Case numbers: 2206055/2022 & 2208262/2022
& 2206294/2023 & 2215329/2023

EMPLOYMENT TRIBUNALS

Claimant: Ms R Joerand

Respondents: (1) Central and North West London NHS Foundation Trust
(2) Rebecca Dunkerley
(3) Mark Hilton

Heard at: London Central
(by remote video hearing)

On: 17, 18, 19, 20, 23, 25, 30 September 2024; 1, 2, 9 October 2024
10, 11, 21, 22, 24 October 2024 (in chambers)

Before: Employment Judge B Smith (sitting with members)
Ms Campbell
Mr Baber

Representation
Claimant: In person
Respondent: Ms Grace (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of unfair dismissal is not well-founded and is dismissed.

2. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.

3. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

4. The complaint of harassment related to disability is not well-founded and is dismissed.

5. The complaint of victimisation is not well-founded and is dismissed.

6. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

7. The complaint of failure to give the claimant written itemised pay statements as required by section 8 Employment Rights Act 1996 in the period 25 August 2023 or 25 September 2023 is not well-founded and is dismissed.

REASONS

INTRODUCTION

1. The claimant was employed by the first respondent from 1 June 2021, initially as a Health Care Assistant (HCA) at the St Pancras Rehabilitation Unit (SPRU). During a period of sick leave her employment was terminated, apparently as a result of an administrative error, which has been dealt with by other proceedings. The claimant's employment was reinstated in November 2021. The claimant was assigned to a Band 2 administrative role under the SPRU lead, Carole Walters, on 15 November 2021. Periods of sick leave followed.

2. The claimant's next role was as a Peripatetic Health Care Receptionist. The claimant attended an induction meeting for this on 24 August 2022 and the role was confirmed as effective from that date. Although the induction was held at the Peckwater Centre, the claimant first worked at another site at Gospel Oak Health Centre due to remedial works at Peckwater, as a phased return.

3. The claims include issues about pay and reasonable adjustments. Some issues also concern an incident with another employee on 26 October 2022 at the Gospel Oak site ('the October 2022 incident'). The claimant resigned with immediate effect on 11 September 2023. The claimant has brought four separate claims which were consolidated by order of the Tribunal.

4. The claims were most recently case managed by EJ E Burns over a three-day hearing which included determination of an extensive amendment application. That hearing was on 10, 12 and 18 June 2024.

5. The first claim was presented on 17 August 2022. ACAS conciliation started on 7 June 2022 and the certificate was dated 19 July 2022. Further conciliation started on 6 August 2022 and the certificate was dated 8 August 2022.

6. The second claim was presented on 1 November 2022. ACAS conciliation started on 5 October 2022 and on the certificate was dated 7 October 2022.

7. The third claim was presented on 27 April 2023. ACAS conciliation started on 27 April 2023 and the certificate was dated 27 April 2023.

8. The fourth claim was presented on 7 October 2023. ACAS conciliation started on 29 August 2023 and the certificate was dated 13 September 2023.

9. The claimant brings claims of:

   (i) Unfair (constructive) dismissal;

   (ii) Discrimination arising from disability;

   (iii) Failure to make reasonable adjustments;

   (iv) Harassment relating to disability;

   (v) Victimisation;

   (vi) Unauthorised deductions from wages; and

   (vii) Failure to provide itemised pay statements.

10. The respondents agreed that the claimant was disabled for the purposes of s.6 EQA 2010 at the relevant times by reason of chronic migraine and

anxiety. The respondents did not accept that the claimant was disabled for the purposes of s.6 Equality Act 2010 ('EQA') by reason of panic attacks, depression, fibromyalgia, vertigo, restless feet syndrome, high blood pressure and hypothyroidism.

PROCEDURE, DOCUMENTS, AND EVIDENCE HEARD

11. The claimant has represented herself throughout.

12. The claimant only attended the hearing for a short period at the start on 17 September 2024. The tribunal concluded that it was in the interests of justice to continue in the absence of the claimant given the outcomes of the claimant's various applications made by email, particularly to postpone the hearing. These are detailed in reasons at **Appendix C**.

13. No adjustments were required by the respondents.

14. The reasonable adjustments ultimately granted to the claimant were as set out, with reasons, in **Appendix B .** This was the outcome of the claimant's reasonable adjustments application dated 15 September 2024. The outcome of this decision was communicated separately to the claimant on 20 September 2024 so that she was fully informed for the hearing continuing with evidence on 23 September 2024. However, at no stage did the claimant attend the hearing with the adjustments in place that the tribunal had granted her.

15. The final hearing started with a preliminary hearing for case management on 17 September 2024. This was because the full tribunal was not yet available and the hearing was to be used for any preliminary matters, such as the claimant's (undetermined) reasonable adjustments application dated 15 September 2024. One member of the final panel attended the first part of that hearing for observational purposes only. The full tribunal sat from 18 September 2024 onwards, with 18, 19, and 20 September 2024 being

reading days. Also, the tribunal decided it was in the interests of justice to decide the reasonable adjustments application on the papers on 20 September 2024. This was fair to the claimant because the claimant had been requesting decisions to be made without oral hearings for a considerable period of time and the claimant had not returned to the hearing on 17 September 2024. Both parties provided written submissions for that decision.

16. The full tribunal decided additional procedural matters on 23 September 2024 as set out in **Appendix C**. The respondents did not pursue a strike out application originally announced on 23 September 2024. The tribunal did additional reading on 25 September 2024 and then heard the respondents' evidence on 30 September and 1 and 2 October 2024. The respondents' written submissions were not ready on 3 October 2024 so the tribunal adjourned until 9 October 2024 for oral submissions.

17. The respondents' witnesses all gave evidence under oath or affirmation.

18. The list of issues was set by order of EJ Burns dated 24 June 2024. This can be found at **Appendix A**.

19. The principal documents were:

    (i) Hearing bundle paginated to 4152;

    (ii) Witness statement bundle paginated to 654;

    (iii) Extract from the health roster in unclipped format (already in the hearing bundle, above);

    (iv) Claimant supplementary bundle;

    (v) Respondent commentary on claimant supplementary bundle;

    (vi) Claimant updated disability impact statement dated 16 September 2024;

(vii) Claimant document '*Argument for Extension of Time…*' dated 15 September 2024;

(viii) Cast list;

(ix) Chronology;

(x) Respondent opening note;

(xi) Respondent closing submissions with appended tables 1 and 2;

(xii) Timetables (updated during the course of the hearing);

(xiii) Two videos about the October 2022 incident from the claimant's phone;

(xiv) Two CCTV videos of the October 2022 incident; and

(xv) The claimant's phone recording alleged construction noise at Peckwater.

20. The claimant made a large number of applications in writing with supporting documentation during the course of the proceedings. These included:

a. Reasonable Adjustments application dated 15 September 2024 (as above and below, with our reasons at **Appendix B**):

i. The respondents made written submissions in response to this application dated 19 September 2024';

ii. The claimant made reply submissions dated 19 September 2024';

b. Postponement and recusal application dated 19 September 2024 (as above and below, with our reasons at **Appendix C**);

c. A photo of the claimant's blood pressure '*093.4 PHOTO-2024-09-13-12-23-56'*;

d. Fit note dated 19 September 2024 (until 24 September 2024);

e. Fit note dated 19 September 2024 (until 16 November 2024);

f. An email from the claimant dated 20 September 2024 with the following attachments:

   i. Estonian Social Insurance Board document dated 11.3.2017;

   ii. Claimant PIP document dated 27 October 2023;

   iii. Claimant updated disability statement (duplicate to above);

   iv. Claimant reasonable adjustments application 15 September 2024 (duplicate to above);

   v. Claimant email about PIP dated 20 July 2023;

   vi. Claimant written brief to intermediary for assessment on 8 August 2023;

   vii. Intermediary report dated 3 October 2023;

   viii. Claimant letter dated 30 August 2024 about her witness statement;

   ix. Claimant document dated 19 September 2024 alleging Equal Treatment Bench Book violations;

g. Claimant GP letter dated 3 March 2023;

h. Claimant hospital A&E notes dated 18 September 2024 at 01:04;

i. Claimant PIP documents sent by email on 20 September 2024 at 12:45;

j. Claimant email sent at 5:04 AM on 18 September 2024 asking to postpone the hearing, including the fit note dated 17 September 2024 two photos of blood pressure readings, and written submissions dated 18 September 2024 purporting to have been written by the claimant's partner asking for a postponement;

k. Document showing claimant's universal credit payments;

l. Application purportedly from the claimant's partner dated 22 September 2024 for postponement, review of reasonable adjustments, and a request for a medical expert review and new intermediary assessment;

m. Emailed application purportedly from the claimant's partner dated 30 September 2024 with attachments from the claimant's GP office, a 'virtually' online consultation reminder, iCope referral request;

n. Claimant written submissions dated 1 October 2024;

o. Claimant application for reconsideration and request to postpone dated 2 October 2024 with attachments including:

    i. Claimant GP letter dated 27 September 2024;

    ii. Claimant fit note dated 27 September 2024 (to 30 November 2024);

p. Claimant written request for further reasons dated 4 October;

q. Claimant written submissions dated 6 October 2024; and

r. 8 October 2024 UCL Hospitals letter.

21. Much of the above material was duplicated from the hearing bundle.

22. The tribunal decided at all material times that the claimant had been granted all reasonable adjustments that were supported by the evidence and that a postponement was not required in the interests of justice. This is because the medical evidence did not establish that the claimant was unfit to attend the hearing. The relevant decisions were made by the full tribunal at various stages of the proceedings and some brief oral reasons given. Our written reasons can be found in **Appendix C**, below.

23. The tribunal took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. However, the tribunal was also proactive in also reading the documentation relied on by the claimant in her submissions and witness statement. We were also proactive about considering the medical evidence, in particular.

24. The respondents made written and oral closing submissions. The claimant did not. However, the claimant had a full and fair opportunity throughout to send to the tribunal (a) questions for the respondents' witnesses to be put in cross-examination in accordance with the reasonable adjustments decision, with the claimant being given additional notice about this by email from the tribunal dated 23 September 2024 giving the claimant until 9am on Monday 30 September 2024 to do this, and (b) closing submissions before the tribunal retired to deliberate on 9 October 2024.

RELEVANT LAW

25. Our findings of fact were made on the balance of probabilities. We were careful not to treat the list of issues as a strict pleading and gave a broad interpretation to how they were worded when appropriate.

A Time limits

26. Time limits for wages claims under the Employment Rights Act 1996 ('ERA 1996') are covered by s.23:

> *(1) A worker may present a complaint to an employment tribunal -*
>
> *(a) that his employer has made a deduction from his wages in contravention of section 13*
>
> *[…]*

(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

[…]

(3) Where a complaint is brought under this section in respect of –

(a) a series of deductions or payments, or

[…]

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series [….]

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

[…]

27. Early conciliation applies.

28. Time limits for claims under the EQA are governed by s.123:

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable […]

[…]

(3) For the purposes of this section—

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

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

(4) In the absence of evidence to the contrary, a person (P) is taken to decide on failure to do something –

(a when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

29. We have a wide discretion to extend time on just and equitable grounds: *Jones v Secretary of State for Health and Social Care* [2024] EAT 2. Relevant factors we should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondents (for example, preventing or inhibiting it from investigating the claim while matters were fresh); whether someone was in ignorance of their rights or had received incorrect advice; if there was an ongoing internal procedure; and reasons relating to disability or ill health.

30. We must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96.

B Unfair dismissal – constructive dismissal

31. A dismissal will be unfair unless it is for one of the admissible reasons specified in s.98 ERA 1996. If the dismissal is proved to be for one of those reasons then the determination of the question of whether the dismissal is fair or unfair, having regard to the reasons shown by the employer, depends on whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably as in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with the substantial merits of the case. The tribunal must not substitute its own opinion about whether or not an employee should have been dismissed and must recognise that there will be a band of reasonable responses on the part of the employer. A dismissal should not be held to be unfair unless it falls outside of that range.

32. A constructive dismissal is set out in s.95(1)(c) ERA 1996:

For the purposes of this Part an employee is dismissed by his employer if

[…]

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

33. This was explained by Lord Denning MR in Western Excavating (ECC) v Sharp [1978] ICR 221 CA as:

'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.'

34. There must be: a repudiatory or fundamental breach of the contract of employment by the employer; a termination of the contract by the employee because of that breach; and the employee must not have lost the right to resign by affirming the contract after the breach (such as by delay).

35. The claimant relies on an alleged breach of the implied term of trust and confidence. This is an obligation that the employer should not '*Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee'*: Malik and Mahmud v BCCI [1997] ICR 606. Acting in an unreasonable manner is insufficient: Frenkel Topping Limited v King UKEAT/0106/15/LA. Section 95(1)(c) does not introduce a concept of reasonable behaviour by employers into contracts of employment: Western Excavating (ECC) Ltd v Sharp. It is relevant to consider whether there was reasonable and proper cause for any alleged conduct, and, if not, the tribunal must ask: when viewed objectively, was that conduct which was calculated or likely to destroy or seriously damage trust and confidence?

36. A course of conduct can cumulatively amount to a fundamental breach of contract even if the last incident itself does not amount to a breach of contract: Lewis v Motorworld Garages Ltd 1986 ICR 157 CA. Where a claimant relies on a series of events which they say collectively amount to a breach of trust and confidence, if the last event is entirely innocuous or trivial, and none of the preceding matters amount to a fundamental breach of contract, the claim of constructive dismissal will fail: Omilaju v Waltham Forest London Borough Council [2005] ICR 481 CA. However, any act constituting a 'last straw' need not be the same character as the earlier acts. It also does not need to constitute unreasonable or blameworthy conduct. The test is objective. The last act can be a part of a course of conduct which cumulatively amount to a breach of the implied term of trust and confidence.

37. A fundamental breach of contract may be actual or anticipatory. An anticipatory breach is when, before performance is due, the employer

intimates by words or conduct to the employee that it does not intend to follow an essential term of the contract at the time of performance.

38. The tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it: Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666 EAT.

39. A breach of the implied term of trust and confidence is inevitably fundamental: Morrow v Safeway Stores plc 2002 IRLR 9 EAT.

C Disability discrimination arising from disability

40. Disability is defined in section 6 EQA:

(1) A person (P) has a disability if -

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability -

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability

[…]

41. Substantial means more than minor or trivial: s.212(1) EQA.

42. We applied and took into account the EHRC Code of Practice ('the Code') where relevant.

43. Section 15 EQA says:

> *(1) A person (A) discriminates against a disabled person (B) if—*
>
> *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
>
> *(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

44. 'Unfavourably' is not defined in the EQA. The Code at [5.7] says that this means that the disabled person must have been put at a disadvantage.

45. The proper approach to determining s.15 EQA claims was summarised by Mrs Justice Simler in Pnaiser v NHS England and anor [2016] IRLR 170 EAT at [31]:

> *'(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.*
>
> *(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason,*

but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: … A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises…

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act … the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) …the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) […]

(h) Moreover, the statutory language of section 15(2) makes clear … that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the

statute would have said so. … … it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

46. It follows that the something that causes the unfavourable treatment does not need to be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment and so amount to an effective reason for or cause of it: *Pnaiser v NHS England* (above) at [31(b)].

47. A claimant bringing a complaint under s.15 EQA bears an initial burden of proof. They must prove facts from which the tribunal could decide that an unlawful act of discrimination has taken place. This means that the claimant has to show that they were disabled at the relevant times, they have been subjected to unfavourable treatment, a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment, and evidence from which the tribunal could infer that the something was an effective reason or cause of the unfavourable treatment. If the claimant proves facts from which the tribunal could conclude that there was s.15 discrimination the burden shifts under s.136 EQA to the respondents to provide a non-discriminatory explanation or to justify the treatment under s.15(1)(b).

48. Whether or not unfavourable treatment is a proportionate means of achieving a legitimate aim involves a balancing exercise between the reasonable needs of the respondents and the discriminatory effect on the claimant: Hampson v Department of Education and Science [1989] ICR 179 CA. Factors to be considered include whether a lesser measure could have achieved the employer's legitimate aim.

D Failure to make reasonable adjustments

49. The duty to make reasonable adjustments is found in s.20 EQA. That duty applies to employers: s.39(5) EQA. Failure to comply with the duty is at s.21 EQA. The relevant questions are:

    (i) what is the provision, criterion or practice ('PCP') relied upon;

    (ii) how does the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled;

    (iii) can the respondents show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage; and

    (iv) has the respondents failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?

50. The Code says at [6.10] that PCP '*should be construed widely so as to include, for example, an formal or informal policies, rules, practices, arrangements or qualifications include one-off decisions and actions'*.

51. Pendleton v Derbyshire County Council [2016] IRLR 580 and Nottingham City Transport Ltd v Harvey [2013] ALL ER(D) 267 EAT demonstrate that, generally, a one-off incident will not qualify. However, a practice does not need to arise often to qualify as a PCP. In Ishola v Transport for London [2020] ICR 1204 the Court of Appeal said that the words provision, criterion or practice '*carry a connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again*.'

52. Substantial disadvantage means more than minor or trivial: s.212 EQA. It must also be a disadvantage which is linked to the disability.

53. A PCP is unlikely to be considered proportionate if there is a way of achieving the aim which imposes less detriment: Chief Constable of West Yorkshire Police v Homer [2012] ICR 704.

54. The tribunal must also consider the extent to which the step will prevent the disadvantage to the claimant.

55. In the context of reasonable adjustments claims, the claimant must prove facts from which it could reasonably be inferred, absent an explanation, that the relevant duty has been breached: Project Management Institute v Latif [2007] IRLR 579 EAT at [54]. The burden then shifts to the respondent under s.136 EQA. In Rentokil Initial UK Ltd v Miller [2024] EAT 37 it was then held at [43] that '*What Latif means is that the burden is on the employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment.'*

56. A PCP can include an expectation, and the identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach and a tribunal should widely construe the statutory definition: Ahmed v Department for Work and Pensions [2022] EAT 107 at [25].

57. The identity of non-disabled comparators may be clearly discernible from the PCP under consideration: Fareham College Corporation v Walters [2009] IRLR 991 EAT. The fact that disabled and non-disabled people may both be affected by a PCP does not in of itself preclude a finding of substantial disadvantage where the likelihood and or frequency of the impact is greater for a disabled person: Pipe v Coventry University Higher Education Corporation [2023] EAT 73.

