore, for the purposes of the harassment complaints, not engaging an assistant was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was an understandable management decision in the light of budgetary constraints.

480. These complaints therefore fail.

Overloading the claimant with work

481. We do not find that the respondent overloaded the claimant with work.

482. As Ms Rieppel acknowledged, the claimant's job was a busy one, which is why she sought to get permission to hire an assistant for her. However, that is very different from "overloading" the claimant with work.

483. Furthermore, the claimant variously referenced the fact that she was spending long hours in the office, particularly in the period in late 2021, as evidence that she was overworked. However, this was not the case. As the claimant herself explained to Ms Rieppel at the time, she was staying in the office because she did not want to go home because of her domestic situation. There was no compulsion on her to stay in the office and no overtime was booked by her or authorised by the respondent; there was no expectation from the respondent that the claimant would stay in the office and work these hours.

484. Therefore, as the respondent did not overload the claimant with work, the factual basis for these complaints is not made out and they fail at the first stage.

485. In any event, the amount of work which the claimant had was a function of her job. Her workload was not in any way whatsoever related to or because of her protected belief or her Polish nationality. The harassment and discrimination complaints therefore fail for this reason.

486. Furthermore, for the purposes of the harassment complaints, the amount of the claimant's workload was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

487. These complaints therefore fail.

Failing to pay the claimant full pay during her six weeks of absence from December 2021

488. The claimant's contract with the respondent provides that, during periods of sickness absence, she is entitled to statutory sick pay only. In accordance with her contract, the respondent paid the claimant statutory sick pay and not full pay during her period of absence in December 2021/January 2022. The factual basis of this allegation is therefore made out.

489. However the respondent's reason for doing so was that this was the claimant's contractual entitlement. It was not in any way related to or because of the claimant's protected belief or her Polish nationality. For this reason, these complaints fail.

490. Furthermore, for the purposes of the harassment complaints, paying the claimant in accordance with her contract was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating,

hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was the straightforward consequence of the terms of the contract which the claimant signed at the start of her employment. Furthermore, there is nothing unusual about this; many organisations pay statutory sick pay only during periods of sickness absence, particularly smaller organisations such as the respondent.

491. These complaints therefore fail.

Being ridiculed by Kate Rieppel, at the meeting with HR on 17 January 2022, for the way she was speaking

492. Although this is not absolutely clear within the terms of the allegation, the meeting with HR "on 17 January 2022" must be a reference to the return to work meeting held by Ms Rieppel and Mr Marziani with the claimant on her return to work following her period of absence from work in December 2021 and January 2022.

493. We do not have any evidence of Ms Rieppel "ridiculing" the claimant at that meeting, nor has the claimant set out the specifics of what she maintains Ms Rieppel did or said. The matter was not put to Ms Rieppel in cross-examination. Furthermore, if Ms Rieppel had ridiculed the claimant at this meeting, it would be surprising if the claimant, who as noted is an assertive individual, had not raised a complaint of some sort at the time; however we have seen no evidence of there being any such complaint. Furthermore, the purpose of the meeting was to put in place a return to work plan, to the claimant's benefit and advantage, which was duly done. It is highly unlikely that Ms Rieppel would ridicule the claimant at the same meeting at which she was putting in place arrangements to help the claimant. For all these reasons, we therefore find that Ms Rieppel did not ridicule the claimant at that meeting.

494. As the factual basis for these complaints is not made out, they fail at the first stage.

Failing to take the concerns that the claimant raised about the new teacher, Ms Y, seriously

495. As we have found, the claimant made various serious allegations about Ms Y at the meeting of 7 September 2022. However, the claimant provided no evidence in relation to these serious allegations and for that reason the respondent felt unable to investigate the allegations further. It is not the case that the respondent did not take the allegations seriously; it is simply that the claimant had not provided the evidence to enable the respondent to investigate further. Ms Cozma and Hallewell did speak to Ms Rieppel as part of the investigation and were able to ascertain from her what she knew about the issue of the gas smell in the classroom used by Ms Y. However, beyond that, the respondent was not reasonably able to investigate further. The claimant has not, therefore, established that the respondent failed to take these concerns seriously and the factual basis for these complaints has not therefore made out. These complaints therefore fail at the first stage.

496. In any case, the reason for not investigating further was because of the lack of evidence; it was not in any way related to or because of the claimant's protected belief or her Polish nationality. These complaints, therefore, fail for this reason too.

497. Furthermore, for the purposes of the harassment complaints, not investigating further was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was because the respondent had not been provided with the evidence to do so.

498. These complaints therefore fail.

Not allowing the claimant to participate in the process of recruiting her own assistant

499. As we have found, it was not the respondent's normal policy for employees of the claimant's seniority to be involved in recruitment decisions. However, despite this, Ms Rieppel voluntarily chose to get the claimant involved in the process at a later stage of that process and the 13 September 2022 meeting was part of that. This allegation is not, therefore, made out on the facts, because the claimant was allowed to participate in part of the process of recruiting her own assistant. It therefore fails at the first stage.

500. However, even if this allegation had been framed along the lines of "not allowing the claimant to participate at the earlier stage of the process of recruiting her own assistant", the reason for doing so was not in any way related to or because of the claimant's protected belief or her Polish nationality; rather, it was because it was the respondent's policy not to involve employees of the claimant's seniority in recruitment decisions. The complaints would, therefore, fail for these reasons.

501. Furthermore, for the purposes of the harassment complaints, the failure to allow the claimant to participate in the earlier stages of the recruitment process was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was done because it was the respondent's policy. We accept that the claimant felt aggrieved at not having been involved earlier in the process, because she had perceived that Ms X had indicated to her that she would be involved; however, any sense of grievance on the claimant's part was not nearly enough to engage the high level of the wording of the statute (in other words that the effect was to "violate her dignity" or "create an intimidating, hostile, degrading, humiliating or offensive environment" for her). The harassment complaints fail for this reason too.

Suspending the claimant on 15 September 2022

502. The claimant was suspended on 15 September 2022, so the factual basis of this allegation is established.

503. However, the reason for the suspension was not in any way related to or because of the claimant's protected belief or her Polish nationality; rather, it was, in the context of an investigation of serious allegations of misconduct against the claimant, because of the claimant's erratic behaviour and the reasonable and understandable concerns which Ms Hallewell and Ms Rieppel had about the safety of Ms Y, Ms X and the claimant herself and their duty of care to those individuals and the students at the respondent. For this reason, these complaints fail.

504. Furthermore, for the purposes of the harassment complaints, the decision to suspend the claimant was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was for the reasons set out in the paragraph above. Furthermore, however much the claimant may have felt aggrieved at being suspended, her sense of grievance was not nearly enough to engage the level of the wording of the statute (in other words that the effect was to "violate her dignity" or "create an intimidating, hostile, degrading, humiliating or offensive environment" for her); the suspension was after all a reasonable and fair management decision in the circumstances. The harassment complaints fail for this reason too.

At the disciplinary hearing on 19 October 2022, Shirley Eden saying to the claimant (and her companion) "we British are very polite, we queue, etc, other cultures are not like that"

505. The quotation in this allegation is a distortion of the quotation as set out in the claimant's own transcript of the meeting and it is worth re-reading the section containing the quotation and the surrounding context, which we have set out in full in our findings of fact above. In the transcript, Ms Eden's reference is to her being English (rather than British) and, more importantly, the words *"not like that"* are not contained in the transcript (which indicates that after the word *"culture"* Ms Eden was cut off by crosstalk). Many elements of what was alleged to have been said in the text of the allegation are also contained in the transcript; however, what was actually said is set out in our findings of fact above, which reflect the transcript.

506. Notwithstanding that this allegation has also been brought as an allegation of harassment related to belief/direct discrimination because of belief, that allegation has not really been pursued before this tribunal. That is because there is nothing in the wording which Ms Eden used which is in any way related to or because of the claimant's protected belief. The complaints relating to belief therefore fail for this reason.

507. These are really complaints of harassment related to race/direct discrimination because of race. The context of the comments in such complaints is absolutely key and we refer in full to our findings about the context of these comments set out in our findings of fact above. If these comments were taken solely in isolation, set out as they are in the allegation above, we consider that someone hearing them might reasonably consider them to be detrimental and unwanted; however, they were not said in isolation and the whole context of them

is key to whether anyone could reasonably consider that they were detrimental or unwanted.

508. As to the complaint of direct discrimination because of race, we do not find that Ms Eden made these comments because of race either generally or specifically because of the claimant's Polish nationality; rather, she made them because she was trying assist the claimant by exploring whether or not the claimant may have been misperceived as being aggressive, including the possibility of her being misperceived because of any cultural differences there may have been between her and her interlocutors; in short, she was trying to give the claimant the opportunity to give a mitigating explanation as to why her actions had been perceived as bullying. We are able to make a clear positive finding in this respect without needing to revert to the burden of proof. However, even if we did apply the burden of proof, we have been provided with no evidence from which we could draw an inference that Ms Eden made these comments for any reason (including the claimant's Polish nationality or race generally) other than the reasons set out above. The burden of proof would not, therefore shift. The comments were not, therefore, made because of race and the direct race discrimination complaint fails.

509. Furthermore, we do not consider that the comments amounted to a detriment. First, they were clearly made to try to assist the claimant. Secondly, looking at them in the whole context, we do not consider that anyone could reasonably consider that they were detrimental. In this respect, and particularly in light of our concerns about the reliability of the claimant's evidence, we do not accept that either she or Ms da Cunha were in fact actually genuinely offended by the comments (as they professed in the strongest terms to be at this tribunal). The fact that two otherwise assertive individuals, who never held back in that meeting from expressing their opinions about anything they were unhappy about, said nothing about these comments at the time and did not complain about the comments until the appeal only adds to our scepticism in this respect; to the contrary, instead of making any expression of concern, the claimant simply continued the conversation and answered (for once) the question which Ms Eden asked her. The claimant did not, therefore, even have an unjustified sense of grievance about the comments; she had no sense of grievance at all. For that reason, the comments were not a detriment. For this reason too, the complaint of direct race discrimination fails.

510. We turn to the complaint of harassment related to race.

511. Firstly, the comments were related to race. They were about cultural differences or perceived cultural differences, which might relate to those from different backgrounds, including from different nationalities.

512. However, for the same reasons as those set out above in our analysis of whether the comments were a detriment, we do not accept that the comments were genuinely unwanted conduct for the purposes of the harassment complaint. As the conduct was not unwanted, the harassment complaint fails at this stage.

513. We do not find that Ms Eden's purpose in making the comments was to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her; rather, as outlined in full above, her purpose was to assist the claimant by giving the claimant the opportunity to give a mitigating explanation as to why her actions had been perceived as bullying.

514. We turn then to the question of whether the comments had that effect. In doing so, we take into account the claimant's perception, any other relevant circumstances of the case, and whether it is reasonable for the conduct to have that effect. As to the claimant's perception, we find that the claimant did not genuinely perceive that the comments had the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We reach this conclusion for essentially the same reasons as those set out in our analysis of detriment above; in short, we do not believe that the claimant was in fact offended by the comments.

515. Furthermore, for the reasons set out above, in particular the context of the comments and the fact that Ms Eden was clearly trying to assist the claimant, we consider that it would not be reasonable for the making of these comments to have this effect. In this respect, we remind ourselves of the relatively high bar created by the serious nature of the wording of the statute; it is not reasonable for an attempt to assist an individual at a disciplinary hearing to amount to conduct which violates that person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

516. The comments did not, therefore, have the relevant effect.

517. As neither the relevant purpose nor the relevant effect have been established, the harassment complaint fails for this reason too.