58. The Code at [6.28] lists factors which might be taken into account when deciding if a step is reasonable to take, including 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 or other resources, the availability of the employer of financial or other assistance to help make an adjustment, and the type and size of the employer.

E Harassment

59. Harassment is prohibited conduct under s.26 EQA:

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

60. The purpose or effect of the conduct must be considered separately. In deciding whether conduct has the effect, we must 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. In terms of effect, we must ask first whether the claimant genuinely perceived the conduct as having that effect, and whether in all the circumstances, was that perception reasonable: Pemberton v Inwood [2018] EWCA Civ 564.

61. The statutory language of violating dignity, and intimidating, hostile, degrading, humiliating or offensive, involves the use of '*significant'* words which are an important control to prevent trivial acts causing minor upsets

being included in the concept of harassment: Grant v HM Land Registry [2011] EWCA Civ 769 (Elias LJ).

62. When deciding whether the conduct related to a protected characteristic we bear in mind that we must evaluate the evidence in the round and recognise that witnesses will not readily volunteer that conduct was related to a protected characteristic: Hartley v Foreign and Commonwealth office Services [2016] ICR EAT. 'Related' is a reasonably broad word, on its face, and is a looser statutory requirement than direct causation. The context of any given conduct is important: Warby v Wunda Group plc EAT 0434/11.

63. If there are facts from which a tribunal could find that the conduct was related to disability it is then for the respondents to discharge the burden of proof that it was not.

F Victimisation

64. Victimisation is prohibited conduct under s.27 EQA:

A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

65. Protected acts are defined in s.27(2) and include making allegations, whether or not express, that someone has contravened the Equality Act 2010 and bringing proceedings under the EQA. One relevant question is why was the discloser subjected to the detriment: was it because of the protected act, or for wholly other reasons?

66. A detriment is a disadvantage.

G Burden of proof in EQA claims

67. The burden of proof for the EQA claims is governed by s.136 EQA:

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *[…]*

68. It was held in Field v Steve Pie [2022] EAT 68 at [37]:

> '*In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities*.' Further at [41] that '*if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment*.'

69. It is not sufficient for the employee to only prove a difference in protected characteristic and a difference in treatment in order to shift the burden of proof: Madarassy v Nomura International Plc [2007] EWCA Civ 33.

70. Once the burden has shifted, the employer must prove that less favourable treatment was in no sense whatsoever because of the protected characteristic: Wong v Igen Ltd [005] EWCA Civ 142.

H Unauthorised deductions from wages

71. Section 13 ERA 1996 says:

> *(1) An employer shall not make a deduction from wages of a worker employed by him unless—*
>
> *(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
>
> *(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*
>
> *[…]*
>
> *(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

72. In order for there to be an unlawful deduction the employee must have a legal entitlement to the wages: New Century Cleaning Co v Church [2000] IRLR 27.

I Failure to provide a written itemised pay statement

73. Section 8 ERA says:

> *(1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*
>
> *(2) The statement shall contain particulars of—*
>
> *(a) the gross amount of the wages or salary,*

(b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,

(c) the net amount of wages or salary payable,

(d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and

(e) where *the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as—*

(i) a single aggregate figure, or

(ii) separate figures for different types of work or different rates of pay.

FINDINGS OF FACT

A Overarching narrative

74. We confirm the matters contained in the chronology and cast list as findings of fact. There was no reason to doubt those documents and the chronology was supported by documentary evidence referenced within the document.

75. The claimant's overall employment history and the dates of Acas conciliation and presentation of the claims are as set out above (paragraphs 1-2).

76. There is no dispute about the authenticity of the documents.

77. The claimant started as a Health Care Assistant on 1 June 2021. On 3 June 2021 to 13 July 2021 the claimant was on sick leave on the basis of being unable to wear a face mask due to migraines. The claimant's accidental dismissal was on 14 July 2021 and the COT3 for this is dated 12 November 2021. The claimant alleged discrimination in her grievance about the dismissal is dated 17 September 2021. The claimant started redeployment

as an administrative assistant on 15 November 2021. This role included assisting ward clerks and Carole Walters with general administrative tasks. The claimant self-certified as off sick for reasons of depression, severe migraines and anxiety between 1 March and 7 March 2022. The claimant raised a further grievance on 10 April 2022. The claimant was off sick by reason of anxiety, depression and migraines for a significant period thereafter.

78. The claimant was offered the role of Health Care Receptionist at the Peckwater site on 24 August 2022. Although her induction was on that date, she started at the Gospel Oak site thereafter. The claimant was initially working at the Gospel Oak site because of building works at the Peckwater Centre. As of 2 February 2023 when it was inspected by Mr Mark Hilton, there were some visible building materials, such as paint awaiting removal, but no further building works were expected until June 2023.

79. The claimant's April 2022 grievance was dealt with by Sarah Hulme and was not upheld in an outcome on 26 August 2022. The claimant self-certified as being off sick on 12 October 2022. An incident between the claimant and Ms Bushiri took place on 26 October 2022 and the claimant made a complaint on the same day. The claimant was off sick from 27 October 2022. The claimant completed a workplace incident report on 31 October 2022 in respect of the incident on 26 October. The claimant was further off sick for a significant period of time.

80. The 26 October 2022 incident was investigated by Mark Hilton and the outcome report was handled by Mrs Rebecca Dunkerley. The outcome letter was dated 16 November 2022. Both the claimant and Ms Bushiri were issued with an improvement notice. This is an outcome under the informal stage of the first respondent's disciplinary policy.

81. The key findings of the outcome report included that an altercation took place, the altercation was verbal and there was no physical violence, the behaviour of both staff did not live up to the first respondent's expected

standards of behaviour, filming took place of Ms Bushiri by the claimant in the face of an explicit lack of consent, and the fact that the doors were set to automatic opening when people entered or left allowed for fresh air to circulate. Mrs Dunkerley concluded that there was adequate airflow to the Gospel Oak Health Centre reception desk at the time.

82. The claimant raised a further grievance on 12 January 2023 as well as a flexible working request on the same day. The flexible working request was responded to by Mark Hilton on 17 February 2023.

83. The claimant was further off sick from 17 April 2023, initially as authorised sick leave but this ultimately became absence without leave which was unpaid.

84. The claimant's employment was terminated by her resignation dated 11 September 2023.

B General findings on the evidence

85. We give no evidential weight to the claimant's witness statement and similar documents such as her updated disability impact statement and written document on time limits. Where the events and diagnoses are expressly evidenced elsewhere, in documentary form in the respondents' witness evidence, that is the more reliable source of evidence that those things happened. Our reasons for this are:

a. The claimant's evidence has not been tested under cross-examination.

b. The claimant's written documents are demonstrably incorrect or, at times, misleading. These include:

i. The claimant's account of the October 2022 incident. This is materially undermined by the claimant's own video recording of the incident, supported by the respondents' CCTV.

ii. The claimant's account to others in respect of the hearing on 17 September 2024 (as set out elsewhere in these reasons).

iii. The claimant's witness statement includes references to claims she is expressly not making, such as whistleblowing. The claimant confirmed that she was not making other claims, or was seeking to amend her claims, by email 9 September 2024.

iv. The claimant seeks to rely on her medical conditions in way that is not properly supported by evidence. For example, the claimant alleges that, in respect of Ms Mhizha, an occupational health assessor, by email dated 30 August 2023 at 12:23 the claimant stated that during the assessment phone call '*This made me feel so unheard and desperate and raised my blood pressure to the life threatening levels'* and included an attached photograph of her blood pressure at 190/123 timed at 8:28AM. However, the phone call the claimant alleged caused the rise in blood pressure took place at 11:55am on 30 August 2023. It follows that the blood pressure reading must have been taken well before the relevant phone call on the evidence and so any rise can't have been caused by Ms Mhizha's conduct during the call, contrary the claimant's assertion that it did. Similar events were described by Mr Hilton.

c. The claimant has also made significant and serious allegations without any proper basis. These include:

i. That the tablet computer provided by the first respondent was, in effect, to monitor her activities. The claimant has wholly misrepresented the written evidence at bundle p.2198 which was the only realistic source of this allegation. The evidence was that it was possible to see when the device was last connected to the internet (page 2199) and it was possible to see if it was being used (page 2198). The claimant's statement refers to a document which was not clearly apparent, namely an alleged email exchange between Kirsty Chestnutt stating that a Samsung tablet would be sent as opposed to an Amazon Fire because it the location can be tracked and could be wiped remotely. The claimant's bundle page reference does not support this. Even if it did, however, this is a clear misreading: remote tracking and wiping of a device is wholly separate to monitoring the claimant's activities.

ii. The allegations about Mark Hilton and Rebecca Dunkerley lying about the extent to which CCTV footage was viewed within their investigation. The claimant's allegation is wholly at odds with the fact that Mr Hilton's investigative report included a timeline with commentary. The allegation is made on a purely speculative basis but this, through the claimant, has morphed into the claimant making positive allegations which are clearly without basis and are totally unfounded.

iii. The claimant alleged at bundle page 2848 that the respondents was putting her life at risk and exposing her to physical assaults by reference to the October 2022 incident. This is an exaggeration in light of the claimant's own footage of the incident.

d. The claimant's documents are, by her own admission (such as in her reasonable adjustments application dated 15 September 2024) and

on the face of the documents, at least in part generated by ChatGPT in circumstances where it is impossible to know which words are the claimant's own words.

e. We are also satisfied that the claimant's written communications include veiled threats to those who are making decisions about her on the basis of her diagnoses. This includes, for example, in her reasonable adjustments application dated 15 September 2024 there are several references to the claimant's preferred beneficiary in the event of her death. There is no reasonable basis for including this type of information, even for a litigant in person.

f. We have also accepted Mr Hilton's evidence that the claimant '*At other times she verbally told me* that *she would add my name to her Tribunal claim unless I made decisions in her favour.*' This is consistent with a documented threat by the claimant dated 3 November 2022, at bundle page 2758, where before Mr Hilton had direct responsibility for the claimant, in reference to his investigative report the claimant said '*I will wait for the outcome report and based on that I can decide if needed to go ahead with formal procedures'.*

g. We also accept the respondents' submission that the claimant has, at times, taken a kernel of truth and expanded it in a why which misrepresents the situation to her advantage. For example, although the claimant is right to include in her witness statement that Nigel Peters accepted that the first respondent's treatment of her was unacceptable, she does this in a way to suggest that he is talking about reasonable adjustments. However, it is clear from the documentary evidence that this expression is about when the claimant was erroneously dismissed, and is not an acceptance of any of the allegations the claimant makes about her disabilities or the other events more generally.

86. We accept the evidence of the respondents' evidence in full. The tribunal had the benefit of asking them questions to neutrally explore the issues and illicit clarification. The evidence was given under oath or affirmation. The tribunal received full and satisfactory answers to its questions. The witnesses were clear about their roles and exactly what they did. They made concessions where appropriate (such as Carol Walters accepting responsibility for the uncorrected entries in the sickness records, and Nigel Peter's accepting that the treatment of the claimant was unacceptable in so far as when she was erroneously dismissed). There is no good reason to doubt their evidence or other cogent evidence to undermine what they told us. Much of their evidence is corroborated in whole or part by the documentary and other evidence. We have no reason to find that their evidence was anything other than credible and reliable. Many of the witnesses had never met or spoken to the claimant and there was no evidential basis to suggest that they had animosity towards the claimant. In fact, overall, the evidence clearly demonstrated that the respondents went to exhaustive efforts to accommodate the claimant's various needs and grievances as demonstrated by the extent of adjustments granted to her and efforts to find a role that the claimant would accept.

87. Overall, we reject the claimant's criticisms of the named individual respondents Ms Dunkerley and Mr Hilton. These criticisms are without foundation.

C More detailed findings relevant to the issues

88. The following findings are made predominantly on the basis of the witness evidence which we have accepted for the reasons above. This evidence, generally, was supported by documentary evidence in the form of correspondence or similar evidence.

89. At the first respondent, employees are entitled to one month's full pay and two months' half pay in the first year of their employment. During the second year of service an employee is entitled to two months' full pay and two

months' half pay of statutory sick pay. During the third year of service, an employee is entitled to four months' full pay and four months' half pay. Sick pay is paid on a rolling basis. This means that the entitlement used in the first year is used against the second year.

90. The claimant's sickness absence before she restarted employment (following the erroneous dismissal) was not taken into account by the first respondent when calculating her sickness entitlement. This was to the claimant's benefit.

91. Occupational health reports about the claimant included the following. 1 July 2021: The claimant was fit to work, and, following provision of GP information:

'*Due to inexperience, I understand that there are no alternative office or administrative duties available within the ward environment where masks would not have to be worn when seated and advises that Human Resources should consider whether temporary or permanent redeployment to another role, not based in a clinical area, is feasible or contractual.'*

92. 8 December 2021 (sent 19 December 2021): following a telephone consultation, and the claimant's self-reported information about mask wearing, the recommendations were:

- *'For management to liaise with the infection control team to explore the possibility of the use of an alternative type of mask for Ms Joerand. It is important to note, however, even if she were able to wear a different type of mask/cotton masks, she will only be able to wear this for a minimum period of 15-30 minutes at any given time.*
- *If the use of an alternative type of mask was approved, Ms Joerand is advised to plan and carry out tasks involving photocopying and scanning for a maximum duration of 15-30 minutes at any one time to ensure that she is able to go back to her office where she can continue other aspects of her role without the use of a mask.*

- *Where the above recommendation is not deemed feasible, other options whereby Ms Joerand can carry out such administrative tasks in a non-communal area is to be explored (if operationally feasible).*

- *I understand from the latter, she can carry out some aspects of her work from home, thus, removing the need for her to wear a mask at all. If that was indeed an option available to her, it is one that would be supported from an occupational health perspective. She may be able to complete some tasks from home and get herself to the office later in the day when there are less people around and she could carry outs tasks that are based in the communal area of the office.*

- *Agile working is supported as and she is symptomatic and does not feel well enough to get herself to the office but feels able to carry out aspects of her role from home.'*

93. A second report dated 8 December 2021 following assessment by occupational health said that she was fit to work and perform the full range of duties. The following was recommended for consideration: making adjustments to premises; allocating some duties to others; transfer to existing vacancy; altering working hours; assigning to different place of work; time off for rehabilitation, assessment or treatment; arranging training; acquiring or modifying equipment; modifying instructions or reference manuals; modifying procedures for testing or assessment; providing reader or interpreter; and providing supervision.

94. Also, in the opinion of the assessor, the claimant was fit to attend and take part in informal meetings with the following provisos:

'Management should take into account her current mental health status; meeting should take place at a mutually neutral location; she should be supplied in advance where possible, with written material to allow time to take this in; she should be accompanied by an appropriate party; if she becomes distressed during a meeting she should be allowed a break; she should not necessarily be required to answer questions 'on the spot', but

rather be given sufficient time to formulate a response taking into account her impaired concentration secondary to her psychological symptoms.'

95. 30 June / 4 July 2022: this included that the claimant was fit to work but would not be able to work in a clinical role. A detailed assessment of her health took place. The advice included about use of public transport and that she is able to work within normal office hours. The following adjustments should be considered (in summary):

DSE self-assessment on return to work; mini-breaks (5-10 mins) throughout the day; varied activities and avoiding prolonged computer-based or sedentary working; if experiencing mild-moderate symptoms to have a quiet room; some duties may need to be reallocated to others (eg. lifting heavy boxes); her own assigned work station; an access to work assessment; signposting to counselling; time off for future medical treatment, rehabilitation and assessment if within working hours; flexible working and agile opportunities per policy; a widening of her absence triggers; and a gradual phased return.

96. The claimant was also fit to attend and take part in formal and informal meeting with the following proviso:

- *'Management should take into account her mental health status at the time*
- *Management and Mrs Joerand will need to consider all means by which meetings can be held, as to which one is most suitable*
- *Meetings should take place at a mutually neutral location.*
- *She should be supplied in advance, where possible, with written material to allow time to take this in.*
- *She should be accompanied by an appropriate party to help reduce anxiety.*

- *If she becomes distressed during a meeting she should be allowed a break.*

- *She should not necessarily be required to answer questions "on the spot", but rather be given sufficient time to formulate a response.'*

97. Carole Walters was the claimant's line manager from 15 November 2021. She was unaware of the claimant's grievance dated 17 September 2021. This concerned the claimant's role at the SPRU as a band 2 administrator. This role was not an existing role and had been created for the claimant for a limited period of time to provide her with administrative experience to support her in later redeployment. The claimant was willing to wear a mask to enter the ward to pick up paperwork to bring back to the 1st floor. Ms Walters agreed to an amended start time from 9:45/10:00 to midday which was welcomed by the claimant. The claimant's anxiety about mask wearing was reduced by staff bringing work down to her in her won office. Ms Walters discussed mask wearing with the claimant in supervision and the need to wear masks for short periods of time, such as on communal corridors and when briefly entering wards was agreed. There were no other alternative administrative tasks or locations where masks would not need to be worn.

98. At this time there was a requirement for staff to wear a face mask in clinical areas, including administrators and when interacting with colleagues.

99. Ms Walters granted the claimant following adjustments during the relevant times:

    a. A personal office in which she did not need to wear a face mask. This was done be decommissioning a training space for ward staff where they could take a break from wearing a mask.

    b. The role was supernumerary and a cost pressure on the first respondent.

c. The claimant's room had line of sight to the multi-function device (photocopier/scanner) so the claimant could check when it was quiet without needing to leave her office.

d. The ward clerk team were a daily point of contact for the claimant.

e. The claimant's shift time was personalised.

f. The claimant agreed the reasonable adjustments in place following an occupational health report.

g. Following concerns about a need to wear a fluid resistant surgical mask, an occupational health referral was made and the report was dated 19 December 2021, recommending exploring alternatives to mask wearing and limiting it to 15-30 minutes.

h. Remote working was not practicable at all relevant times as the unit was still dependent on paper for a significant amount of its work. A lot of the work was paper based and involved organising and making up folders, photocopying and entering manually completed exit questionnaire to an electronic platform. The one regular job that could be done remotely amounted to no more than 15 to 45 minutes of work each day.

i. A further occupational health referral was made on 24 November 2021.

j. Later start and finish times were then agreed with the claimant when the printer area was less busy, ie. 12:00 to 20:00.

k. With regards to a meeting on 17 February 2022 to discuss concerns raised by the claimant, adjustments were made based on occupational health advice including that the claimant should be supplied in advance with written material to give her time to take it in, and the claimant should be given time to formulate answers and not be put on the spot.