Dismissing the claimant

518. The respondent dismissed the claimant. The fact which forms the basis for this allegation is therefore established.

519. It is clear from our findings of fact above that the claimant's dismissal was not in any way related to or because of her Polish nationality. Furthermore, it is clear that her dismissal for two of the three allegations against her (the bullying of Ms Y and the conduct at the meeting of 13 September 2022) was not in any way related to or because of her protected belief. For this reason, these complaints of harassment and direct discrimination fail.

520. However, we consider further the issue of whether or not there is any way that it can be said that her dismissal for the third allegation, the bullying of Ms X, could be because of or related to her protected belief. In doing so, we consider an argument that was not put to us in submissions by either party but which for completeness' sake we think we are bound to consider in any event. In doing so, we apply the EAT's guidance in Higgs.

521. To be clear, the claimant was not dismissed because of the fact that she had a belief in a healthy natural way of living free from allopathic drugs and experimental injections; she was dismissed for bullying Ms X. However, we are obliged to go on to consider whether the claimant's actions towards Ms X amounted to a manifestation of her protected belief; if they were, we will need to ask whether there was a sufficiently close and direct nexus between the claimant's conduct and the belief. It will then only be possible to rely on a distinction between an objectionable manifestation of a belief and the holding or manifestation of the belief itself if the action taken (in this case the claimant's dismissal) is justified as being a proportionate means of achieving a legitimate aim.

522. First, however detrimental the effect on Ms X clearly was, we do consider that the claimant's actions in repeatedly, over a period of time, and despite warning, sending Ms X advice, books and products in relation to treating her cancer did amount to a manifestation of the claimant's protected belief in a healthy natural way of living free from allopathic drugs and experimental injections. There was a sufficiently close and direct nexus between the claimant's conduct and her protected belief.

523. We turn, then, to the issue of justification. For this purpose, the aim of the respondent in dismissing the claimant was to prevent serious ongoing bullying of a vulnerable employee. That is clearly a legitimate aim.

524. We turn to the issue of proportionality. We address those factors in Higgs which are relevant in this case. First, the respondent's objective of preventing bullying is clearly sufficiently important to justify any limitation of the claimant's right to manifest her belief in the way she did. Secondly, a less intrusive sanction than dismissal would not have been effective because the claimant had shown no remorse whatsoever in relation to her conduct and she did not consider that she had done anything wrong; if the claimant had not been dismissed, that would have undermined the respondent's objective of preventing bullying and risked it continuing. Finally. in balancing the restriction on the claimant's ability to manifest her belief in the way she did against the importance of the objective of preventing bullying, the latter clearly significantly outweighs the former. For these reasons we consider that dismissing the claimant in the circumstances was justified as being a proportionate means of pursuing a legitimate aim.

525. It is, therefore, possible and indeed appropriate to rely on the distinction between the objectionable manifestation of the claimant's belief as demonstrated in her conduct towards Ms X and her holding or manifestation of that belief itself. The respondent's action in dismissing the claimant was justified and was by reason of the objectionable manner of the manifestation of the claimant's belief. As such, the respondent's actions did not involve the belief but only its objectionable manifestation. Therefore, the dismissal of the claimant because of the third allegation of her bullying of Ms X was also neither related to nor because of the claimant's protected belief. These complaints of harassment and direct discrimination therefore also fail.

526. Furthermore, for the purposes of the harassment complaints, the decision to dismiss the claimant was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was a reasonable and fair decision on the basis of the evidence. Furthermore, however much the claimant may have felt aggrieved at the dismissal, her sense of grievance was not nearly enough to engage the level of the wording of the statute (in other words that the effect was to "violate her dignity" or "create an intimidating, hostile, degrading, humiliating or offensive environment" for her); dismissing the claimant was after all a reasonable and fair decision in the circumstances. The harassment complaints fail for this reason too.

Failing to uphold the claimant's appeal

527. The respondent did not uphold the claimant's appeal. The fact which forms the basis for this allegation is therefore established.

528. However, the reason for not upholding the appeal was not related to or because of the claimant's protected belief or her Polish nationality; it was because there were no grounds for upholding the appeal. These complaints therefore fail.

529. Furthermore, for the purposes of the harassment complaints, the decision not to uphold the appeal was neither for the purpose of nor did it have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Rather, it was a reasonable and fair decision on the basis of the evidence. Furthermore, however much the claimant may have felt aggrieved at the appeal not being upheld, her sense of grievance was not nearly enough to engage the level of the wording of the statute (in other words that the effect was to "violate her dignity" or "create an intimidating, hostile, degrading, humiliating or offensive environment" for her); not upholding the appeal was after all a reasonable and fair decision in the circumstances. The harassment complaints fail for this reason too.

Summary

530. All of the complaints of harassment related to race and/or belief and direct discrimination because of race and/or belief fail.

<u>Reasonable adjustments (LOI 13)</u>

531. As already noted, the reasonable adjustments complaints fail from the start because the claimant has not proven that she was a disabled person at any material time for the purposes of these complaints. We nonetheless consider the other issues of those complaints for completeness' sake.

Knowledge

532. In short, no one at the respondent had knowledge of any disability which the claimant had. This was because the claimant did not have a disability. The

only instances where individuals at the respondent were aware of any health issues were situation specific periods of stress in December 2021/January 2022 and of "a deterioration in mental health" for a period of a few days in early November 2022. Based on that information, and even if those had amounted to a disability, there is no way that any of those individuals did or could have known that they amounted to a disability; to the contrary, these periods not only were, but also appeared to be, isolated and situation specific. The reasonable adjustments complaints fail for this reason to.

533. Similarly, as no individual at the respondent knew that the claimant was disabled or claimed to be disabled, they could not know or reasonably have been expected to know of any disadvantage that any disability might have placed the claimant at. For this reason too, the reasonable adjustment complaints fail.

PCPs

Requiring the duties of the jewellery workshop technician to be undertaken without an assistant or an additional assistant being engaged to assist with the workload

534. As set out in our findings of fact above, the respondent did not hire an assistant for the claimant. It did, therefore, require her duties to be undertaken without an assistant or an additional assistant being engaged to assist with the workload. This PCP is therefore established.

Making suspension decisions without giving any or any adequate consideration to the mental health of the employee

535. Ms Rieppel and Ms Hallewell carefully considered whether to suspend the claimant and decided to do so. In doing so they considered the welfare of all of the employees, including Ms Y, Ms X and the claimant. However, as there was no indication that the claimant had any mental health issues at that time, they did not consider such issues. This PCP is therefore also established.

Making suspension decisions without obtaining occupational health advice

536. Ms Rieppel and Ms Hallewell did not obtain occupational health advice before suspending the claimant, as there was no information before them which indicated that that was something which might be necessary or appropriate. However, this PCP is also established.

Not giving any or any adequate consideration as to reviewing whether a suspension could be should be continued

537. We have been provided with no evidence that any review of whether the suspension should continue took place and therefore find that there was no such review and no consideration as to whether to conduct such a review. This PCP is therefore also established.

Not providing any or any adequate assistance or support during a period of suspension such as by calling or staying in touch with a suspended employee

538. We have seen examples of contact between employees at the respondent (including in HR) and the claimant during the period of the investigation and disciplinary process when the claimant was suspended. These relate mainly to that process. However, the respondent was in so doing keeping in touch with the claimant. This PCP is not therefore established.

Not allowing the suspended employee to speak to colleagues and/or have a point of contact

539. The claimant's suspension letter instructed her not to contact the respondent's employees while she was suspended. That part of the PCP is therefore established.

540. However, the claimant did have points of contact in HR during the process, so the second part of this alleged PCP is not established.

Substantial disadvantage

The claimant's workload, amount of work and lack of assistance adversely impacted her mental health including contributing to a nervous breakdown and sickness absence in December 2021

541. This is said to relate to the first PCP only, regarding the claimant not having an assistant.

542. However, based on the evidence set out in our findings of fact above, we find that, on the balance of probabilities, the reason that the claimant was staying in the office late in the period running up to her sickness absence from December 2021 was to do with her domestic circumstances and not the fact that she did not have an assistant. That PCP did not therefore put her at a substantial disadvantage in this respect and this part of the reasonable adjustments complaints fails for this reason.

The claimant's suspension, its continuation for a prolonged period, and the lack of support or contact, adversely impact upon her mental health

543. The other five alleged PCPs, which all relate to the suspension, are said to have put the claimant at this alleged disadvantage.

544. We have however seen no medical evidence which indicates that the claimant's suspension or matters connected to it impacted upon her mental health. The claimant has not proven that any of the PCPs in relation to suspension impacted upon her mental health; in this context, we also note that the claimant herself, in her email of 28 October 2022 to Mr Marziali seeking to further postpone the second disciplinary hearing, stated that her mental health "deteriorated after our last meeting", in other words after the first disciplinary hearing on 19 October 2022 – not the decision to suspend her or the ongoing

suspension. We therefore find that the claimant was not put at a substantial disadvantage by any of those five alleged PCPs relating to the suspension.

545. For this reason, these reasonable adjustments complaints fail.

Alleged reasonable adjustments

Engaging an assistant

546. Engaging an assistant would not have been a reasonable adjustment for the purposes of this complaint because it was not the absence of an assistant which impacted upon the claimant's health such that she was off sick in December 2021/January 2022.

Giving adequate consideration to the mental health of the claimant in making any decision as to the suspension of the claimant

547. This would not have been a reasonable adjustment because, based on the information available to them at the time, Ms Rieppel and Ms Hallewell had no reason to ask the claimant about her mental health.

Obtaining occupational health advice before making any decision as to the suspension of the claimant

548. This would not have been a reasonable adjustment because, based on the information available to them at the time, Ms Rieppel and Ms Hallewell had no reason to seek an occupational health assessment of the claimant.

Giving adequate consideration as to reviewing whether the suspension of the claimant should be continued

549. The claimant was not suspended for a lengthy period. Furthermore, the respondent did not prolong the suspension any longer than was necessary to carry out the investigation and the disciplinary process. To the extent that that process was protracted, this was largely because of the claimant, both in the way that she conducted herself at the disciplinary hearings, which meant the need for multiple disciplinary hearings; and the fact that she requested postponements (albeit for good reasons) on several occasions. Furthermore, the reasons as to why the claimant was initially suspended continued to apply throughout the period of suspension. There was, therefore, no reason to review the claimant's suspension and doing so would not therefore have been a reasonable adjustment.

Providing adequate assistance or support to the claimant during any suspension whether through calling or staying in touch with her

550. As already noted, the claimant did have points of contact in HR. To that extent, this adjustment was already implemented, so there was no failure to make a reasonable adjustment.

Allowing the claimant, during her suspension, to speak to colleagues and/or have a point of contact

551. As noted, the claimant already had points of contact at the respondent so this adjustment had already been implemented and there was no failure to make a reasonable adjustment.

552. As to allowing the claimant during a period of suspension to speak to colleagues as well, that would have driven a coach and horses through the suspension, which was in part to protect other colleagues. It would not, therefore, have been a reasonable adjustment.

Summary

553. In summary, therefore, all of the claimant's reasonable adjustments complaints fail.

Breach of contract (LOI 16)

554. We consider below the three alleged breaches of contract which the claimant maintains that the respondent did.

Failing to provide training for the claimant as a first aider

555. The claimant has maintained that she was not provided with training as a first aider. However, the claimant had no contractual entitlement to be provided with training as a first aider. Not providing such training was not therefore a breach of the claimant's employment contract.

556. As there was no breach of contract, this complaint fails.

Unilaterally imposing changes in terms and conditions on the claimant through the introduction of a statement of main terms of employment on or around 4 May 2021/16 June 2021

557. As we have found in our findings of fact above, the respondent did not impose any changes in terms and conditions on the claimant at this time or at any time during her employment. The claimant remained employed on her original employment contract throughout employment. There was, therefore no breach of the claimant's employment contract.