100. In March 2022 Ms Walter's recruited a personal assistant. That role necessitates direct contact with ward based staff and required continual mask wearing. The role was unsuitable for the claimant given her position on mask wearing. The role was advertised on 31 December 2021 with a closing date on 7 January 2022. It was circulated within the relevant part of the organisation through a weekly email to staff including the claimant. It was a band 4 role and completely different to the claimant's role at that time because it involved invoice management, procurement, budget monitoring and overseeing complaints and a safeguarding tracker. The claimant did not have the necessary skills for that role.

101. Sarah Hulme dealt with a grievance raised by the claimant on 10 April 2022 about how various policies had been implemented including about sickness absence and disability. She took into account occupational health advice when preparing an agenda for a meeting on 12 April 2022 which was to be held online. The outcome of the meeting was confirmed on 13 April 2022. The claimant was at that stage on sick leave and receiving half pay. It was agreed that an alternative band 2 administrative role would be looked for. The claimant asked that her concerns be investigated informally at stage 1 of the relevant policy and the claimant preferred to attend virtual meetings from home. The claimant's computer did not support MS Teams and so Ms Hulme arranged for a tablet computer to be sent to the claimant.

102. When investigating the claimant's grievance, Ms Hulme's PA Dipa Mistry was asked by Ms Hulme to convert the claimant's PDF document into Word so that it could be broken down into headings and numbered paragraphs. Ms Mistry struggled with this task and stated in an email dated 25 May 2022 that it was '*a nightmare to edit'*. Ms Hulme continued the redeployment process with the claimant. In dealing with the grievance the claimant rejected Ms Hulme's attempts to reformat the grievance in a more manageable manner. When Ms Hulme asked the claimant with four options as to how to proceed with the grievance on 13 June 2022 the claimant stated that she was unable to cope following a bereavement. The communications between the claimant and Ms Hulme were in writing at the

claimant's request which necessitated a considerable amount of correspondence. The grievance was not upheld by outcome letter dated 26 August 2022.

103. Rebecca Dunkerley and Nigel Peters made attempts to meet with the claimant to discuss and commence redeployment during the summer of 2022. In a letter dated 4 July 2022 the claimant was given an extension of four weeks to the normal policy of an 8-week redeployment process as a result of delays in bring able to engage the claimant in conversation as opposed to written communication.

104. By letter dated 19 August 2022 a suitable role for redeployment was offered to the claimant at the Peckwater Health Centre, the band 2 administrator health centre receptionist role. This was subject to a trial period of 28 days to see if the claimant and respondent deemed the role suitable.

105. The claimant raised issues about her salary with Mrs Dunkerley about this role in correspondence.

106. The claimant raised a requirement for fresh air, she said as a reasonable adjustment, during her induction to this role on 24 August 2022. This was not mentioned in the claimant's prior occupational health reports.

107. In around September 2022 the claimant applied for a season ticket loan from the first respondent. The relevant procedure includes at paragraph [6.2]:

'All CNWL staff who are on the Payroll system are entitled to apply for an annual interest free standard Season Ticket Loan if their contract of employment or external funding is for a period which exceeds the expiry date of the ticket (i.e. a minimum of twelve months) and their net monthly pay is sufficient to cover the deduction of the loan.'

108. Also, the policy says that the season ticket loan is a benefit and not a contractual entitlement and the first respondent reserved the right to refuse a season ticket loan to individuals at its discretion.

109. James Long declined the claimant's application for a season ticket loan because she was still in a 'probationary' period, and if she passed that period the loan could be approved. It was important for him to know the scope of her role and where should be working to ensure that it covered the necessary travel arrangements, and these would not have been finalised during any probationary period. This was made clear to the claimant in an email dated 8 September 2022.

110. Mark Hilton was appointed to investigate the 26 October 2022 incident. The incident concerned an altercation between the claimant and Ms Bushiri. Ms Bushiri wanted the external reception door to be set to automatically open for visitors because she was cold. The claimant wanted it to be locked open so that she could have more fresh air. During the discussion between them the claimant started to record Ms Bushiri using her mobile phone following which Ms Bushiri pushed the claimant's phone away from her face.

111. At that time the more relevant occupational health report dated 30 June 2022 had the various adjustments recommended, these included (in summary):

    a. DSE self-assessment on return to work;

    b. Mini-breaks (5-10 minutes) advised throughout the day, with varied activities and to avoid prolonged computer based or sedentary working;

    c. Use of a quiet room to retain some level of productivity if the claimant was experiencing mild-moderate symptoms;

    d. Some duties to be reallocated such as heavy lifting;

    e. Her own work station.

112. The list did not include fresh air. At the time of the incident there was no documented agreed reasonable adjustment in respect of fresh air.

113. Mr Hilton was not aware of the claimant's previous concerns about her managers before doing this and there is no reason to consider that it was anything other than independent or impartial in his investigation. His investigation included reviewing the first respondent's CCTV footage. During the investigation he declined to view the claimant's own footage taken with her mobile phone of the incident on the basis that it was taken without the other party's consent and because of concerns about the legality of using such footage. Also, he was satisfied that the first respondent's CCTV was sufficient for him to carry out his investigation.

114. Rebecca Dunkerley sent the outcome letter for the October 2022 incident.

115. Mr Hilton started a discussion with the claimant about her Workplace Adjustment Plan (WAP). As of 8 November 2022 the claimant raised a large number of conditions and her case had become complex. A further occupational health referral was made.

116. The WAP is a tool to support staff members and line managers designed by the first respondent's Disable Employees Network. It is an employee led process subject to guidelines.

117. The claimant submitted a grievance about the October 2022 incident on 12 January 2023. This was dealt with by Kim Rice who found that the investigation reached a fair and just decision based on the evidence.

118. Mr. Hilton continued with work with the claimant on the WAP from January 2023. He confirmed the adjustments in place following occupational health advice as follows:

    (i) Management should take into account the Claimant's mental health status.

(ii) Consider appropriate methods of meeting and neutral locations.

(iii) Should be able to be accompanied.

(iv) Should be given reasonable advance notice of points to be made in writing.

(v) Should not be required to respond “on the spot”.

(vi) Should take into account difficulty using public transportation.

(vii) May require adjustments to start times during flare ups.

(viii) DSE self-assessment required.

(ix) Access to work assessment to determine equipment needs required – likely to include a screen filter.

(x) Varied activities through the day and mini breaks available.

(xi) If experiencing mild to moderate symptoms may require a quiet room.

(xii) Some duties to be assigned to others (example physical heavy lifting).

(xiii) Own workspace to accommodate specific equipment.

(xiv) Able to consider full and part time roles.

(xv) Time off for medical appointments.

(xvi) Flexible and agile options to be considered.

(xvii) Widening of absence triggers to be considered.

119. Mr Hilton discussed with the claimant that working from home to answer the phone would not be practicable. This is because, of the nineteen main responsibilities of a receptionist, answering the telephone was only one of them. Reducing the claimant’s working pattern to 3 days a week was also available. The claimant’s flexible working request was rejected by letter dated 17 February 2023 for those reasons. If the claimant was working from

home the claimant could not provide reception support, answer drop in enquiries, ensure that clerical work arising from each clinic was completed at the end of the clinic, do shredding or distribution of post, or act as a point of contact for site visitors and team leaders or act as a fire marshal. We make those findings accordingly. A further occupational health referral was made at that point.

120. Mr Hilton and the claimant had a meeting on 28 February 2023 to review the suitability of the Peckwater Centre as a working space.

121. As part of Mr Hilton's efforts to assist the claimant's redeployment and meet her requests for her working environment, the four possible receptions were considered. The Peckwater Centre was potentially suitable, it was purpose-built and had a large airy waiting area. The reception desk was spacious and is not behind glass. The door was automatic but under reception staff control. The Gospel Oak Health Centre was potentially suitable. It was purpose-built and had a spacious reception area not behind glass. It is had the largest and most open waiting area. The door was automatic under the control of reception staff. The Hunter Street Health Centre was not suitable. This is because it was a converted Victorian town house with a small waiting area, the reception area was closed behind glass and there was no access to outside air. It was not spacious and the door is automatic. Belsize Priory was not suitable because it was moving location and was subject to building wors. The reception was enclosed by glass with no access to outside air.

122. As of 2 August 2023 Rebecca Dunkerley sent the claimant an email which was supportive in nature. It confirmed that she was seeking unblock any challenges that were preventing the claimant from returning to work and the first respondent's commitment to finding a suitable outcome. She confirmed that she understood that the claimant wanted to return to work and the first respondent's position was that she had been redeployed to a suitable alternative role within the reception team and they were willing to explore further reasonable adjustments. At that time, a further occupational health referral was outstanding. It included exploring a new role in podiatry which could include home working.

123. By this time, the claimant was not off sick and was not attending work. There was no reasonable adjustment that had not been implemented which was supported by the evidence such as occupational health advice. Those reasonable adjustments which were evidenced were in place. In accordance with the first respondent's sickness policy, the claimant was therefore absent without leave.

124. The claimant was advised by Rebecca Dunkerley that this was the position by email dated 21 August 2023. Her email included:

'You have stated that you are not sick and are not providing any fit notes to the Trust at this time since your return from a period of paid leave that ceased on 4 July 2023. My view is that we do have reasonable adjustments in place, have worked with you and will continue to do so. I am also aware that you are not at work and are currently on full pay. Until we can agree an additional suitable alternative role, beyond the current Health Centre Receptionist role that you have agreed to undertake and were redeployed into then I have instructed Mark Hilton to mark you down on Health Roster as unpaid leave from 5 July 2023. I will review this again following the outcome of the Occupational Health Report. Payroll will write to you about any pay implications.'

125. The occupational health referral for August 2023 was handled by Ms Mhizha, an occupational health advisor. Due to the complexities of the claimant's position it was judged that the claimant should be escalated to an occupational health physician. Ms Mhizha had a telephone conversation with the claimant on 30 August 2023. The claimant gave an account of that conversation by email afterwards. We fully accept Ms Mhizha's evidence that the claimant's written account is inaccurate. For example, contrary to the claimant's email, the claimant did not show distress during the call and was not tearful during the brief phone call. Also, Ms Mhizha did not make comments to the effect of '*you just have to talk*!'. There is no good reason to doubt Ms Mhizha's witness evidence about what happened. The claimant sent a blood pressure with her email account dated 30 August 2023 at 12:23. The email included '*I cannot put constantly my life in danger due*

CNWL NHS policies which literally killing me over the time.' The claimant's blood pressure reading, that she attached to the email, was timed at 8:28am. It followed that it could not be a reading taken after a short call at 11:55am, although the claimant's email started '*I am sending you my blood pressure result after our today's OH assessment call…'*

126. Sickness issues raised by the claimant included that on 17 and 18 February 2022 she was marked on the roster as being sick when she should not have been. However, she was on full pay at that time because it was within the first 31 days. On 15-28 February 2022 the claimant was not marked as sick and received her pay for that time. On 25 January 2023 the claimant was not marked as sick and was paid. From 5 July 2023 the claimant was advised that she would be on unpaid leave as she was not working. However, she was paid in full for July 2023.

127. Although the claimant submitted a back-dated sick note for the period of 5 July 2023, this was rejected by the first respondent. This was entirely in accordance with its policy prohibiting back-dated sick notes.

128. The claimant received payslips in August 2023 at pages 3775 and 3776 in the bundle. The August payslip records a tax refund and no salary. The September payment is for payment of bank holiday unsocial hours of £71.26 which is paid in arrears.

129. The claimant's GP letter dated 8 March 2023 at bundle page 3472 summarises the claimant's medical conditions, and includes that '*Due to the severity of her anxiety she prefers not to communicate verbally and rather communicate in writing. she finds the verbal communication too stressful. She would benefit from access to fresh air and have regular food breaks. again this would reduce her stress and anxiety.'* (emphasis added).

D Specific additional findings of fact relevant to the conclusions

6.1 On 4 March 2022, Carole Walters demanding forcefully that the claimant talk to her on the phone when the claimant has asked that

their communications be in writing only;

130. We find that this allegation is not proven as a matter of fact. The allegation concerns an email (bundle p1971). We accept that the email has a formal tone. However, it does not amount to a forceful demand, on our analysis of any reasonable reading of the document. Importantly, the email included a reference to a possibility of referring the claimant to occupational health to facilitate communication.

131. The claimant, at times did speak to various people. For example, Mark Hilton met informally with the claimant during the short period of her four days at work at the end of October/November 2022. Also, there was a meeting on 24 January 2023 with Mr Hilton, which appeared to be by telephone. Also, Carole Walters had supervision meetings with the claimant in November 2021 and January 2022.

6.2 Failures in connection with the claimant's grievance dated 10 April 2022 including:

6.2.1 the unreasonable length of time taken to reach an outcome;

6.2.2 the respondents refusing to look at the Claimant's evidence and not explaining why

6.2.3 not initially allowing the Claimant to participate in writing, but instead insisting on face to face or Teams meetings (the Claimant says this was a reasonable adjustment required because of her disabilities)

132. The length of the time to reach outcome is outlined above. We accept the evidence of Ms Humle as to why it took the length of time that it did, and that at some of the delays were caused by the claimant's requests to communicate in writing.

133. We do not find that the respondents refused to look at the claimant's evidence without explanation. We make this finding because there is no

cogent evidence on which we could find that the respondents did this. We are satisfied that the respondents looked at all reasonable evidence related to the grievance and explained itself to the claimant in reasonable terms.

134. We do not find that the first respondent insisted on face to face or Teams meetings. We accept that this was the first respondent's preferred method. However, this is not the same as 'insisting'.

6.3 Seeking to monitor the claimant's activities by sending her a tablet in April/May 2022;

135. We find that this allegation is unproven for the reasons outlined above. This is because there is no cogent to support it. Whilst the respondents did send the claimant a tablet in April/May 2022, there is no evidential basis for this being with the purpose or ability of monitoring her activities. The claimant's allegation is without basis. We accept the evidence of Ms Hulme about this. We accept that there is documentary evidence that the device was able to be monitored to the extent that it was turned on or off, and be used, and there is the capability for remote wiping. However, this is far from sufficient for the claimant's allegation to be proven.

6.4 Forcing the claimant to accept working conditions and hours of work for the role of Peripatetic Health centre role in August 2022 without a written agreement.

136. We find that this is not proven as matter of fact. The claimant was not forced to accept any particular role, working conditions, or hours of work. The evidence does not support this finding. In particular, Ms Dunkerley spent a significant amount of time and effort to find redeployment for the claimant and the role met the claimant's requirements and evidenced reasonable adjustments.

6.6 On 3 November 2022, Mark Hilton lying in an email to the claimant saying he had watched the CCTV footage of the incident that occurred on 26 October 2022. The claimant suspected this because of the outcome of the investigation into the incident;

137. We find that this is not proven as a matter of fact. We are entirely satisfied that Mark Hilton did watch the CCTV footage as part of his preparation for his investigative report. This is because his report includes a timeline of events during the footage. There is no reasonable basis for suspecting that this was not the case. We accept his evidence of this, also.

138. The tribunal has also viewed the CCTV and Mr Hilton's summary appears to be accurate.

139. The only basis for the claimant's allegation is that the documentary evidence showed a copy of the footage being later preserved. However, this does not show that Mr Hilton did not view it before that time, and we accept his evidence that he did. There is no reason to doubt his evidence.

140. The claimant's contention that the camera did not include the reception area where the claimant was working is also plainly undermined by the footage itself: the claimant made this assertion in her grievance dated 12 January 2023 in which she stated that she had explained to Mr Hilton that the CCTV camera does not reach to that corner of reception.

6.7 On 16 November 2022, Rebecca Dunkerley lying in the outcome letter to the claimant saying Mark Hilton had watched the CCTV footage and that there had been a fair investigation;

141. We find this not proven as a matter of fact. There is no evidential basis for saying that Ms Dunkerley lied in the outcome letter about Mr Hilton having watched the CCTV. Quite apart from the fact that the initial allegation is not

proven and is without evidential basis, there is no good to believe that Ms Dunkerley thought that this was the case in any event.

6.8 On 18 November 2022, Mark Hilton asking the Claimant for a telephone catch up while the claimant was off sick even though she has asked that communications be in writing;

142. Mr Hilton emailed the claimant on 18 November 2022 proposing a regular telephone conversation. It was the first respondent's normal procedure to conduct welfare checkups in this way. The claimant did not have a written-communications only reasonable adjustment supported by evidence.

6.9 Forcing the claimant to work in an unsafe working environment without reasonable adjustments in place. The claimant alleges that the Peckwater Health Centre was not a safe working environment for her due to her disabilities. The respondents could have transferred her to other premises or agreed that the claimant could work from home. The claimant says that homeworking would solve most problems connected to the claimant's disability related needs;

143. This is not proven as a matter of fact. At no stage was the claimant forced to work at all. It was open at all times for the claimant to resign. Also, the respondents made considerable efforts to find alternative roles for the claimant throughout her period of employment and in fact put in place every reasonable adjustment that was justified by the medical and occupational health evidence available. Also, the working environment in the Peckwater Health Centre was not unsafe. There is no evidential basis for such a finding. Also, the respondents clearly did put in place the reasonable adjustments that were justified for the claimant.

6.10 Mark Hilton misleading the Claimant by telling her that reasonable adjustments were in place in Peckwater health Centre in January 2023 when they were not;

144. This is not proven as matter of fact. This is because we accept Mr Hilton's evidence that he did not tell the claimant in January 2023 that reasonable adjustments were already in place at Peckwater Health Centre or at any other time. There is no cogent evidence to undermine his evidence on this point. At that time, there was not a formally agreed list of reasonable adjustments but the respondents had in mind the 30 June 2022 occupational health report recommendations. It demonstrably wrong on the evidence. We also accept Mr Hilton's evidence, and find accordingly, that at that around the relevant time, the claimant was absent from work, was refusing telephone conversations, and had only been at work for four dates since he had met her, and so any discussion of reasonable adjustments would have been necessarily very limited and challenging.