558. As there was no breach of contract, this complaint fails.

Suspending the claimant on 15 September 2022

559. The respondent had a contractual right in the claimant's contract of employment to suspend her on full pay in order to undertake an investigation into any allegations of a disciplinary nature. The claimant's suspension on 15 September 2022 was on full pay. Furthermore, it was done to undertake an

investigation into allegations of a disciplinary nature. There was, therefore no breach of contract by the respondent.

560. As there was no breach of contract, this complaint fails.

Summary

561. in summary, all of the claimant's complaints of breach of contract fail.

Failure to allow the claimant to be accompanied (section 10 of the Employment Relations Act 1999) (LOI 17)

562. This allegation relates to what the claimant in the LOI curiously describes as a "grievance hearing" on 15 September 2022 (the LOI states "15 September 2023" but that must be a typographical error, as 15 September 2023 was 10 months after the termination of the claimant's employment with the respondent). However, the meeting on 15 September 2022 was not a grievance hearing; rather, it was the meeting arranged by Ms Rieppel and Ms Hallewell at which they informed the claimant that she was being suspended. At no stage had the claimant herself raised any grievance until the three grievances which she raised on 11 November 2022, just after her dismissal, against Mr Marziali, Ms Eden and Ms Hallewell; and these were considered, by agreement between the claimant and the respondent, at the disciplinary appeal meeting, at which the claimant was afforded her right to be accompanied and was accompanied by Ms da Cunha.

563. The right to be accompanied under section 10 of the Employment Relations Act 1999 extends to disciplinary and grievance hearings. There is no right to be accompanied at a meeting at which an employer informs an employee that they are being suspended. The statutory legislation is not therefore even engaged. This complaint therefore fails for this reason.

564. For completeness, we should add that the claimant did not make a request to be accompanied at the meeting of 15 September 2022. The complaint therefore fails for that reason too.

565. Furthermore, it therefore follows, in the absence of a request by the claimant, that the respondent did not refuse any such request. The complaint therefore also fails for this reason too.

Summary in relation to the substantive merits of the complaints

566. All of the claimant's complaints fail on their substantive merits.

567. However, we nonetheless need to go on to consider whether the tribunal has jurisdiction to hear all of those complaints on the basis of some of them having been presented out of time.

Time Limits

568. The claimant commenced ACAS early conciliation on 1 February 2023 and the ACAS certificate was issued on 1 March 2023. As noted, the claim was presented on 1 April 2023.

569. Therefore, any complaint where the alleged act or omission took place prior to 2 November 2022 is prima facie out of time.

570. That means that the following complaints were presented in time and the tribunal has jurisdiction to hear them: the complaints of unfair dismissal, of automatically unfair dismissal by reason of having made a protected disclosure, of harassment related to religion or belief and/or race and of direct discrimination because of religion or belief and/or race at paragraphs 11.1.11-11.1.12 and 12.1.11-12.1.12 of the LOI, for a failure to make reasonable adjustments for disability at paragraphs 13.5.4-13.5.6 of the LOI, and for breach of contract.

571. The remaining complaints are prima facie out of time.

572. We have not heard any evidence from either party about why the out of time complaints were not presented earlier. Furthermore, there is nothing in the materials which we have seen which provides us with any information as to whether it was practicable to have presented out of time complaints earlier or whether it would be just and equitable to extend time.

Reasonable practicability

573. We turn first to those out of time complaints in relation to which the reasonably practicable test applies, namely the allegations of being subject to a detriment by reason of having made a protected disclosure and the complaint about a failure to allow the claimant to be accompanied for the purposes of section 10 of the Employment Relations Act 1999. We remind ourselves that the burden of proof is on the claimant to show that it was not reasonably practicable to have presented the complaints in time.

574. We have seen no evidence to suggest that it was not reasonably practicable to have brought those complaints in time. We therefore find that it was reasonably practicable to have brought those complaints in time. The tribunal does not therefore have jurisdiction to hear those complaints and they are struck out.

EQA

575. We turn to the EQA complaints which are prima facie out of time, namely the complaints of harassment related to religion or belief and/or race and of direct discrimination because of religion or belief and/or race at paragraphs 11.1.1-11.1.10 and 12.1.1-12.1.10 of the LOI and the complaints of a failure to make reasonable adjustments for disability at paragraphs 13.5.1-13.5.3 of the LOI.

576. First, as there were no successful in time complaints, there are no complaints to which these out of time complaints could attach as being part of conduct extending over a period such that they would be deemed to be in time.

577. We therefore need to consider whether or not it is just and equitable to extend time in relation to these complaints. As noted, we have seen no evidence to suggest that it is just and equitable to extend time and we remind ourselves that the burden of proof is on the claimant to show that it is just and equitable to extend time. We do not, therefore, consider that it is just and equitable to extend time. The tribunal does not therefore have jurisdiction to hear these complaints and they are struck out.

_____
Employment Judge Baty

Dated: 11 October 2024

Judgment and Reasons sent to the parties on:

23 October 2024
…….....

…….....
For the Tribunal Office

ANNEX

AGREED ISSUES

The Complaints

1. The Claimant is making complaints set out below.

    1.1 Unfair dismissal (Employment Rights Act 1996 sections 98 and 111)

    1.2 Wrongful dismissal (breach of contractual entitlement to notice of dismissal).

    1.3 Automatically unfair dismissal by reason of having made a protected disclosure (Employment Rights Act 1996 sections 103A and 111)

    1.4 Victimisation by being subjected to detriment by reason of having made a protected disclosure (Employment Rights Act 1996 section 47B).

    1.5 Harassment related to religion or belief and / or race (nationality) (Equality Act 2010 section 26)

    1.6 Direct discrimination on the grounds of religion or belief and / or race (nationality) (Equality Act 2010 section 13).

    1.7 Failure to make reasonable adjustments for disability (Equality Act 2010 sections 20 and 21).

    1.8 Failure to allow the Claimant to be accompanied (Employment Relations Act 1999 section 10

    1.9 Unauthorised deductions from wages (Employment Rights Act 1996 sections 13 and 23).

    1.10 Breach of contract.

List of issues

2. The issues the Tribunal will decide are set out below.

1. Time limits

1.1 Given the date the ET1 Form of Claim was presented and the dates of early conciliation, any complaint about something that happened on or before 10 August 2022 may not have been brought in time.

1.2 Were the discrimination and harassment complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide upon the matters set out below.

1.2.1 Was any complaint made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the complaint made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, was any complaint made to the Tribunal within a further period that the Tribunal thinks is just and equitable having regard to:
1.2.4.1 the reason the complaints were not made to the Tribunal in time;
1.2.4.2 any prejudice to the Claimant or Respondent;
1.2.4.3 any other circumstances relevant to whether it would be just and equitable to extend time?

1.3 Were the complaints of unauthorised deductions from wages, victimisation by being subjected to detriment by reason of having made a protected disclosure, breach of the right to be accompanied at a grievance hearing and breach of contract, made within the applicable time limit? The Tribunal will decide upon the matters set out below.

1.3.1 Was any complaint of unauthorised deductions from wages made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made (section 24 of the Employment Rights Act 1996)?
1.3.2 Was any complaint of victimisation by being subjected to detriment by reason of having made a protected disclosure made to the Tribunal within three months (plus early conciliation extension) of the detriment of which complaint is made (section 48 of the Employment Rights Act 1996)?
1.3.3 Was any complaint of breach of the right to be accompanied at a grievance hearing made to the Tribunal within three months (plus early conciliation extension) of any failure to comply (section 11(2) of the Employment Relations Act 1999)?
1.3.4 Was any complaint of breach of contract made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination of employment (article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order SI 1994 1994/1623)?

1.3.5 If not, in relation to the complaints of unauthorised deductions from wages, was there a series of deductions and was the complaint made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.3.6 If not, in relation to the complaints of victimisation by being subjected to detriment by reason of having made a protected disclosure, was there a series of similar acts or failures and was the complaint made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.3.7 If not, was it reasonably practicable for the complaint to be made to the Tribunal within the time limit?

1.3.8 If it was not reasonably practicable for the complaint to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Disability

2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the Claim is about? The Tribunal will decide the matters set out below.

2.1.1 Did the Claimant have a physical or mental impairment namely anxiety and / or stress and / or post-traumatic stress disorder (PTSD)?

2.1.2 Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?

2.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.1.4 Would the impairment have had a substantial adverse effect on the Claimant's ability to carry out day-to-day activities without the treatment or other measures?

2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months;

2.1.5.2 if not, were they likely to recur?

3. Philosophical beliefs

3.1 Does the Claimant's belief in a healthy natural way of living free from allopathic drugs and experimental injections amount to a philosophical belief for the purposes of section 10 of the Equality Act 2010? The Tribunal will decide the matters set out below.

3.1.1 Was the belief genuinely held?

3.1.2 If so, is it a belief and not an opinion or viewpoint based on the present state of information available?

3.1.3 If so, is it a belief as to a weighty and substantial aspect of human life and behaviour?
3.1.4 If so, does it have a certain level of cogency, seriousness, cohesion and importance?
3.1.5 If so, is it excluded by virtue of being an extreme belief?

4. Protected disclosure

4.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide the maters set out below.

4.1.1 What did the Claimant say or write, when, and to whom? The Claimant relies upon having made disclosures on the occasions set out below:

4.1.1.1 on 18 January 2021 to Kate Rieppel, in person;
4.1.1.2 (date not specified) to Kate Rieppel;
4.1.1.3 (date not specified) to [Ms X];
4.1.1.4 on various dates, including on 8 and 21 July 2022, to Kate Rieppel and / or [Ms X], in person as well as via Google Chat and phone calls;
4.1.1.5 on 7 September 2022, to Lisa Halliwell and [Ms X], during a meeting on that date.

4.1.2 Did the Claimant disclose information? The Claimant relies upon having disclosed the information set out below:

4.1.2.1 concerns about medical experiments with information about the ingredients of the vaccines (4.1.1.1);
4.1.2.2 concerns about the Covid PCR test, namely that the test that the Respondent was distributing to its employee was sterilised with Ethylene Oxide which is very toxic and carcinogenic (4.1.1.2);
4.1.2.3 information as to the harmful effects of the PCR Test (4.1.1.3);
4.1.2.4 information as to the conduct of one of the Respondent's tutors, [Ms Y], relating to alleged sexual misconduct, intentional gas release, leaving students unattended for hours, mishandling equipment, causing the risk of fire, manipulation and stealing from the Respondent (4.1.1.4, and 4.1.1.5).

4.1.3 Did the Claimant believe the disclosure of information was made in the public interest?
4.1.4 Was that belief reasonable?
4.1.5 Did the Claimant believe it tended to show that:

4.1.5.1 a criminal offence had been, was being or was likely to be committed (4.1.2.4);
4.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;
4.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered;
4.1.5.4 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

4.1.6 Was that belief reasonable?

4.2 If the Claimant made a qualifying disclosure, was it a protected disclosure through being made to the Claimant's employer or any other applicable person?

5. Unfair dismissal (including dismissal by reason of protected disclosures)

5.1 Was the reason or principal reason for dismissal that the Claimant made a qualifying protected disclosure?

5.2 If yes, then the Claimant will have been unfairly dismissed.

5.3 If not, what was the reason or principal reason for dismissal? The Respondent says the reason was conduct.

5.4 Did the Respondent genuinely believe that the Claimant had committed misconduct.

5.5 If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

5.5.1 there were reasonable grounds for that belief;
5.5.2 at the time that the belief was formed the Respondent had carried out a reasonable investigation;
5.5.3 the Respondent otherwise acted in a procedurally fair manner;
5.5.4 dismissal was within the range of reasonable Responses.