6.11 The respondents' failure to take into account the impact of the claimant's newly diagnosed hypothyroidism when considering her requirements for reasonable adjustments;

145. We find this not proven as a matter of fact. The claimant's hypothyroidism was diagnosed on 10 March 2023, Mr Hilton was informed of this by email on 17 April 2023, and Mr Hilton included the diagnosis in his referral to occupational health (bundle page 3042) which included information provided by the claimant (bundle page 3038). We consider this to be sufficient by the respondents to take into account her diagnosis.

6.12 The delay in organising a new occupational health assessment for the claimant until September 2023 even though the claimant was diagnosed with hypothyroidism on 10 March 2023 and communicated that different reasonable adjustments would be needed by an email dated April 2023 onwards;

146. The claimant was off sick from 17 April 2022 to 2 June 2023. She was then on annual leave until 5 July 2023. The occupational health referral was in fact made on 11 July 2023, as is clear from the document, and we accept

Mr. Hilton's evidence that the lack of specific requests in a context of the claimant being absent from work, and lack of constructive engagement with the respondents meant that it was appropriate for occupational health to be involved. The claimant had an occupational health appointment by telephone on 30 August 2023 which she left.

6.13 Forcing the claimant to have redeployment discussions on Teams or in person in the summer of 2023 when she had asked that communications be in writing as follows:

6.13.1 On 14 and 22 June 2023 Mark Hilton asked the claimant to meet via Teams with him and Wayne Bailey (HR);

147. We find the allegation not proven as a matter of fact. The claimant was not forced to have redeployment discussions in that manner. We accept Mr Hilton's evidence that these requests were supportive in nature because they were with a purpose of accommodating the claimant's requests for her employment. In particular, the request dated 14 June 2023 was as follows, as is clear from the documents:

'*In response to your email I have asked recruitment to place the role you detail in your email (Band 3 Clinical Administrator) on hold pending future discussions with you.*

Myself and Wayne Bailey would like to meet with you, at the earliest opportunity on-line via Teams to explore with you to explore suitability and how this role may work for you and of course what reasonable adjustments would support. You would be welcome to attend any meeting with a supportive colleague or friend if this would help.' (bundle pages 3025).

148. The communication of 22 June 2023 similarly expresses that they would like to meet with the claimant on Teams to see how the claimant can be supported (bundle page 4113). On its face, this document is not forcing the claimant to have a discussion on Teams or in person.

6.13.2 On 5 July 2023, Mark Hiton asked the claimant to attend an OH case conference;

149. Mark Hilton's email dated 5 July 2023 states as follows:

'*As part of the OH referral I will also make arrangements for a case conference to happen to enable discussion on both key points. Such a case conference, if agreed, will involve yourself, any supportive colleague or trade union colleague you wish to attend with, myself and Wayne and the Occupational Health clinician. I will leave Occupational Health to determine if the meeting should be in person or on Microsoft Teams. An additional support may be the `Access to Work advisor*.'

6.14 Requiring the claimant to provide a new fit note for the period from 5 July 2023 onwards. The claimant says this was not necessary as she had already provided the respondents with fit notes that said she was able to work with reasonable adjustments;

150. This is not proven as a matter of fact. It was a contractual requirement that the claimant provide a fit note if she was not attending work due to illness. Also, the claimant's fit note ended on 4 June 2023 and concluded that she may be fit for work taking into account the advice given. The advice was a recommendation that the claimant *'communicates with colleagues in writing to reduce stress and anxiety, she requires to fresh air, adequate breaks for air and food (including lunch break) If possible to train for working from home'.*

6.15 In July and August 2023 making the claimant believe that there could be an option for redeployment to the Camden Integrated Adult Service administrator position when this was not an option because a decision had been taken to reject her application on 12 July 2023;

151. We find this not proven as a matter of fact. The claimant was not misled by anyone. We accept that the claimant applied individually for the role and was rejected on 12 July 2023. However, we accept that Ms Dunkerley did not know about this application or its outcome when the possibility of that role was brought to her attention by the claimant. Any discussion the claimant had with Ms Dunkerley was separate to her own unsuccessful application. It is unclear whether the claimant alleges that she was also misled by Mr Hilton, however, this is not is not accepted in his evidence and we have no reason to find that he did mislead the claimant. Also, we accept that Mr Hilton was not involved in that recruitment exercise.

6.16 In August 2023, Rebecca Dunkerly requiring the claimant to have redeployment discussions by Teams (2 and 30 August 2023 emails);

152. We find this not proven as a matter of fact. The 2 August 2023 email was at bundle page 3080. It is clear from the content of this email that it was supportive in nature: '*The purpose of sending this this email is that I want to reach out to you in my capacity as Head of the Camden Integrated Adult Services and see if I can use my influence to try and unblock the challenges that are preventing your return to work. This feels the right thing to do at this time and I am still, and have always been, committed to finding a suitable outcome for us all*.' Also, the email includes '*If we could discuss this, then let's get an early date in the diary for a Teams meeting*.' It is not the same as forcing the claimant to have redeployment discussions in that manner.

153. We find that this email also included a genuine attempt to facilitate some home working: '*As I have said, I can authorise you to work mainly, but not exclusively, from home. I would like your thoughts on how this would work for you and what your physical attendance in the workplace would be?*'

154. The 30 August 2023 email included '*In my view, conversations on the telephone and via Teams with service users and the Podiatry team will be necessary in real time because they will need break me responses to the*

queries they raise. I have previously stated that any role in my services where communication is exclusively in writing is not a reasonable adjustment that can be supported.' It also included that Ms Dunkerley was keen to meet with the claimant and requests times for a Teams meeting.

6.17 Forcing the claimant to accept considerably reduced pay and working hours before redeployment talks can commence. The Claimant relies on the email to her from Ms Dunkerley dated 30 August 2023 which said that the computer based element of a proposed role only amounted to 1.5 days per week and that she would only be paid for 1.5 days per week;

155. This is not proven as a matter of fact. It is correct that the respondents when exploring other options for the claimant identified that the computer-based element of a proposed role would only amount to 1.5 days a weeks' worth of work:

'I have already expressed a view that the 'mainly in writing' elements you have identified could occupy you for approximately 1.5 days and I have also been clear that I have reservations that the tasks you have detailed can be conducted entirely through email. In my view, conversations on the telephone and via Teams with service users and the Podiatry team will be necessary in real time because they will need real time responses to the queries they raise.'

156. This is not the same as forcing the claimant to accept reduced pay or working hours before deployment talks can commence. The allegation is not supported by clear and cogent evidence.

6.18 Rebecca Dunkerley's email dated 23 August 2023 to the claimant that confirmed that the claimant would be treated as being on unpaid leave from 5th July 2023 for the foreseeable future, to be reviewed again after receipt of the OH report and that payroll would write to her with

the implications of this decision;

157. We understand that this issue, in fact, referred to a letter sent by email dated 24 August 2023. We also considered the other correspondence around this date.

158. Rebecca Dunkerley's letter sent by email to the claimant dated 24 August 2023 included:

'You have stated that you are not sick and are not providing any fit notes to the Trust at this time since your return from a period of paid leave that ceased on 4 July 2023. My view is that we do have reasonable adjustments in place, have worked with you and will continue to do so. I am also aware that you are not at work and are currently on full pay. Until we can agree an additional suitable alternative role, beyond the current Health Centre Receptionist role that you have agreed to undertake and were redeployed into then I have instructed Mark Hilton to mark you down on Health Roster as unpaid leave from 5 July 2023. I will review this again following the outcome of the Occupational Health Report. Payroll will write to you about any pay implications.'

159. Also, *'I know this is a difficult time for you and I remain committed to working with you to seek an alternative role where your skills can be used in a fulfilling role as there are so many across Camden Adult Services and indeed the Trust. I am confident that by working together we can achieve a suitable outcome for both of us.'*

160. Also, the letter includes an attempt to explore an alternative role for the claimant in podiatry. The letter sent by email on 24 August 2023 (bundle 3124) appears to be the same or similar in content to the email sent 21 August 2023 (bundle page 3104).

6.19 The failure of payroll to write to the claimant about any such implications. Instead the claimant's salary was stopped from 25

August 2023; and/or

161. It is correct to find that payroll did not separately write to the claimant about the implications of Mrs Dunkerley's letter dated 24 August 2023 and the claimant's normal wages were stopped around that time.

6.20 Stopping the Claimant's pay on 25 August 2023;

162. It is correct that the claimant's normal pay was stopped around this period. The claimant provided a fit note dated 26 August 2023 which was backdated to 5 July 2023 ending 6 October 2023. The respondents rejected this fit note because, on the application of their policy, it was backdated. The respondents policy said that backdated fit note would not be accepted. The policy also says that fit notes must be provided in a timely manner. We accepted Mr Opio's evidence on this point.

6.21 Failing to provide the Claimant with a correct itemised pay slip on 25 August 2023; and/or

163. We find that this did not happen. We are satisfied that the payslip was provided to the claimant: bundle at page 3775. The claimant was not paid in August 2023 because she did not work in August 2023. The amount paid, £209.80 was a tax refund. It is marked as a refund.

Disability

11. 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?

Hyperthyroidism

164. The claimant was diagnosed with hyperthyroidism in March 2023.The respondents first became aware of it when it was told about the diagnosis

in an email dated April 2023 (bundle page 2977). The claimant took medication for this condition.

High blood pressure

165. The claimant had high blood pressure throughout the relevant period. This was not in dispute. The combination of the claimant's anxiety and this impairment prevented her from undergoing dental treatment. This is confirmed in the evidence of Dr Morris dated 14 September 2023 at bundle page 3521.

Restless feet syndrome

166. We accept that the claimant had the condition of restless feet syndrome. This is because it is referred to in the evidence of Dr Mummery, a Consultant Neurologist, dated 4 January 2023.

Vertigo

167. Our conclusions on this disability are reflected below. As a matter of fact, this impairment features in a letter by Dr Mummery dated 27 July 2022. This includes the claimant reporting having had vertigo in the last two year especially first thing in the morning and she struggles to go downstairs. However, there is no clear and specific diagnosis of vertigo other than the claimant's self-reporting. In a documented practitioner completed management plan dated 18 February 2022 the claimant says that her glasses make her feel like she has vertigo and refers to having to try lots of different prescriptions for her glasses.

Fibromyalgia

168. We accept that the claimant had this impairment. This is featured, at least, in a letter about dental care dated 21 November 2022 which refers to this

as a diagnosis (bundle page 3346). Also, in a health summary generated on 16 November 2022 fibromyalgia is listed as an active problem. Also, by 8 March 2023 a letter from the claimant's GP includes that her physical symptoms include fibromyalgia. Dr Mummery also refers to the claimant taking medical cannabis which helps with it, in a letter dated 4 January 2023.

Depression

169. We are satisfied that the claimant did have depression as an impairment. This is because it is included in her diagnosis by Dr Mummery in a letter dated 27 July 2022 at bundle page 3340.

Panic attacks

170. The claimant's fit note dated 30 June 2021 states that she was off sick by reason of migraines. The claimant's fit note dated 10 March 2022 states she was off sick by reason of anxiety and depression. The fit note dated 24 March 2022 states she was off sick by reason of anxiety and depression and migrant. The fit note dated 21 April 2022 says the same, similarly for the fit note dated 8 June 2022. The fit note dated 17 June 2022 has the claim off sick for the same reasons plus bereavement. The fit note dated 14 November 2022 has the claimant off sick by reason of anxiety, depression and severe migraine. It was not until the fit note dated 26 August 2023 that the conditions included the following: chronic migraines, depression, anxiety, fibromyalgia, hypothyroidism, panic attacks restless leg syndrome, communication difficulties due to extreme stress and anxiety.

171. A letter dated 4 January 2023 from Dr Mummery includes '*When she describes lack of fresh air as a trigger she also describes what is triggered as her having difficulty breathing and I do wonder whether there is an element of hyperventilation or panic attack at this time which might also be responsible for the intermittent sensory symptoms.'* We take this evidence

as suggestive that even as of 4 January 2023 the claimant did not have a clear diagnosis of panic attacks.

Discrimination arising from Disability (Equality Act 2010 section 15)

13. Did the first respondent treat the claimant unfavourably by:

13.1 An incident on 26 October 2022 with a colleague, Ms A Bushiri, hitting the claimant's phone out of her hand?

172. We do not find that this happened as a matter of fact. This is because it is not supported by sufficient cogent evidence. It is right that there was an incident between the claimant and Ms Bushiri on 26 October 2022 between the claimant at Ms Bushiri about whether or not the external door should be locked open or set to open automatically to admit visitors. The claimant wanted the door open and Ms Bushiri wanted the door closed because she was cold. The claimant's original allegation was that Ms Bushiri hit her phone. It is right that during the incident Ms Bushiri did make contact with the claimant's phone. This is clear from the claimant's own video footage. The claimant does not specifically allege that her phone was hit out of her hand in her original workplace incident report. Mark Hilton's report concluded that neither the claimant nor Ms Bushiri behaved professionally during the incident. His finding included that the claimant had invaded Ms Bushiri's physical space in an actively threatening way and that Ms Bushiri batted the phone away physically which was not an acceptable response.

173. However, we are entirely satisfied that this was, as a matter of fact, a defensive action by Ms Bushiri to stop the claimant from recording her, something that was an act by the claimant amounting to harassment of Ms Bushiri. It is also clear that Ms Bushiri had clearly communicated to the claimant that she did not want to be recorded and Ms Bushiri appeared distressed by the claimant's actions and the claimant continued to record her.

174. During the incident with Ms Bushiri, the claimant was able to communicate clearly with Ms Bushiri. This is clear from the claimant's own video footage.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

20. A "PCP" is a provision, criterion or practice. Did the first respondent have the following PCPs:

20.1 A requirement that staff wear face masks in clinical areas;

175. We accept (and find accordingly) Carole Walters' oral evidence that between 23 November 2021 and 1 March 2022 there was a requirement that staff wear face masks in clinical areas or in non-clinical areas within the site of St Pancras Hospital.

20.2 A requirement that administrators carry out tasks which were carried out in areas where face masks were mandatory;

176. We find that, generally, there was a practice at the respondent that at least some administrators carried out tasks in areas where face masks were mandatory. This must be case because the first respondent covered health centres and the timing of the claims includes when Covid-19 was present. Whether or not it was applied to the claimant is addressed below. Also, Ms Walters' oral evidence included that there was a requirement that there a requirement that administrators carry out tasks which were carried out in areas where face masks were mandatory, specifically between 23 November 2021 and 1 March 2022.

20.3 A requirement that meetings be held face to face over Teams or on the telephone, and not in writing;

177. The respondents did not agree to communicate exclusively with the claimant in writing.

20.4 A requirement to work in enclosed areas with the doors closed?

178. The claimant was permitted to work in her own office with a window and fresh air circulating continuously whilst she was working as a band 2 administrator at SPRU since 15 November 2022. We accept Ms Walters' evidence of this. Whilst the claimant was working as a receptionist later on, there was demonstrably fresh air from the Gospel Oak Healthcare Centre site because this is clear from the CCTV and the doors were not always closed, as shown on the CCTV. Also, any work at the Peckwater Centre was not in an enclosed area with the doors closed. The claimant had been specifically not placed by Mr Hilton, accepting his evidence, at any site where the reception areas were enclosed. Also, at the Peckwater site the claimant was sited right next to the door.

20.5 A requirement to work at Peckwater Health Centre during the construction work in March and April 2023

179. We do not find that there is clear and cogent evidence that there was construction work at that site during those times. Although the claimant has submitted a video which includes some noise, the video is not clearly dated, it only lasts for 21 seconds, and this does not establish more generally (even if it was dated March – April 2023) that there was any material construction work carried out at that site at that time. Mr Hilton does not accept that there was construction work during that time and his evidence is consistent with there not being construction work at that site when the claimant was working there.

21.1 Wearing fact masks triggered the claimant's migraine. The claimant alleges that the dates when she was required to carry out duties in areas where mask wearing was mandatory was 23 November 2021, 24 November 2021, 25 November 2021, 26 November 2021, 8 December 2021, 11 January 2022, 10 February 2022 and every Monday and Thursday until 1 March 2022.

180. On the basis of the accepted evidence of Ms Walters, we find that the claimant was allocated a personal office with no requirement for her to wear a mask. This involved decommissioning a training space for ward staff. The room had line of sight to the multi-function device (photocopier) for photocopying and scanning so the claimant could see that it was quiet when she left the office. The claimant had a ward clerk team to act as a daily point of contact and clarify the required administrative support required. The claimant's shift patterns were also altered so that she did not need to wear a mask at work, at least for any significant period of time, as her shift timings minimised contact with other staff.

181. We find that the claimant's shift patterns were altered so that she did not need to wear a mask at work, at least for any significant period of time, and that the effect of the shift timings minimised contract with other staff. Also, there was insufficient medical evidence that wearing masks as a matter of fact triggered the claimant's migraines.

21.2 Having meetings by Teams or on the telephone caused the claimant to become anxious and have panic attacks. As a result, her migraines were triggered and the claimant was unable to express herself as her mind would not work properly. The Claimant says this caused the following disadvantages:

21.2.1 The requirement that a meeting be held rather than the claimant making her points in writing caused the grievance to be delayed.

21.2.2 The requirement to have a job interview over Teams meant that the claimant was excluded from the redeployment opportunity.

182. We find that there is insufficient cogent evidence that having meetings by Teams or on the telephone, as a matter of fact, caused the claimant to become anxious and have panic attacks.

183. As a result of the claimant's request to communicate about her grievance in writing there was some delay in resolving that grievance. We make this finding because we accept Ms Hulme's evidence of this.

184. The claimant's own GP letter dated 8 March 2023, states that written communication is the claimant's preference as opposed to a requirement, and that she benefits from access to fresh air as opposed to requires it.

24. What steps could have been taken to avoid the disadvantage?

185. The respondent provided reasons for not adopting some of the claimant's suggestions in a letter dated 17 February 2023 (at bundle page 2846).