6. Remedy for unfair dismissal

6.1 Does the Claimant wish to be reinstated to their previous employment?

6.2 If so, should the Tribunal order reinstatement? The Tribunal will consider, in particular, whether reinstatement is practicable and, if

the Claimant caused or contributed to dismissal, whether it would be just.

6.3 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?

6.4 If so, should the Tribunal order re-engagement? The Tribunal will consider, in particular, whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

6.5 If so, should the terms of any Order for re-engagement be?

6.6 Should the Tribunal make a compensatory award?

6.7 If so, how much should it be? The Tribunal will need to consider the matters set out below.

- 6.7.1 What financial losses has the dismissal caused the Claimant?
- 6.7.2 Has the Claimant taken reasonable steps to replace any lost earnings, for example by looking for another job?
- 6.7.3 If not, for what period of loss should the Claimant be compensated?
- 6.7.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 6.7.5 If so, should the Claimant's compensation be reduced?
- 6.7.6 If so, by how much?
- 6.7.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 6.7.8 If so, did the Respondent or the Claimant unreasonably fail to comply with the applicable ACAS Code of Practice?
- 6.7.9 If so, is it just and equitable to increase or decrease any award payable to the Claimant?
- 6.7.10 If so, by what proportion, up to 25%?
- 6.7.11 If the Claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
- 6.7.12 If so, would it be just and equitable to reduce the Claimant's compensatory award?
- 6.7.13 If so, by what proportion?
- 6.7.14 Does the statutory cap of fifty-two weeks' pay apply?

6.8 What basic award is payable to the Claimant, if any?

6.9 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal?

6.10 If so, to what extent?

7. Wrongful dismissal / Notice pay

7.1 What was the Claimant's notice period?

7.2 Was the Claimant paid for that notice period?

7.3 If not, was the Claimant guilty of gross misconduct and / or did the Claimant do something so serious that the Respondent was entitled to dismiss without notice.

8. Remedy for wrongful dismissal

8.1 How much should the Claimant be awarded as damages for wrongful dismissal? The Tribunal will need to consider the matters set out below.

8.1.1 What was the Claimant entitled to be paid for any notice period?
8.1.2 Has the Claimant taken reasonable steps to replace any lost earnings, for example by looking for another job?
8.1.3 If not, for what period of loss should the Claimant be compensated?
8.1.4 Has the Claimant earned any other amounts during the period of notice to which s/he was entitled?
8.1.5 If so, should the Claimant give credit for any such amounts received?
8.1.6 If so, by what amount should any damages be reduced?
8.1.7 Does any element of double recovery arise by reason of any compensatory award for unfair dismissal covering the same period?
8.1.8 If so, by what amount, if any, should any damages be reduced?
8.1.9 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
8.1.10 If so, did the Respondent or the Claimant unreasonably fail to comply with the applicable ACAS Code of Practice?
8.1.11 If so, is it just and equitable to increase or decrease any award payable to the Claimant?
8.1.12 If so, by what proportion, up to 25%?

9. Victimisation by being subjected to detriment (Employment Rights Act 1996 section 47B)

9.1 Did the Respondent do the following things:

9.1.1 suspend the Claimant on 15 September 2022;
9.1.2 subject her to disciplinary proceedings.

9.2 By doing so, did the Respondent subject the Claimant to detriment?

9.3 If so, was it done on the ground that the Claimant made a protected disclosure?

10. Remedy for victimisation by being subjected to detriment

10.1 What financial losses has the detrimental treatment caused the Claimant?

10.2 Has the Claimant taken reasonable steps to reduce any financial losses, for example by looking for another job?

10.3 If not, for what period of loss should the Claimant be compensated?

10.4 What injury to feelings has the detrimental treatment caused the Claimant and how much compensation should be awarded for that?

10.5 Has the detrimental treatment caused the Claimant personal injury and how much compensation should be awarded for that?

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

10.7 Did the Respondent or the Claimant unreasonably fail to comply with it?

10.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant?

10.9 If so, by what proportion, up to 25%?

10.10 Did the Claimant cause or contribute to the detrimental treatment by the Claimant's own actions and if so, would it be just and equitable to reduce the Claimant's compensation? By what proportion?

10.11 Was the protected disclosure made in good faith?

10.12 If not, is it just and equitable to reduce the Claimant's compensation?

10.13 If so, by what proportion, up to 25%?

11. Harassment related to belief and / or race (nationality) (Equality Act 2010 section 26)

11.1 Did the Respondent treat the Claimant in the ways set out below:

11.1.1 being told by Kate Rieppel, on 29 January 2021, not to discuss vaccines at work;
11.1.2 removing PCR tests from the Claimant's office;
11.1.3 failing to engage an assistant to assist the Claimant with her workload;
11.1.4 overloading the Claimant with work;
11.1.5 failing to pay the Claimant full pay during her six weeks of absence from December 2021;
11.1.6 being ridiculed by Kate Rieppel, at the meeting with HR on 17 January 2022, for the way she was speaking;
11.1.7 failing to take the concerns that the Claimant raised about the new teacher, [Ms Y], seriously;
11.1.8 not allowing the Claimant to participate in the process of recruiting her own assistant;
11.1.9 suspending the Claimant on 15 September 2022;
11.1.10 at the disciplinary hearing on 19 October 2022, Shirley Eden saying to the Claimant (and her companion) "*we British are very polite, we queue, etc, other cultures are not like that*";
11.1.11 dismissing her
11.1.12 failing to uphold her appeal?

11.2 If so, was that unwanted conduct?

11.3 Did it relate to her belief and / or race (nationality)?

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

11.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

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

12. Direct discrimination on the grounds of belief and / or race (nationality) (Equality Act 2010 section 13)

12.1 Did the Respondent treat the Claimant in the ways set out below:

12.1.1 being told by Kate Rieppel, on 29 January 2021, not to discuss vaccines at work;
12.1.2 removing PCR tests from the Claimant's office;
12.1.3 failing to engage an assistant to assist the Claimant with her workload;
12.1.4 overloading the Claimant with work;

12.1.5 failing to pay the Claimant full pay during her six weeks of absence from December 2021;
12.1.6 being ridiculed by Kate Rieppel, at the meeting with HR on 17 January 2022, for the way she was speaking;
12.1.7 failing to take the concerns that the Claimant raised about the new teacher, [Ms Y], seriously;
12.1.8 not allowing the Claimant to participate in the process of recruiting her own assistant;
12.1.9 suspending the Claimant on 15 September 2022;
12.1.10 at the disciplinary hearing on 19 October 2022, Shirley Eden saying to the Claimant (and her companion) "*we British are very polite, we queue, etc, other cultures are not like that*";
12.1.11 dismissing her
12.1.12 failing to uphold her appeal?

12.2 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else (an actual comparator) was treated. There must be no material difference between the circumstances of the comparator and the circumstances of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated (a hypothetical comparator). The Claimant relies on being treated less favourably than a hypothetical comparator.

12.3 If so, was it because of the Claimant's belief and / or race (nationality)?

13. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

13.1 Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability, and, if so, from what date?

13.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

13.2.1 requiring the duties of a Jewellery Workshop Technician to be undertaken without an assistant or an additional assistant being engaged to assist with the workload;
13.2.2 making suspension decisions without giving any or any adequate consideration to the mental health of the employee;
13.2.3 making suspension decisions without obtaining occupational health advice;

13.2.4 not giving any or any adequate consideration as to reviewing whether a suspension should be continued;
13.2.5 not providing any or any adequate assistance or support during a period of suspension such as by calling or staying in touch with a suspended employee;
13.2.6 not allowing the suspended employee to speak to colleagues and / or have a point of contact?

13.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:

13.3.1 the Claimant's workload, amount of work and lack of assistance adversely impacted her mental health including contributing to a nervous breakdown and sickness absence in December 2021 (13.2.1);
13.3.2 the Claimant's suspension, its continuation for a prolonged period, and the lack of support or contact, adversely impacted upon her mental health (13.2.1 to 13.2.6);

13.4 Did the Respondent know, or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

13.5 Could the following steps have been taken to avoid the disadvantage:

13.5.1 engaging an assistant or an additional assistant to assist with the Claimant's workload as a Jewellery Workshop Technician;
13.5.2 giving adequate consideration to the mental health of the Claimant in making any decision as to the suspension of the Claimant;
13.5.3 obtaining occupational health advice before making any decision as to the suspension of the Claimant;
13.5.4 giving adequate consideration as to reviewing whether the suspension of the Claimant a suspension should be continued;
13.5.5 providing adequate assistance or support to the Claimant during any suspension whether through calling or staying in touch with her;
13.5.6 allowing the Claimant, during any suspension, to speak to colleagues and / or have a point of contact?

13.6 Was it reasonable for the Respondent to have to take those steps to avoid the disadvantage, and, of so, when?

13.7 Did the Respondent fail to take those steps?

14. Remedy for discrimination or harassment

14.1 What financial losses, including loss of earnings, have been caused to the Claimant?

14.2 Is there a chance that the Claimant's employment would have ended in any event?

14.3 If so, should the Claimant's compensation be reduced as a result?

14.4 Has the Claimant taken reasonable steps to replace any financial losses such as lost earnings, for example by looking for another job?

14.5 If not, for what period of loss should the Claimant be compensated?

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

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

14.8 Should the Claimant be awarded aggravated damages?

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

14.10 If so, did the Respondent or the Claimant unreasonably fail to comply with the applicable ACAS Code of Practice?

14.11 If so, is it just and equitable to increase or decrease any award payable to the Claimant?

14.12 If so, by what proportion, up to 25%?

14.13 Does any element of double recovery arise by reason of any compensatory award for unfair dismissal and / or damages for wrongful dismissal?

14.14 If so, by what amount, if any, should any award be reduced?

14.15 Should interest be awarded?

14.16 If so, how much?

15. Unauthorised deductions from wages

15.1 Were the wages paid to the Claimant less than the wages that she should have been paid in that:

15.1.1 she was not paid for additional hours that she worked in excess of her contractual hours between 9 March 2020 and 10 November 2022;
15.1.2 she was not paid full pay while she was absent on sick leave?

15.2 Was any deduction required or authorised by statute?

15.3 Was any deduction required or authorised by a written term of the contract?

15.4 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

15.5 Did the Claimant agree in writing to the deduction before it was made?

15.6 If any deduction was unauthorised, how much is the Claimant owed?

15.7 For what period can any payment be made for any unlawful deductions from wages?

16. Breach of Contract

16.1 Did any complaint of breach of contract arise or was it outstanding when the Claimant's employment ended?

16.2 Did the Respondent do the following:

16.2.1 fail to provide training for the Claimant as a first aider;
16.2.2 unilaterally impose changes in terms and conditions on the Claimant through the introduction of a statement of main terms of employment on or around 4 May 2021 and / or 16 June 2021;
16.2.3 suspend her on 15 September 2022?

16.3 Was that a breach of contract?

16.4 If so, how much should the Claimant be awarded as damages?

17. Failure to allow the Claimant to be accompanied (section 10 Employment Relations Act 1999)

17.1 Did the Respondent require or invite the Claimant to attend a grievance hearing to be held on 15 September 2023?

17.2 Did the Claimant make a reasonable request to be accompanied at that meeting by a trade union representative of a colleague?

17.3 If so, was that request reasonable?

17.4 If so, did the Respondent refuse that request?

17.5 If so, is the Claimant entitled to an award of two weeks' pay?