186. There was no formal policy of paid disability leave at the first respondent.

187. We accept the respondents' evidence (and find accordingly) that there was insufficient tasks which could done from home as part of the role, in the context of her home working/job share requests.

Harassment related to Disability (Equality Act 2010 section 26)

28.1 Ms Walter's email sent on 4th March 2022 requesting that the claimant speak to her either by phone or in person (paragraph 16 of the particulars attached to the first claim form);

188. The email dated 4 March 2022 is at bundle page 1971. We find that this does request that the claimant speak to Ms Walters either by phone or in person. However, we also find that it gave a third option of contacting occupational health to facilitate alternative means of communication.

189. However, the claimant was simply saying that she was too unwell to discuss on the phone or Zoom at that time (bundle page 1971) as opposed to it be contrary to her additional needs.

28.2 Sarah Hulme sending the claimant a tablet for virtual meetings. The Claimant says this was unwanted conduct because she had a computer and that the respondents; s real intention was to secretly monitor her activity;

190. We find that Sarah Hulme did send the claimant a tablet for virtual meetings. However, we also refer to our other factual findings on this issue.

191. The claimant did not object to the tablet at the time. The claimant also thanked Ms Hulme for sending the tablet by email dated 14 April 2022 (bundle at page 2136).

28.3 Sarah Hulme's letter to the claimant dated 13th July 2022 (paragraph 15 of the particulars attached to the first claim form);

192. We find that this letter was sent (bundle page 2337). The letter is neutral in tone and procedural in nature

28.5 Mr Mark Hilton advising the claimant on 26 January 2023 that the misunderstanding regarding the calculation of holiday occurred because the claimant had sold part of her holiday (which the claimant disputes)

193. We do not find that this happened as a matter of fact. It's correct that there was a query over whether or not some of the holiday had been sold, because this is mentioned in the letter dated 17 February 2023 (bundle p205). However, this was resolved in the claimant's favour given the ambiguity. It did not appear to us that Mr Hilton in fact did advise the claimant on 26 January 2023 that she had sold part of her holiday.

28.6 At a meeting on 28 February 2023, Mr Mark Hilton:

28.6.1 Mr Hilton was not aware of the role that the claimant undertook;

194. We find that this is not proven. This is because although Mr Hilton was unaware of the claimant's brief previous role as a HCA, we accept his evidence that he was aware of the claimant's role as a receptionist. This allegation fails as a matter of fact. Our finding is also consistent with the claimant's own notes of the meeting, sent to herself on 9 March 2023 (bundle page 2934) which only refer to him not knowing about the HCA role.

28.6.2 Mr Hilton advised the claimant that she was unable to take breaks or her lunch break;

195. We find that this is not proven. This is because we accept Mr Hilton's written and oral evidence that this did not happen. This allegation fails as a matter of fact. Also, the claimant's own notes of the meeting dated 9 March 2023 above specifically include that '*Mr Hilton said then you go away from reception for how long as you want and as often you want.'* The claimant's own case is undermined by her own notes.

28.6.3 Mr Hilton started laughing at the claimant.

196. We accept (and find accordingly) Mr Hilton's evidence that he did laugh once briefly during the meeting at what he reasonably understood to be a joke made by the claimant about meetings with NHS managers being stressful. This is not the same as laughing at the claimant. We consider this laugh to be an entirely normal human interaction in the circumstances.

197. We find the proven conduct is at odds with the claimant's contemporaneous account. This can be found in her email about the meeting to Richard White dated 28 February 2023 at bundle page 2936. In this email she alleges that '*seeing this Mark Hilton could just not stop laughing in front of me while seeing my tears - this is really mean and unprofessional behaviour. It made me feel really hurt and abused*.' The claimant's characterisation of the meeting is not one we accept on the evidence.

28.8 Mr Hilton advising senior managers on 28 February 2023 that the claimant had messed up the time for the meeting.

198. We find that this did not happen. There is no clear evidence that Mr Hilton did such a thing. We accept his evidence that he did not.

28.9 The failure by Rebecca Dunkerley and Richard White to reply to the claimant's email setting out her concerns regarding the meeting on 28 February 2023

199. The respondents accepts that there was no specific reply to the claimant's email dated 28 February 2023. However, we accept Ms Dunkerley's explanation that she had engaged in a large volume of correspondence with the claimant. This is well-supported by the documentary evidence. The email is at bundle page 2936.

200. For all of the above reasons, the claim of harassment related to disability is unsuccessful.

Victimisation (Equality Act 2010 section 27)

201. The claimant submitted a grievance dated 17 September 2021; 10 April 2022; a workplace incident report dated 31 October 2022; and a grievance dated 12 January 2023.

34. Did the respondents do the following things:

34.1 The claimant was not made aware of a vacancy for Mrs Walter's personal assistant position.

202. We find this not proven as a matter of fact. We accept Ms Walter's evidence that the role was advertised. Also, this is supported by documentary evidence by email dated 31 December 2021 in a weekly email. Also, this

was a band 4 role when the claimant was at band 2. We also accept Ms Watler's evidence, and find, that it involved a skill set which the claimant did not have, such as invoice management, procurement, and budget monitoring. Also, it was inherent in the role that it was a role involving direct staff contact and occasional patient contact and so involved wearing a mask.

34.2 Management of the claimant's sick leave by Ms Walters as described in paragraph 15 of the particulars attached to the claimant's first claim form.

203. We find this unproven as a matter of fact. It is unclear exactly what the claimant says was any kind of mismanagement and it appeared to us on the evidence that the claimant's sickness was managed in accordance with the first respondent's policies as set out in Ms Watler's evidence, which we accept. The claimant has failed to establish anything else. Equally, the claimant's witness statement on this issue is unclear.

34.3 Ms Walter made incorrect entries on Health Roster as described at paragraphs 1 - 6 under the heading 'Wrongful Entries in Health Roster not corrected' of the particulars attached to the claimant's first claim form.

204. We accept Ms Walter's evidence that there were two incorrect entries about the claimant's sickness absence on the health roster. Accepting Mr Opio's evidence, these were on 17 and 18 February 2022. We make that finding of fact. However, also find that, on the basis of Mr Opio's evidence, the two days of sickness would have been paid at full pay. Also, accepting the combination of Ms Walter's evidence, and Mr Opio's evidence, there was no actual effect on the amount of sick pay that the claimant got overall.

34.5 The claimant was not appointed to the PA Band 4 role in February 2022. The claimant was not offered training on 22 February 2022 after

she asked to do training entitled Pressing Pause: Reflective Practice Consultation training. The claimant was also not offered training on medical coding. The Claimant makes this allegation against Ms Walters and Mr Peters.

205. The claimant was not appointed to the PA Band 4 role in February 2024. This was not disputed as a pure question of fact. The claimant was also not offered the reflective practice or medical training. This was not disputed. However, the reason for this is because the reflective practice training was for senior managers and coding training was not in relation at the first respondent. There was no role that required that training within the first respondent trust.

34.6 The claimant was denied training by Ms Walters and Mr Peters

206. Some training that was offered to the claimant was that she was being trained on the Cellam system by the PA to Rob Clarke. We make this finding because we accept Ms Walters' evidence on this point.

34.7 Dippa Mistry calling the claimant's grievance a 'nightmare to edit' and saying she 'lost the will to live' on 25 May 2022

207. In an email dated 25 May 2022 between Dippa Mistry and Sarah Hulme, Ms Mistry described difficulties in editing the claimant's document as '*a nightmare to edit'* and she had '*lost the will to live'.*

34.8 An issue with the claimant's holiday and sick pay as described under the heading 'Payments reduced and ceased' at paragraphs 18 - 20 of the particulars attached to the claimant's first claim form. The Claimant cites Ms Hulme as responsible for victimising her.

208. On 13 April 2023 an email was sent by Sarah Hulme. This can be found at bundle page 2130 and confirms the position in respect of sickness absence.

34.9 Ms Dunkerley failing to support the claimant with redeployment during the summer of 2022

209. We find that this is not the case as a matter of fact. We accept Ms Dunkerley's evidence that she was supportive of the claimant's redeployment efforts more generally. This is corroborated by the email evidence. To the extent that Ms Dunkerley's evidence was that she was not personally involved in the claimant's redeployment efforts during the summer of 2022, there is no evidence that this was to the claimant's disadvantage given the efforts of the respondents overall.

34.10 Ms Dunkerley forcing the claimant to accept the role of Peripatetic Health Centre Receptionist even though she said it was not suitable for her

210. We do not find this proven as a matter of fact. The claimant was not forced to accept that role. There is no evidence that this was the case.

34.11 Paying the claimant less than the advertised salary for the role of Peripatetic Health Centre Receptionist role. The Claimant says this was admitted by Ms Dunkerley on 11 November 2022 and that she, Ms Dunkerley should have ensured that the issue was resolved;

211. We do not find this proven as a matter of fact. Ms Dunkerley explained the pay situation to the claimant clearly by email dated 11 October 2022. The claimant was paid at the same rate as advertised taking into account the higher cost allowance. It is correct that Ms Dunkerley by email dated 11 November 2022 agreed with Mr White that the claimant should be paid at the top end of the band, based on experience. We accept her oral explanation that Ms Dunkerley was satisfied with the claimant's level of experience, she was paid correctly to reflect that, and the increased pay was backdated. In those circumstances there was no disadvantage, as a question of fact.

34.12 Rejecting the Claimant's application, made in October 2022, for the Gospel Oak Health Centre Administrator role. Again, the Claimant cites Ms Dunkerley as responsible for victimisation;

212. It is correct that the claimant's application for the role was rejected. However, we accept Ms Dunkerely's evidence that she did not herself reject the application because she did not have an input to that recruitment process. Also, we accept Ms Dunkerley's evidence that this particular had in fact already been reserved for someone else doing through redeployment. Also, the claimant had requested to leave that site after the October 2022 incident. In those circumstances, we find that the claimant did not want to work at that site.

34.13 Rebecca Dunkerley failing to uphold the grievances contained in the Claimant's Workplace Incident Report dated 31 October 2023 and failing to look at the evidence presented?

213. It is not in dispute that Rebecca Dunkerley did not uphold the grievance. However, we do not find that Ms Dunkerley failed to look at the evidence presented. There is no cogent evidence that this is the case.

34.14 On 16 November 2022, Ms Dunkerley threatening the claimant with disciplinary action as an outcome to the investigation into the workplace incident that occurred on 26 October 2023;

214. The relevant communication is at page 2818 of the bundle. This contains the wording '*I will not be taking formal action against either party. However, the level of outcome is an Improvement Notice under the Informal Stage of the Disciplinary Policy.'* A meeting was then mandated and the communication included *'If this intervention does not bring about the necessary improvement within a reasonable agreed timescale, action will be taken under the formal part of the Disciplinary Policy.'* We therefore disagree with the respondents' submission that this was not a threat.

Broadly speaking, the possibility of formal action under a disciplinary procedure is advisory as potential future actions that may be taken.

34.15 Refusing further training requests from the Claimant

34.15.1 8th September 2022, the claimant sent an email to regarding staff training including business administration

34.15.2 13th October 2022, the claimant sent an email to Ms Barnett, Ms Dunkerley and Mr White for retraining for a computer based job working from home

34.15.3 18th October 2022, the claimant sent an email to Ms Dunkerley and Mr White asking to have training to be home based

34.15.4 28th February 2023, the claimant asked Mr Hilton for training to do work which was computer based only or IPC on the job training.

34.15.5 18th April 2023, the claimant sent emails to Ms Barnett, Mr White, Mr Hilton, Ms Dunkerley and Mr Bailey seeking training to work from home as set out in her GP fit certificate. No one replied to the training request.

215. It is correct as a matter of fact that the respondents did not offer the claimant training subsequent to these requests. However, the evidence of Ms Dunkerley and Mr Peters was that these training requests were properly refused for good reasons. We accept that evidence and find accordingly. Specifically, the 8 September 2022 request was refused because it was not essential or to enhance the claimant's role. The 13 October 2022 request was refused because there was no training available to cover the claimant's parameters of retraining for a computer-based job working from home. The 18 October 2022 request was refused for the same reasons. The 28 February 2023 was refused because there was no training for the same parameters, namely computer based-only or ICP on the job training. In regards to the claimant not receiving training for working from home no such

training was given, and in the event that she work from home, her GP had recommended that she have some training in this. However, at no stage did the claimant progress to a working from home role. We are satisfied that if this had happened the respondents would have put appropriate training in place. It was never the case that a lack of specific working from home training was ever a bar to the claimant being redeployed to such a role.

34.16 The first respondent failing to follow its own Workplace Adjustment policy for reasonable adjustments between 17 November 2021 and the last day of the Claimant's employment in that:

34.16.1 No early meeting was arranged with union rep after new diagnosis in April 2023;

34.16.2 The claimant's proposed solutions were ignored;

34.16.3 Adjustment requirements were not recorded in the WAP;

34.16.4 Reasons for decisions were not recorded;

34.16.5 Adjustments were not checked;

34.16.6 Effectiveness of adjustments was not reviewed regularly

216. The WAP was not a formal policy but rather an employee-led measure and was a process to assist with guiding conversations with managers, accepting the evidence of Ms Dunkerley. We also accept Mark Hilton's evidence that the process was collaborative and was did not give rise to obligations on managers.

217. Also, the claimant did not have a union representative at the time of her hypothyroid diagnosis (as confirmed by the claimant's own email dated 13 March 2023 at bundle page 2937). More generally, the documentation clearly shows that the respondents did not ignore the claimant's solutions. There were clearly considered and, where rejected, full explanations were given. Much of what the claimant asked for was in fact given. The situation was also ongoing in nature as is clear from the numerous times that

reasonable adjustments were considered by the respondents. The suggestion that the claimant's adjustments were not checked or reviewed is incorrect because there were four references to occupational health during the claimant's employment. Also, as a result of the extensive communication in writing, there were records of what was granted.

34.17 The first respondent's delay to provide the Claimant with information in an accessible format in response to her SAR request.

218. We fully accept Ms Okesola's evidence on this point. There was a delay to the response to the claimant's data subject access request. However, this was a result of the sheer amount of information to be considered. The delay was as a result of claimant's request for information in PDF format.

36. If so, was it because the claimant did a protected act?

219. Neither Carole Walters nor Nigel Peters were aware of the claimant's grievance dated 17 September 2021 at the time of the alleged detriments. We make this finding because we accept their evidence on this point.

Unauthorised deductions and right to itemised pay statement

38. Did the first respondent fail to pay the claimant her full holiday pay for the holiday taken in or about June /July 2022, January 2023?

220. We accept Mr Opio's analysis of whether or not the claimant was not paid her full pay for holiday taken in June, July 2022 and January 2023. No annual leave was deducted from that period, but the claimant was paid sick pay for those dates. However, additional payments were made of £510.68 for holiday dated 1-24th July 2022; together with a SSP payment for that period, the claimant was not under paid. This equals the amount she should have received for that period. In respect of January 2023, the claimant was paid £920. This appears was an additional amount of money to correct any

underpayment made for that month. We accept in full Mr Hilton's evidence about this, as set out in his calculations in the bundle at page 2874.

39. Was the claimant's sickness pay incorrectly recorded causing her to lose entitlement to sick pay on the following occasions:

39.1 17 and 18 February 2022

221. On 17 and 18 February 2022 the respondents concedes that the claimant was wrongly marked as sick when she should not have been. However, this did not result in an immediate loss of pay because she was in fact paid her full day's pay in any event, accepting the evidence of Mr Opio on this point. There was no reason to make a deduction at this time because the claimant was still in her rolling sickness period.

39.2 15-28 February 2022

222. Having considered the respondents' documents, the claimant was not marked as off sick for this period. It follows that sickness pay was not wrongly recorded and there was no subsequent loss to the claimant. Even if the claimant was in fact off sick during that period, this is to her benefit because no sickness pay would be deducted from any future eligibility period. We accept Mr Opio's evidence on this point.

39.3 25 January 2023

223. Having considered the respondents' documents, the claimant was not marked as off sick for this period. It follows that sickness pay was not wrongly recorded and there was no subsequent loss to the claimant. Even if the claimant was in fact off sick during that period, this is to her benefit because no sickness pay would be deducted from any future eligibility period. We accept Mr Opio's evidence on this point.

39.4 5 July 2023 onwards?

224. Having considered the documentary and witness evidence, for this period, the claimant was not off sick. She therefore was not eligible for sick pay for this period at all. The claimant was also not attending work at that this stage, as already found above. The respondent did not accept the claimant's backdated fit note for that period and this was in accordance with its policies. When the claimant was reinstated in November 2021 she was given continuous service by the respondents but her previous sick leave had not been discounted upon reinstatement. The claimant had an entitlement to 29 full day's pay and 61 days half pay for a total of 90 days or three months, applying the respondents' policy on this. The claimant was off sick from 3 June 2021 until her dismissal in September 2021. As a result of this the claimant was treated as having a full entitlement from November 2021 which she was not in fact entitled to.

CONCLUSIONS

225. We did not find that, for the purposes of the EQA claims, the claimant had established any primary facts from which the tribunal could infer that there had been a contravention of the EQA. In those circumstances the burden of proof did not shift to the respondents for any of the EQA allegations.

226. The respondents submitted that in relation to claim 4, presented on 7 October 2023, the early conciliation against the second and third respondents was not entered into until 11 October 2023 with the certificate being issued on 13 October 2023. It was submitted that this meant that any claims against those respondents about things that happened before 12 July 2023 were out of time. The respondents also submitted that, with early conciliation taking place in respect of those respondents after the presentation of the claim form, and there being no express application to amend the claim to include them as respondents, the tribunal had no

jurisdiction to consider claims against them and so those claims should be struck out. This submission was only made in closing submissions.

227. We do not agree with the respondents. The tribunal accepted claims against all three respondents. This was communicated to the claimant by letter dated 28 November 2023. From that time onwards all parties and the tribunal operated on the basis that all respondents were validly part of the fourth claim. Once the claim has been accepted it is not for the tribunal to then retrospectively reject it: Sainsbury's Supermarkets Ltd v Clark & Ors [2023] EWCA Civ 386. If a respondent takes issue with jurisdiction on the basis of an alleged failure to comply with early conciliation it may apply to the tribunal for the claims to be struck out, as has happened here. Also, we take into account that Rule 10 requires the name and address of each claimant and each respondent, and it is sufficient for it to contain the number of 'an' EC certificate *(*Clark at [36]). Whilst we recognise that Clark concerned missing claimant conciliation as opposed to missing respondent conciliation, we see no reason in principle why this should be treated differently. At [42] of Clark it was held that '*if no such rejection* [under rule 10 or 12] *occurs it is not in my view open to a respondent to argue at a later stage that the claim should have been rejected. The respondents' remedy is to raise any points about non-compliance with the Rules in their form ET3, or in appropriate cases at a later stage, and to seek dismissal of the claim under Rule 27 or apply for it to be struck out under Rule 37. [43] Where such an application is made then the waiver power under Rule 6 is applicable. I regard it as significant that this power is a very wide one.'*

228. To the extent that it is necessary, therefore, we consider that any errors relating to early conciliation are waived under Rule 6. This is in the interests of justice because it reflects the position that everyone has been operating under for a considerable period of time. Also, there was no material prejudice to the second and third respondents having early conciliation with the claimant shortly after the claim was presented. There is no strike out in the circumstances.

229. If the above is wrong, then in the alternative we take the exceptional course of adding the second and third respondents to the claims under Rule 34. Subject to questions of fairness, there can be no proper objection to us remedying the situation in this manner. This is because everyone thought that they were parties throughout the relevant times. Both the second and third respondents have also benefited from representation throughout.

Time limits

1. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2 If not, was there conduct extending over a period?

1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.4.1 Why were the complaints not made to the Tribunal in time?

1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

230. The first claim form contains a very large number of allegations and particulars.

231. The second claim form relates to the October 2022 incident with Ms Bushiri. The respondents accepts that the allegations about this incident are in time.

232. The respondents says that the third claim does not contain any particulars. However, the claimant had ticked the box for being owed arrears of pay and alleging disability discrimination. Under further information she also says that her claims are for disability discrimination harassment, failure to make reasonable adjustments, and in relation to pay. She relies on facts she says have already been communicated to the respondents and will provide more details in the future.

233. The fourth claim included reference to claims for holiday pay, arrears of pay, and other payments.

234. To the extent that any of the EQA claims are out of time, we consider that it would be just and equitable to extend time. This is because the length of delay is relatively short for all relevant allegations. Some of them are continuing in nature, such as relating to mask wearing, the methods by which there was communication with the claimant, and those claims relating to the claimant's working environment. It is difficult given our findings on the reasonable adjustments claims to say exactly when those claims would have been triggered given that they are unsuccessful for the reasons set out below. There has been no material prejudice to the respondents from any delay. The respondents have been able to mount a full and proper defence to allegations. There is no obvious difficulty with memories having faded or documents not having been preserved. The claimant was not legally represented and does not appear to have a good knowledge of employment law or practice. The claimant also has various medical conditions. It is also the case that the claimant made broad claims, particularly in her first claim form, and she should be given the benefit of the doubt when it comes to when any particular claim was first made. In circumstances, for any EQA claim that is out of time, we consider it just and equitable to extend time to the extent necessary.

235. We reject the respondents' position for the above reasons.

2. Were the unauthorised deductions complaints made within the time limit in the Employment Rights Act 1996? The Tribunal will decide:

2.1 Was the claim 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?

2.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

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

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

236. The claimant first made a claim for unauthorised deductions from wages in the first claim. This is because the particulars of claim do, at least in one sense, make reference to issues relating to pay and sick pay. This was recognised by the tribunal at the first case management hearing on 20 February 2023. The third claim also included an unspecified claim for arrears of pay. The fourth claim also included claims for various payment including holiday pay and arrears of pay.

237. The claimant brought various claims for various items of pay at various times. The situation is further complicated by the fact that various amendment applications were also made and granted.

238. In the circumstances, we are not satisfied that the claimant's claims for pay were in fact out of time.

239. If we are wrong about any of the above, we are satisfied that for any pay-related claim, it was not reasonably practicable for the claimant to make a claim in time. This is because the way in which the claimant's pay could be

challenged is complicated by the various ways in which it was recorded by the respondents, there were times when the respondents admitted making incorrect pay records which were subsequently corrected by various payments, and the claimant was a litigant in person. In particular, the calculation of sickness pay is particularly complicated given the claimant's reinstatement and use of a rolling sickness pay entitlement. We are also satisfied that, if out of time, the claims were brought within a reasonable period of time. This is because the claimant brought four claims over the relevant periods of time. There was no unreasonable delay in all of the circumstances.

Constructive unfair dismissal

3. Was the claimant's resignation in response to an alleged fundamental breach of her contract of employment as set out below?

4. The term of the contract relied upon by the claimant is the implied term of trust and confidence.

5. In particular, did the first respondent, without reasonable and proper cause, act in a manner that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondents?

6. For the avoidance of doubt, the claimant relies on the following conduct said to be discriminatory or constituting victimisation referred to in the reminder of the list of issues and the by the first Respondent as individually or cumulatively amounting to a repudiatory breach of her contract:

6.1 On 4 March 2022, Carole Walters demanding forcefully that the claimant talk to her on the phone when the claimant has asked that their communications be in writing only;

240. We find this allegation not proven for the reasons outlined above. We also find that this email was, ultimately, reasonable conduct in circumstances

where there was not clear medical evidence that the claimant was unable to speak by telephone. Looking at the situation more broadly, no occupational health assessment concluded that the entirety communication with the claimant should be by writing only.

241. There was evidence of the claimant, at times speaking to various people. For example, Mark Hilton met informally with the claimant during the short period of her four days at work at the end of October/November 2022. Also, there was a meeting on 24 January 2023 with Mr Hilton, which appeared to be by telephone. Also, Carole Walters had supervision meetings with the claimant in November 2021 and January 2022.

242. This was not an act which breached the claimant's employment contract.

6.2 Failures in connection with the claimant's grievance dated 10 April 2022 including:

6.2.1 the unreasonable length of time taken to reach an outcome;

6.2.2 the respondents refusing to look at the Claimant's evidence and not explaining why

6.2.3 not initially allowing the Claimant to participate in writing, but instead insisting on face to face or Teams meetings (the Claimant says this was a reasonable adjustment required because of her disabilities)

243. We repeat our findings on these issues as set out above. We do not find that there were failures in the respondents' dealing with the claimant's grievance. For issue 6.2.1, we do not find that the it took an unreasonable length of time to reach an outcome. We accept the evidence of Ms Humle as to why it took the length of time that it did, and that at some of the delays were caused by the claimant's requests to communicate in writing. Issue 6.2.2 was found not proven.

244. Also, for 6.2.3, this was not a reasonable adjustment required because of her disabilities. A requirement to communicate only in writing is not something that had been recommended by occupational health or was otherwise supported by the medical evidence. We are satisfied that that the respondents' preference to not conduct the process entirely by writing was in order to achieve a fair outcome.

245. For those reasons, this was not an act which breached the claimant's employment contract.

6.2.4 the grievance outcome

246. The claimant's grievance outcome was dated 26 August 2022 and is at page 2625 of the bundle.

247. There is nothing about the grievance outcome which amounted to a breach of the claimant's employment contract. There is no basis on which we could make any other finding. Simply disagreeing with a grievance outcome is insufficient.

6.3 Seeking to monitor the claimant's activities by sending her a tablet in April/May 2022;

248. This allegation fails as a matter of fact for the reasons outlined above. It is also the case that the reason why the tablet was sent to the claimant was to facilitate her communication with the first respondent. This was not an act which breached the claimant's employment contract.

6.4 Forcing the claimant to accept working conditions and hours of work for the role of Peripatetic Health centre role in August 2022 without a written agreement.

249. This allegation fails as a matter of fact for the reasons outlined above. Also, although there was no express separate written agreement, no such agreement is necessary. We consider that the letter dated 19 August 2022 about the offer of a new role provided the claimant with sufficient written information about the role proposed.

6.5 On 8 September 2022, refusing the claimant's application for a season ticket loan without valid legal justification;

250. We find that this did not happen as a matter of fact. This is because we accept the evidence of Mr Long that within the first respondent's scheme the season ticket loan could be validly rejected if the claimant was in a trial / probationary period. This is not the same as the formal probationary period that other elements of her employment might have been subject to. Mr Long's oral evidence included that any difference between describing the situation as a trial or probation period would not have made any difference to the decision. The real question was not the particular label given to the period of employment, it was whether the claimant was an established person in post. This was plainly justified in circumstances where the length of the loan might reasonably be significantly beyond the length of employment.

251. We are satisfied that the proper application of the first respondent's policy, having considered the wording used, resulted in the claimant's application being refused, particularly taking into account paragraph [6.2] of the policy at bundle page 1620 and set out above. This was not an act which breached the claimant's employment contract.

6.6 On 3 November 2022, Mark Hilton lying in an email to the claimant saying he had watched the CCTV footage of the incident that occurred on 26 October 2022. The claimant suspected this because of the outcome of the investigation into the incident;

252. This fails as a matter of fact for the reasons outlined above. This was not an act which breached the claimant's employment contract.

6.7 On 16 November 2022, Rebecca Dunkerley lying in the outcome letter to the claimant saying Mark Hilton had watched the CCTV footage and that there had been a fair investigation;

253. This fails as a matter of fact for the reasons outlined above. Also, we reject any contention that there had not been a fair investigation. There is no evidential basis for finding otherwise. The investigation considered a number of different sources of information, including CCTV, the outcome was balanced, and involved people with sufficient seniority and independence to those involved.

254. We acknowledge that Mr Hilton declined to use the claimant's own footage. However, given the open question as to the lawfulness of this, given it was footage taken without the other party's consent, we consider this was entirely reasonable in the circumstances.

255. In any event, had Mr Hilton used the claimant's own footage, this (at a minimum) would have made no difference to the outcome. This is because, on any reasonable viewing of the footage, the claimant was acting in an unreasonable and hostile manner in the way in which she started filming the other party in a manner that amounted to harassment by the claimant. The fact that the other party used reasonable efforts to stop her being filmed is far from the allegation of violence made by the claimant. The claimant's version of events is not supported by her own video evidence. For example, in the claimant's grievance about this at page 2842 of the bundle at paragraph 21 the claimant says '*I … have a video recording of the incident which can show clearly what happened and that Mrs Anthea Bushiri is confessing hitting'* We consider that, again, the claimant has used an element of her own video – in which the other party does accepts hitting the claimant's phone (albeit in a particular context) – and the claimant has

misrepresented this to suggest something much more serious, such as an alleged confession as to unlawful violence.

256. This was not an act which breached the claimant's employment contract.

6.8 On 18 November 2022, Mark Hilton asking the Claimant for a telephone catch up while the claimant was off sick even though she has asked that communications be in writing;

257. Mr Hilton did email the claimant on 18 November 2022 This is entirely reasonable in circumstances where the claimant was off sick given that it was part of the first respondent's normal procedure to conduct welfare checkups in this way. The claimant did not have a written-communications only reasonable adjustment supported by evidence. This was not an act which breached the claimant's employment contract. In any event the wording of this email is supportive and friendly in tone and simply states that he will try again on another date and asks if there is a particular time that would work well for the claimant. The fact that the claimant preferred to communicate in writing does not mean that the respondents in any way was bound by her preference. Also, we find that, generally speaking, the respondents did in fact communicate largely in writing the claimant in accordance with her preferences. This is clear from the vast amount of documentary evidence to that effect.

6.9 Forcing the claimant to work in an unsafe working environment without reasonable adjustments in place The claimant alleges that the Peckwater Health Centre was not a safe working environment for her due to her disabilities. The respondents could have transferred her to other premises or agreed that the claimant could work from home. The claimant says that homeworking would solve most problems connected to the claimant's disability related needs;

258. This fails as a matter of fact for the reasons outlined above.

259. Also, it would not have been reasonable for the claimant to be transferred elsewhere because we accept the respondents' evidence, particularly Mr Hilton's evidence about why the other centres would not be appropriate for the claimant given her requests (as outlined above). We also entirely accept that home working was not a reasonable option for the claimant in that role. This is because the role was a receptionist in a health centre which required face to face contact with visitors as well being able to answer phone calls to that centre, and to do other duties. What the claimant was proposing as a reasonable adjustment was in fact a completely different role to the one she was employed to undertake.

260. This was not an act which breached the claimant's employment contract.

6.10 Mark Hilton misleading the Claimant by telling her that reasonable adjustments were in place in Peckwater health Centre in January 2023 when they were not;

261. This fails as a matter of fact for the reasons outlined above. Also, it is plain that the respondents did put in reasonable adjustments to the extent that it was attempting to accommodate the claimant's needs in terms of working location, access to fresh air, and not being required to wear a mask. Also, we accept Mr Hilton's evidence that at that stage the claimant was absent from work, was refusing telephone conversations, and had only been at work for four dates since he had met her, and so any discussion of reasonable adjustments would necessarily be very limited and challenging.

262. This was not an act which breached the claimant's employment contract.

6.11 The respondents' failure to take into account the impact of the claimant's newly diagnosed hypothyroidism when considering her requirements for reasonable adjustments;

263. This fails as a matter of fact for the reasons outlined above. Also, we do not consider that, on the evidence, there is a particular reasonable adjustment that is supported by medical or occupational health evidence that arises from the hypothyroidism that was not put in place by the respondents. There was no act which breached the claimant's employment contract.

6.12 The delay in organising a new occupational health assessment for the claimant until September 2023 even though the claimant was diagnosed with hypothyroidism on 10 March 2023 and communicated that different reasonable adjustments would be needed by an email dated April 2023 onwards;

264. This is not proven as a matter of fact. Also, the claimant had resigned before further occupational health assessment could reasonably carried out. Overall, we find that there is insufficient evidence to suggest that there was any kind of real delay in organising a new occupational health assessment for the claimant arising from her new diagnosis.

265. This fails as a matter of fact for the reasons outlined above. There was no act which breached the claimant's employment contract.

6.13 Forcing the claimant to have redeployment discussions on Teams or in person in the summer of 2023 when she had asked that communications be in writing as follows:

6.13.1 On 14 and 22 June 2023 Mark Hilton asked the claimant to meet via Teams with him and Wayne Bailey (HR);

266. This fails as a matter of fact for the reasons outlined above. We also note that the request dated 14 June 2023 was the respondents going beyond what was necessary because it included asking recruitment to put a particular role at a higher salary and higher band that the claimant's current role on hold whilst its suitability for the claimant was considered. This is indicative of an employer going above and beyond what is required to

accommodate the claimant's needs, and the communication of 22 June 2023 was supportive.

267. Also, the communications were in the context of the claimant not having medical or occupational health evidence of a reasonable adjustment that she only communicate in writing with her employer.

6.13.2 On 5 July 2023, Mark Hiton asked the claimant to attend an OH case conference;

268. Mark Hilton's email dated 5 July 2023 states as follows:

'*As part of the OH referral I will also make arrangements for a case conference to happen to enable discussion on both key points. Such a case conference, if agreed, will involve yourself, any supportive colleague or trade union colleague you wish to attend with, myself and Wayne and the Occupational Health clinician. I will leave Occupational Health to determine if the meeting should be in person or on Microsoft Teams. An additional support may be the `Access to Work advisor*.'

269. As set out above, Mark Hilton's email dated 5 July 2023 states as follows:

'*As part of the OH referral I will also make arrangements for a case conference to happen to enable discussion on both key points. Such a case conference, if agreed, will involve yourself, any supportive colleague or trade union colleague you wish to attend with, myself and Wayne and the Occupational Health clinician. I will leave Occupational Health to determine if the meeting should be in person or on Microsoft Teams. An additional support may be the `Access to Work advisor*.

270. We looked at the allegations from a broad perspective, namely that in so far as the respondents did not agree to only communicate in writing, that did happen. However, this was in the context of the claimant not having medical

or occupational health evidence of a reasonable adjustment that she only communicate in writing with her employer. In the claimant's case, it would not have been reasonable, in any event, for the respondents to only communicate with her in writing in the absence of this being supported by medical or occupational health evidence, given the fundamental differences between written and other forms of contact and the need for collaborative and supportive discussion and conversation given the issues arising for the claimant.

271. These are not acts which breached the claimant's employment contract.

6.14 Requiring the claimant to provide a new fit note for the period from 5 July 2023 onwards. The claimant says this was not necessary as she had already provided the respondents with fit notes that said she was able to work with reasonable adjustments;

272. This fails as a matter of fact for the reasons outlined above. It is also not correct that reasonable adjustments were not in place. We are satisfied that that the respondents did put in place those reasonable adjustments that were supported by the medical and occupational health evidence. Also, the claimant's fit note ended on 4 June 2023 and concluded that she may be fit for work taking into account the advice given. The advice was a recommendation that the claimant *'communicates with colleagues in writing to reduce stress and anxiety, she requires to fresh air, adequate breaks for air and food (including lunch break) If possible to train for working from home'.* This is not the same as communicating only in writing and we are satisfied that the respondents had put all relevant adjustments in place for the claimant.

273. Ultimately, the respondents was entirely reasonable in asking the claimant to provide a fit note saying she was unfit for work if she was not attending work for that reason. This was not an act which breached the claimant's employment contract.

6.15 In July and August 2023 making the claimant believe that there could be an option for redeployment to the Camden Integrated Adult Service administrator position when this was not an option because a decision had been taken to reject her application on 12 July 2023;

274. This fails as a matter of fact for the reasons outlined above. This was not an act which breached the claimant's employment contract.

6.16 In August 2023, Rebecca Dunkerly requiring the claimant to have redeployment discussions by Teams (2 and 30 August 2023 emails);

275. This fails as a matter of fact for the reasons outlined above. We repeat our findings above about the extent to which not allowing the claimant to communicate only in writing was not a breach of the claimant's employment contract. The claimant's preference to communicate exclusively in writing was not supported by occupational health or medical evidence and would not have been a reasonable adjustment from an employer's perspective. This is because by its nature it would have been an overly restrictive form of communication. This was not an act which breached the claimant's employment contract.

6.17 Forcing the claimant to accept considerably reduced pay and working hours before redeployment talks can commence. The Claimant relies on the email to her from Ms Dunkerley dated 30 August 2023 which said that the computer based element of a proposed role only amounted to 1.5 days per week and that she would only be paid for 1.5 days per week;

276. This allegation fails as a matter of fact for the reasons outlined above. This is not an act that breached the claimant's employment contract.

6.18 Rebecca Dunkerley's email dated 23 August 2023 to the claimant that confirmed that the claimant would be treated as being on unpaid leave

from 5th July 2023 for the foreseeable future, to be reviewed again after receipt of the OH report and that payroll would write to her with the implications of this decision;

277. It appears that there is an error in the list of issues and the email referred to is the letter sent by email dated 24 August 2023. We have also considered the other correspondence around this date. Firstly, we consider that there is nothing in the letter itself which amounts to a breach of contract. It is detailed and formal in tone but not aggressive. Also, it is clearly supportive in nature in light of the final paragraph:

'I know this is a difficult time for you and I remain committed to working with you to seek an alternative role where your skills can be used in a fulfilling role as there are so many across Camden Adult Services and indeed the Trust. I am confident that by working together we can achieve a suitable outcome for both of us.'

278. The letter also includes a genuine attempt to explore an alternative role for the claimant in podiatry.

279. The letter does include: *'You have stated that you are not sick and are not providing any fit notes to the Trust at this time since your return from a period of paid leave that ceased on 4 July 2023. My view is that we do have reasonable adjustments in place, have worked with you and will continue to do so. I am also aware that you are not at work and are currently on full pay. Until we can agree an additional suitable alternative role, beyond the current Health Centre Receptionist role that you have agreed to undertake and were redeployed into then I have instructed Mark Hilton to mark you down on Health Roster as unpaid leave from 5 July 2023. I will review this again following the outcome of the Occupational Health Report. Payroll will write to you about any pay implications.'*

280. However, given the content of the letter, there is nothing about this email which amounts to a breach of the claimant's employment contract. The content of the email accurately reflected the respondents' position at the time. Whether or not that position amounted to a breach of contract is covered by other issues elsewhere in these reasons.

6.19 The failure of payroll to write to the claimant about any such implications. Instead the claimant's salary was stopped from 25 August 2023; and/or

281. We refer to our findings of fact above. It is correct that Mrs Dunkerley's letter dated 24 August 2023 makes a reference to possible future payroll communications. However, the letter is clear that the claimant will not be paid as of 5 July 2023. Although payroll did not make a subsequently write to the claimant, we do not consider that this amounted to a breach of the claimant's contract. Full and sufficient and clear information about the pay situation had been given to the claimant in the letter dated 24 August 2023. It makes no difference that the same information was not repeated to the claimant from another source. The claimant was fully on notice of the position. This was not an act which breached the claimant's employment contract.

6.20 Stopping the Claimant's pay on 25 August 2023;

282. We repeat our findings of fact above. We are satisfied that this was a lawful act by the respondents. The claimant was not attending work. The claimant was not off sick. There was no sick note provided at the correct time for this period. As far as the respondents were concerned, the claimant was fit for work.

283. The claimant provided a fit note dated 26 August 2023 which was backdated to 5 July 2023 ending 6 October 2023. The respondents rejected this fit note because, on the application of their policy, it was backdated. This is an

entirely reasonable course of action to take. The respondents policy said that backdated fit note would not be accepted. The policy also says that fit notes must be provided in a timely manner. We accepted Mr Opio's evidence on this point.

284. We also note that the fit note was only provided once the claimant realised that she was not going to be paid.

285. The claimant was, as a matter of fact and law, on unauthorised absence. In those circumstances the respondents was under no obligation to pay her.

286. Also, we are satisfied that all reasonable adjustments that were justified by the medical and occupational health evidence were in place, and so this was not a scenario where the claimant could not attend work because justified reasonable adjustments were not in place. This was not an act which breached the claimant's employment contract.

6.21 Failing to provide the Claimant with a correct itemised pay slip on 25 August 2023; and/or

287. This fails as a matter of fact for the reasons outlined above. We are satisfied that this was an itemised payslip. We also accept Mr Opio's evidence on this point. In any event, was not an act which breached the claimant's employment contract.

6.22 Others acts of discrimination, harassment and/or victimisation as set out in this list of issues.

288. We repeat our findings on the other acts alleged. Those claims are unsuccessful. None of our other findings amount to a breach of the claimant's employment contract.

7. Did the first respondent do those things?

289. We refer to our findings above.

8. If so, did that amount to a breach the implied term of trust and confidence and was it sufficiently serious to have justified the claimant's resignation?

290. As set out above, we do not find that any of the acts individually or cumulatively amounted to a breach of the implied term of trust and confidence. The majority of the allegations are unproven as a matter of fact. For those things that did happen, none of them breached the implied term. Also, none of the respondents conduct – such as the lack of further details about the payslip or tone of any correspondence – was sufficiently serious to have justified the claimant's resignation in any event. The proven conduct was with reasonable and proper cause. It did not amount to the respondent acting in a manner that was calculated or likely to destroy the trust and confidence between the claimant and the respondent.

291. We also find, in the alternative, that the claimant did not resign because of the respondents' conduct. This is because there is an absence of cogent and reliable evidence about why she resigned. We have given no weight to the claimant's witness statement. Also, the claimant's resignation letter dated 11 September 2023 is not, in the absence of corroborative findings, sufficient for us to find that this showed the reason for the claimant's resignation.

9. Did the claimant waive or affirm any of the alleged breaches of the implied term of trust and confidence?

292. In light of our findings above it is not necessary for us to determine this issue.

10. Insofar as the Tribunal finds that there has been a constructive dismissal, was this an unfair dismissal?

293. This issue does not arise in light of our findings above.

294. For all of the above reasons, the claim of unfair dismissal is not successful.

Disability

11. 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 first respondent accepts that the claimant is disabled by reason of chronic migraine and anxiety.

The claimant also relies on the following conditions: panic attacks, depression, fibromyalgia, vertigo, restless feet syndrome, high blood pressure and hypothyroidism

12. The Tribunal will decide:

12.1 Did the claimant have a physical or mental impairment?

12.2 Did the impairments have a substantial adverse effect on her ability to carry out day-to-day activities?

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

12.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?

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

12.5.1 Did they last at least 12 months, or were they likely to last at least 12 months?

12.5.2 If not, were they likely to recur?

Hyperthyroidism

295. We find that the claimant had this condition. It was diagnosed in March 2023.

296. We do not find that this impairment had a substantial adverse effect on the claimant's ability to carry out day-to-day activities. This is because there is insufficient clear and reliable evidence that this was the case. The claimant's updated impact statement asserts things which are not corroborated. Her bundle reference is to a document she drafted herself. There is not clear evidence that this condition in fact had a substantial adverse impact on the claimant's ability to carry out day-today activities.

297. We accept that the claimant took medication for this condition. However, the evidence does not suggest that the condition would have had a substantial adverse effect on her ability to carry out day-to-day activities without that treatment.

298. We accept that this is a long-term, lifelong condition. This is because of the evidence of Dr Morris at bundle page 4145.

299. For those reasons, this condition does not amount to a disability for the purposes of s.6 EQA.

High blood pressure

300. We accept that the claimant had high blood pressure throughout the relevant period. This is not in dispute.

301. We do find that the claimant's high blood pressure in combination with other disabilities did have a substantial effect on her ability to carry out day-to-day

activities. This is because it was not disputed that the combination of this and her anxiety, which was not disputed as an impairment, prevents the claimant from undergoing dental treatment. Dental treatment is a day-to-day activity. This is confirmed in the evidence of Dr Morris dated 14 September 2023 at bundle page 3521.

302. We were also satisfied that it was likely to last for more than 12 months. This is because as a matter of fact it clearly has, throughout the material periods of the claims. The respondents accepts that the claimant has high blood pressure which does not respond to treatment and that this is corroborated by the medical records.

303. For those reasons, we find that this impairment should be included in the claimant's disabilities for the purposes of s.6 EQA.

Restless feet syndrome

304. We accept that the claimant had the condition of restless feet syndrome. This is because it is referred to in the evidence of Dr Mummery, a Consultant Neurologist, dated 4 January 2023.

305. We accept that the claimant had the condition of restless feet syndrome. This is because it is referred to in the evidence of Dr Mummery, a Consultant Neurologist, dated 4 January 2023.

306. We do not find that this impairment had a substantial adverse effect on the claimant's ability to carry out day-to-day activities. We do not find that this impairment had a substantial adverse effect on the claimant's ability to carry out day-to-day activities. This is because there is insufficient clear and reliable evidence that this was the case. The claimant's updated impact statement asserts things which are not corroborated. There is not clear evidence that this condition in fact had a substantial adverse impact on the claimant's ability to carry out day-today activities.

307. It was unclear to us, on the evidence, whether the claimant was taking measures to address this condition. In any event, we did not find that there was clear or sufficient evidence for us to find that without any such steps the impairment would have had a substantial adverse effect on the claimant's day-to-day activities. This was not clearly covered by the evidence we had. The evidence from Dr Mummery was insufficient for this as it simply says that some medication the claimant had taken does help with her fibromyalgia and restless leg syndrome.

308. In those circumstances we do not find that this impairment amounted to a disability for the purposes of s.6 EQA.

Vertigo

309. We do not accept that the claimant had this impairment. It does feature in a letter by Dr Mummery dated 27 July 2022. This includes the claimant reporting having had vertigo in the last two year especially first thing in the morning and she struggles to go downstairs. However, there is no clear and specific diagnosis of vertigo other than the claimant's self-reporting. Also, there is good reason to doubt the claimant's self-reporting because in a documented practitioner completed management plan dated 18 February 2022 the claimant says that her glasses make her feel like she has vertigo and refers to having to try lots of different prescriptions for her glasses. We therefore could not be satisfied that the reported symptoms were in fact vertigo as a condition as opposed to issues arising from the claimant's glasses.

310. In those circumstances we do not find that this impairment amounted to a disability for the purposes of s.6 EQA.

Fibromyalgia

311. We accept that the claimant had this impairment. This is featured, at least, in a letter about dental care dated 21 November 2022 which refers to this as a diagnosis (bundle page 3346). Also, in a health summary generated on 16 November 2022 fibromyalgia is listed as an active problem. Also, by 8 March 2023 a letter from the claimant's GP includes that her physical symptoms include fibromyalgia. Dr Mummery also refers to the claimant taking medical cannabis which helps with it, in a letter dated 4 January 2023.

312. We do not find that this impairment had a substantial adverse effect on the claimant's ability to carry out day-to-day activities. This is because there is insufficient clear and reliable evidence that this was the case. The claimant's updated impact statement asserts things which are not corroborated. There is not clear evidence that this condition in fact had a substantial adverse impact on the claimant's ability to carry out day-today activities.

313. To the extent that the claimant was taking treatment or other measures for this condition, we did not feel that there was sufficient clear evidence that the impairment would have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures.

314. For those reasons, this impairment was not a disability for the purposes of s.6 EQA.

Depression

315. We are satisfied that the claimant did have depression as an impairment. This is because it is included in her diagnosis by Dr Mummery in a letter dated 27 July 2022 at bundle page 3340. The claimant's diagnosis is of anxiety and depression. The treatment and symptoms are not separated. In light of the respondents accepting that the claimant was disabled by reason

of anxiety, we consider this to be part and parcel of the same impairment, and therefore the claimant was disabled by reason of anxiety and depression.

Panic attacks

316. We refer to our findings about panic attacks as set out above.

317. Overall, we do not feel that there is sufficient medical evidence to find that the claimant had this condition. It does not feature in her fit notes until the very end of her employment. Also, there is no clear evidence that this particular fit note involved any kind of proper assessment of analysis of claimant's specific diagnoses. Whilst there are references to panic attacks in the documentary evidence these are self-reports by the claimant.

318. Even if we are wrong about this, then there is not sufficient evidence that panic attacks were in fact having a substantial adverse effect on the claimant's ability to carry out day-to-day activities. Similarly, there was not sufficient clear evidence that the claimant was taking measures to address panic attacks and that impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures.

319. For those reasons, the claimant was not disabled for the purposes of s.6 EQA by reason of panic attacks.

Discrimination arising from Disability (Equality Act 2010 section 15)

13. Did the first respondent treat the claimant unfavourably by:

13.1 An incident on 26 October 2022 with a colleague, Ms A Bushiri, hitting the claimant's phone out of her hand?

320. We refer to our findings of fact on this issue, above.

321. We note that to the extent our findings are different to Mr Hilton's, we have had the benefit of viewing the claimant's own footage. This shows the claimant in a significantly worse light than Mr Hilton would have been aware of.

322. We also note that despite the claimant asserting during the video that she cannot breathe – and her other claims to have difficulty with verbal communication – these are not supported by her own video evidence.

323. In the circumstances as we have found them to be, this was not unfavourable treatment.

14. Did the following things arise in consequence of the claimant's disability:

14.1 The claimant's need for fresh air;

14.2 The claimant seeking to open the door to get fresh air;

14.3 The claimant's inability to communicate verbally?

The Claimant says that these three things arise because of a combination of her migraines, depression, social anxiety and panic attacks.

324. We find that these things did not arise in consequence of the claimant's disability. The evidence does not demonstrate that the claimant was unable to communicate verbally. The occupational health evidence falls short of this finding. Also, the claimant can clearly be seen on her own footage to be able to communicate verbally with Ms Bushiri.

325. The occupational health report dated 8 December 2021 included that if the claimant becomes distressed she should be allowed time to formulate

answers to questions. The occupational health letter dated 4 July 2022 assess the claimant as fit to work, recommends consideration to adjustments including mini breaks and varied activities and avoiding prolonged computer based or sedentary working, a quiet room to enable productivity if the claimant experiences mild symptoms. There is insufficient clear evidence that at the relevant time the claimant had a need for fresh air, and therefore would be seeking to open the door to get fresh air, as consequences of her disabilities. Also, we have found that the reception area, with intermittently opening doors, had fresh air in any event, without the need for further action by the claimant.

326. For those reasons, we do not find that the alleged things arose in consequence of the claimant's disability.

15. Was the unfavourable treatment because of any of those things?

327. If we are wrong about the above, we do not find that any unfavourable treatment was because of those things. The incident arose because of the claimant's decision, which was not because of her disabilities, to record the incident on her phone. This was demonstrably without Ms Bushiri's agreement. It was visibly causing Ms Bushiri distress and was, to a degree, prolonged. The incident and any resulting treatment by the trust was claimant's own fault.

328. Also, the claimant had not been diagnosed with hypothyroidism at that time, and there was no cogent medical evidence that the claimant's migraines were caused by a lack of fresh air. The CCTV and mobile phone footage demonstrate that the claimant had no difficulty in communicating about door. Also, the claimant's own footage does not show her having a panic attack at the relevant time. Further, it is clear from the evidence of Mr Hilton and the CCTV footage that there was adequate fresh air at the Gospel Oak Health Centre at that time.

16. Was the treatment a proportionate means of achieving a legitimate aim?

329. In light of our findings above it is not necessary to determine these issues.

330. For those reasons the claim of discrimination arising from disability is unsuccessful.

17. The Tribunal will decide in particular:

17.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

17.2 could something less discriminatory have been done instead;

17.3 how should the needs of the claimant and the first respondent be balanced?

18. Did the first respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

331. In light of our findings above it is not necessary to determine these issues.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

332. As of 15 November 2021, the claimant's role was assisting the ward clerks and Carole Walters with general administrative tasks.

19. Did the respondents know or could it reasonably have been expected to know that the claimant had the disability? From what date?

333. In light of our other conclusions it is not necessary for us to address this issue.

20. A "PCP" is a provision, criterion or practice. Did the first respondent have the following PCPs:

20.1 A requirement that staff wear face masks in clinical areas;

334. The respondents agreed that this PCP was in place generally. However, the respondents says that this was not a PCP which was applied to the claimant. That is addressed below. Also, we accept Carole Walters' oral evidence that between 23 November 2021 and 1 March 2022 there was a requirement that staff wear face masks in clinical areas or in non-clinical areas within the site of St Pancras Hospital.

20.2 A requirement that administrators carry out tasks which were carried out in areas where face masks were mandatory;

335. This PCP is denied by the respondents. We repeat our findings above. We find that, generally, there was a practice that at least some administrators carried out tasks in areas where face masks were mandatory. This must be case because the first respondent covered health centres and the timing of the claims includes when Covid-19 was present. Whether or not it was applied to the claimant is addressed below. Also, Ms Walters' oral evidence included that there was a requirement that there a requirement that administrators carry out tasks which were carried out in areas where face masks were mandatory, specifically between 23 November 2021 and 1 March 2022. Whether that was applied to the claimant is addressed below, however.

20.3 A requirement that meetings be held face to face over Teams or on the telephone, and not in writing;

336. We find that this PCP was applied by the respondents to the extent that they did not agree to communicate exclusively with the claimant in writing. However, they did agree to very significant amounts of communication with

the claimant in writing as is clear from the vast amount of email correspondence. Only a small number of meetings were suggested to be either face to face or by MS Teams.

20.4 A requirement to work in enclosed areas with the doors closed?

337. We find that this was not a PCP applied by the respondents. We repeat our findings above. The claimant was permitted to work in her own office with a window and fresh air circulating continuously whilst she was working as a band 2 administrator at SPRU since 15 November 2022. We accept Ms Walters' evidence of this. Whilst the claimant was working as a receptionist later on, there was demonstrably fresh air from the Gospel Oak Healthcare Centre site because this is clear from the CCTV and the doors were not always closed, as shown on the CCTV. Also, any work at the Peckwater Centre was not in an enclosed area with the doors closed. The claimant had been specifically not placed by Mr Hilton, accepting his evidence, at any site where the reception areas were enclosed. Also, at the Peckwater site the claimant was sited right next to the door.

20.5 A requirement to work at Peckwater Health Centre during the construction work in March and April 2023

338. We find that the PCP put in place by the first respondent was for people to work at the Peckwater Health Centre. We do not find that there is clear and cogent evidence that there was construction work at that site during those times for the reasons outlined above in our findings of fact.

21. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that

21.1 Wearing fact masks triggered the claimant's migraine. The claimant alleges that the dates when she was required to carry out duties in areas where mask wearing was mandatory was 23 November 2021, 24 November 2021, 25 November 2021, 26 November 2021, 8 December

2021, 11 January 2022, 10 February 2022 and every Monday and Thursday until 1 March 2022.

339. We find that what the respondents were actually doing did not put the claimant at any substantial disadvantage. This is because of our findings of fact above, namely that the claimant was allocated a personal office with no requirement for her to wear a face mask. This involved decommissioning a training space for ward staff. The room had line of sight to the multi-function device (photocopier) for photocopying and scanning so the claimant could see that it was quiet when she left the office. The claimant had a ward clerk team to act as a daily point of contact and clarify the required administrative support required. The claimant's shift patterns were also altered so that she did not need to wear a mask at work, at least for any significant period of time, as her shift timings minimised contact with other staff.

340. Also, there was insufficient medical evidence that wearing masks in fact triggered the claimant's migraines.

21.2 Having meetings by Teams or on the telephone caused the claimant to become anxious and have panic attacks. As a result, her migraines were triggered and the claimant was unable to express herself as her mind would not work properly. The Claimant says this caused the following disadvantages:

21.2.1 The requirement that a meeting be held rather than the claimant making her points in writing caused the grievance to be delayed.

21.2.2 The requirement to have a job interview over Teams meant that the claimant was excluded from the redeployment opportunity.

341. We find that there is insufficient cogent evidence to find these matters proven. There is insufficient evidence that having meetings by Teams or on the telephone cause the claimant to become anxious and have panic attacks. Although this is something the claimant asserts, this is not corroborated by cogent evidence. Also, there is insufficient evidence that

her migraines were triggered by this and that there was, in fact, any resulting impact on the claimant's ability to express herself.

342. The claimant's own GP letter dated 8 March 2023, states that written communication is the claimant's preference as opposed to a requirement, and that she benefits from access to fresh air as opposed to requires it.

343. We do find that the claimant's request to communicate about her grievance in writing resulted in some delay. This is because of Ms Hulme's evidence. However, in the absence of medical or other sufficient evidence that the claimant should only be expected to communicate in writing, the delay was as a result of the claimant's preference and not the respondents' PCPs. It follows that the claimant did not suffer that particular disadvantage.

344. Also, the claimant was not excluded from redeployment opportunities. This is because she was permitted to communicate mainly in writing about those opportunities and a significant amount of effort was made by the respondents to explore redeployment opportunities. We find that the respondents' general approach to communicating with the claimant mainly in writing did not ultimately cause her a substantial disadvantage because this in of itself did not exclude her from redeployment opportunities.

21.3 The claimant required access to fresh air to avoid symptoms of hypothyroidism (inability to control body temperature), high blood pressure and risk of migraine and panic attacks.

345. We do not find that to the extent any of the PCPs were in place, the claimant was not put at a substantial disadvantage compared to someone without her disabilities. This is because what the respondents did put in place entailed access to fresh air for the reasons outlined above.

21.4 The background noise and dust generated by the construction work at Peckwater Health Centre further exacerbated the claimant's

symptoms as described above in 20.3.

346. We find this is not proven for the same reasons outlined above. There was no such disadvantage to the claimant. Also, we accept the respondents' witnesses evidence that for the time when there was construction work at the Peckwater Health Centre, the claimant was working at the Gospel Oak site.

22. Did a physical feature, namely lack of access to fresh air at Gospel Oak Health Centre and Peckwater Health Centre, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she required access to fresh air?

347. This is not proven for the reasons outlined above. There was no such requirement for fresh air, or to the extent that there was, the claimant was put at no such disadvantage because her working places did include access to fresh air.

23. Did the first respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

348. In light of our conclusions above it is not necessary for us to determine this issue.

24. What steps could have been taken to avoid the disadvantage?

25. The claimant suggests:

25.1 Assigning tasks which had to be done in clinical areas to other employees;

25.2 Assigning tasks to the claimant which could be done in areas which were not clinical areas;

25.3 Allowing the claimant to put her points in writing rather than attend meetings (at least initially);

25.4 Allowing the claimant to have constant access to fresh air;

25.5 Transferring the claimant to another health centre with access to fresh air;

25.6 Agreeing to one of the three options put forward in the claimant's flexible working request made in February 2023;

25.7 Agreeing to a job share in the role of Health Care Receptionist with the Claimant performing tasks that could be done remotely at home;

25.8 Training the claimant so that she could undertake a different role from home; and/or

25.9 Allowing the claimant to take paid disability leave. The Claimant is specifically arguing that the respondents should have paid her because it had failed to make reasonable adjustments.

26. Was it reasonable for the first respondent to have to take those steps?

27. Did the first respondent fail to take those steps?

349. We find that the respondents put in place, in any event, the steps as follows.

350. Step 25.1 done, on the basis of Carol Walters' oral evidence that people brought work to the claimant rather than requiring her to go to clinical areas. Step 25.2 was done for the same reasons.

351. Step 25.3 was done to a degree. To a large extent the claimant was permitted to communicate in writing. However there were some requests which suggested that the claimant communicate otherwise than in writing.

352. Step 25.4 was done for the same reasons as already outlined. The evidence including the evidence of Mark Hilton clearly established that the claimant had constant access to fresh air.

353. Step 25.5 was done because the claimant had access to fresh air where she was and she was moved whilst construction work was taking place at the Peckwater Centre. Also, the claimant was deliberately not placed at the Hunter Street because it did not have sufficient access to fresh air.

354. The respondent provided reasons for not adopting some of the claimant's suggestions in a letter dated 17 February 2023 (at bundle page 2846).

355. There was no formal policy of paid disability leave at the first respondent.

356. We accept the respondents' evidence (and find accordingly) that there was insufficient tasks which could done from home as part of the role, in the context of her home working/job share requests.

357. Step 25.6 was not done. However, three options were rejected for good and reasonable reasons by the respondents as outlined in their letter dated 17 February 2023 (bundle page 2846). We accept that working from home whilst answering the telephone was not a reasonable adjustment. This is because working from home is almost entirely at odds with the claimant's receptionist role which necessarily involved working with people. There was insufficient purely administrative work as part of that role for it to be suitable for working from home. Whilst working from home the claimant could not provide reception support, answer drop in enquiries, ensure that clerical work arising from each clinic was completed at the end of the clinic, do shredding or distribution of post, acting as a point of contact for site visitors and team leaders or act as a fire marshal. The respondents did agree, in principle, to working only three days a week, so step was offered. It was slightly unclear to us what the third option was, but to the extent that the claimant asked to work with different people, this was not something that

related to her disabilities. Working with other people would not have mitigated any disadvantages that the claimant had as a result of her disabilities. There is no link between the two.

358. For Step 25.7 the claimant did not suggest a job share at the relevant time. In any event, this, is in effect. a reworking of the suggestion that the claimant be permitted to work from home. We accept the respondents' evidence that there was insufficient tasks which could done from home as part of the role. This would be the case whether the claimant's role was as a job share or otherwise. This would not have been a reasonable step to take for that reason.

359. Step 25.8 was not done. However, it would not have been a reasonable step in the absence of a particular suitable role. What the respondents did do was actively try to assist the claimant with redeployment to a different role, which could include roles that could be done from home. So to the extent that consideration of such redeployment was a reasonable step for them to take, we find that it was done.

360. Step 25.9 was not done but this would not have been a reasonable step to take. There was no formal policy of paid disability leave at the first respondent. In any event, this would have been completely unreasonable. The claimant was given the majority of reasonable adjustments that had been requested or were justified by the medical and occupational health evidence. There could be no justification for paying the claimant when she was not working, and she was fit to work, and all appropriate reasonable adjustments have been put in place.

361. For those reasons we find that the respondents did in fact put in place all adjustments that might have been justified in any event.

362. The claim for failure to make reasonable adjustments is unsuccessful for those reasons.

Harassment related to Disability (Equality Act 2010 section 26)

28. Did the respondents do the following things:

28.1 Ms Walter's email sent on 4th March 2022 requesting that the claimant speak to her either by phone or in person (paragraph 16 of the particulars attached to the first claim form);

363. We refer to our factual findings above.

28.2 Sarah Hulme sending the claimant a tablet for virtual meetings. The Claimant says this was unwanted conduct because she had a computer and that the respondents; s real intention was to secretly monitor her activity;

364. We refer to our factual findings above.

28.3 Sarah Hulme's letter to the claimant dated 13th July 2022 (paragraph 15 of the particulars attached to the first claim form);

365. We refer to our factual findings above.

28.4 The incident on 26 October 2022 with colleague, Ms A Bushiri;

366. It is correct that an incident happened on 26 October 2022 with Ms Bushiri. However, we find that the incident was as a matter of fact, having viewed the claimant's own video footage, was actually an act of harassment against Ms Bushiri. We refer to our findings above.

28.5 Mr Mark Hilton advising the claimant on 26 January 2023 that the misunderstanding regarding the calculation of holiday occurred because the claimant had sold part of her holiday (which the claimant

disputes)

367. We do not find that this happened as a matter of fact for the reasons set out above.

28.6 At a meeting on 28 February 2023, Mr Mark Hilton:

28.6.1 Mr Hilton was not aware of the role that the claimant undertook;

368. We do not find this happened as a matter of fact for the reasons outlined above.

28.6.2 Mr Hilton advised the claimant that she was unable to take breaks or her lunch break;

369. We do not find this happened as a matter of fact for the reasons outlined above.

28.6.3 Mr Hilton started laughing at the claimant.

370. We do not find this happened as a matter of fact for the reasons outlined above.

28.7 Mr Hilton's delay in attending the meeting on 28 February 2023.

371. It is accepted by the respondents that Mr Hilton was late to the meeting in February 2023.

28.8 Mr Hilton advising senior managers on 28 February 2023 that the claimant had messed up the time for the meeting.

372. We find that this did not happen as a matter of fact for the reasons outlined above.

28.9 The failure by Rebecca Dunkerley and Richard White to reply to the claimant's email setting out her concerns regarding the meeting on 28 February 2023

373. There was no specific reply to the claimant's email dated 28 February 2023. However, as set out above, we accept Ms Dunkerley's explanation that she had engaged in a large volume of correspondence with the claimant. This is well-supported by the documentary evidence.

29. If so, was that unwanted conduct?

374. We do not find that the issue at 28.1 was unwanted conduct. This is because the claimant was simply saying that she was too unwell to discuss on the phone or Zoom at that time (bundle page 1971) as opposed to it be contrary to her additional needs.

375. We do not find that the issue at 28.2 was in fact unwanted conduct. The claimant did not object to the tablet at the time. The claimant's allegation that it was to monitor her activity is without foundation, and arose only from information the claimant received following a DSAR request. We repeat our findings above on this issue.

376. The claimant thanked Ms Hulme for sending the tablet by email dated 14 April 2022 (bundle at page 2136).

377. We do not find that the issue at 28.3 was unwanted conduct. The claimant's interpretation of the wording of this letter, namely that arrangements were made for a union representative to speak on her behalf, to suggest that she was 'mentally retarded', is completely at odds with any reasonable interpretation of the act. The letter is neutral in tone and procedural in

nature; there is nothing about this letter that, we consider, was in fact unwanted conduct.

378. We do not find that the issue at 28.4 was unwanted conduct. This is because we have found that the claimant was in fact the aggressor and unreasonable party.

379. We do not find, in the alternative, that anything about 28.5 was unwanted conduct. This is because the claimant was in fact treated more beneficially over the ambiguity rather than penalised. She was given the benefit of the doubt on this point by the respondents.

380. It is not possible to sensibly make a finding on whether or not 28.6.1 or 28.6.2 were unwanted conduct given our findings above.

381. We cannot find that 28.6.3 was unwanted conduct. This is because the proven conduct is so at odds with the claimant's contemporaneous account. This can be found in her email about the meeting to Richard White dated 28 February 2023 at bundle page 2936. In this email she alleges that '*seeing this Mark Hilton could just not stop laughing in front of me while seeing my tears - this is really mean and unprofessional behaviour. It made me feel really hurt and abused*.' The claimant's characterisation of the meeting is not one we accept on the evidence. In those circumstances, we do not find that the admitted laugh was, as a matter of fact, unwanted conduct.

382. We accept that 28.7 was unwanted conduct, by its nature.

383. We cannot sensibly make a finding about 28.8 given our findings above.

384. Given our findings about 28.9, above, we do not consider this to be unwanted conduct. A failure to provide a specific reply in the context of a large volume of email correspondence was insufficient in the context of the

case as a whole, particularly given that the alleged conduct here is an omission rather than a positive act.

30. Did it relate to disability?

385. We find that 28.1 does relate to disability. This is because the respondents accepts anxiety as a disability, and, broadly speaking, the claimant's preference for communication to be in writing was informed by her anxieties.

386. We find that 28.2 does relate to disability. This is because the tablet was sent to facilitate communication as a supportive measure for the claimant's additional needs.

387. We find that 28.3, broadly speaking, did relate to disability. This is because it involved someone representing the claimant's case at a meeting which would involve her disability issues.

388. We find that, consistent with our other findings, the issue at 28.4 did not relate to the claimant's disability, in any event. This is because the issue arose from the claimant's own behaviour and we do not accept the claimant's contention that she was in fact unable to breath or her actions were caused by her disabilities. We accept however that it arose in part from the claimant's perception of her own needs.

389. We do not find that the issue at 25.8 related to disability, in any event. This is because there is no basis for making such a finding.

390. We accept that the issues at 28.6.1 and 2 related to the claimant's disability. This is because the claimant's role and breaks were broadly related to her disability.

391. We do not find that the issue at 28.6.3 related to disability, even taking a broad approach to 'relate', in any event. On the facts we have found them,

it was a simple interaction that happened between to individuals. The laugh was a perfectly normal part of human interaction. It did not relate to the claimant's disability.

392. We do not find that the issue at 28.7 related to the claimant's disability in any event. There was no link between her disability and Mr Hilton's delay.

393. We do not find that the issue at 28.8 related to the claimant's disability in any event. There was no clear link between the claimant's disability and this.

394. We accept that the issue at 28.9 related to the claimant's disability because it refers to her redeployment, which was related to her disability.

31. 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?

32. 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.

395. Even if we are wrong about the above, we do not find that any of the acts proven (or otherwise) had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. This is because of an absence of cogent evidence that this was any of the relevant individuals' intentions. We consider that all of the proven acts were intended to be supportive to the claimant's position. This is because (a) of their inherent nature and (b) the manner in which they were done. For any written communication this is clear from the words used.

396. We also do not find that any of the conduct had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. This is because of an absence of cogent evidence that this was the case. We did not consider that the fact that the claimant took a considerable amount of time off sick and reported her views as to what was causing it to medical staff is sufficient evidence that any of the respondents' conduct caused her sickness absence.

397. If we are wrong about that, then we do not find any such affect would be reasonable. This is because the actions by the respondents were entirely reasonable in the circumstances and no such reaction by the claimant would be reasonable. There is nothing inherent in the respondents' actions such that the relevant effect would be reasonable.

Victimisation (Equality Act 2010 section 27)

33. Did the claimant do a protected act as follows:

33.1 her grievance of 17 September 2021

33.2 her grievance of 10 April 2022;

33.3 the contents of the Workplace Incident Report which the Claimant completed on 31 October 2022;

33.4 her grievance of 12 January 2023?

398. The claimant submitted a grievance dated 17 September 2021; 10 April 2022; a workplace incident report dated 31 October 2022; and a grievance dated 12 January 2023.

399. It is not in dispute that that these were protected acts. Also, we were satisfied that, on the face of the documents, these were protected acts. This is because each involved an allegation of disability discrimination.

34. Did the respondents do the following things:

34.1 The claimant was not made aware of a vacancy for Mrs Walter's personal assistant position.

400. We find this not proven as a matter of fact for the reasons outlined above.

401. Also, even if this is wrong, this was not a detriment. There was no disadvantage to the claimant because it was a role well beyond her current banding, it being a band 4 role as opposed to the claimant being at band 2, and we accept Ms Watler's evidence that it involved a skill set which the claimant did not have, such as invoice management, procurement, and budget monitoring. Also, it was inherent in the role that it was a role involving direct staff contact and occasional patient contact and so involved wearing a mask. The claimant could not have been disadvantaged by her not being aware of roles that were inherently unsuitable for her.

34.2 Management of the claimant's sick leave by Ms Walters as described in paragraph 15 of the particulars attached to the claimant's first claim form.

402. We find this unproven as a matter of fact for the reasons outlined above.

34.3 Ms Walter made incorrect entries on Health Roster as described at paragraphs 1 - 6 under the heading 'Wrongful Entries in Health Roster not corrected' of the particulars attached to the claimant's first claim form.

403. As set out above in our findings of fact, there were two incorrect entries about the claimant's sickness absence on the health roster.

404. However, we do not accept that this amounted to a detriment. This is because we accept Mr Opio's evidence that the two days of sickness would

have been paid at full pay. Also, accepting the combination of Ms Walter's evidence, and Mr Opio's evidence, there was no actual effect on the amount of sick pay that the claimant got overall, repeating our finding of fact on this point above.

34.4 The requirement of Ms Walters and Mr Peters to discuss matters either face to face or by phone.

405. We repeat out findings on this as above.

406. To the extent that that the claimant was invited to discuss matters by anything other than written communication, this was not a detriment. It was not a disadvantage because there was no clear medical or occupational health evidence that she should communicate only in writing. Also, the purpose of non-written communication was entirely to support the claimant and facilitate supportive discussions about reasonable adjustments and redeployment. In that context, it was not disadvantageous.

34.5 The claimant was not appointed to the PA Band 4 role in February 2022. The claimant was not offered training on 22 February 2022 after she asked to do training entitled Pressing Pause: Reflective Practice Consultation training. The claimant was also not offered training on medical coding. The Claimant makes this allegation against Ms Walters and Mr Peters.

407. It is correct that the claimant was not appointed to the PA Band 4 role in February 2022. However, this was not a detriment in the context as explained above. This is because this was not a suitable role for the claimant's preferences or skills.

408. It is correct that the claimant was not offered the reflective practice or medical coding training. However, this was not a detriment because the reflective practice training was for senior managers and coding training was

not in relation at the first respondent. There was no role that required that training within the first respondent trust. There was no disadvantage to the claimant in those circumstances.

34.6 The claimant was denied training by Ms Walters and Mr Peters on the following occasions:

34.6.1 11th January 2022; the claimant sent an email to Mr Peters and Ms Walters asking for clinical coder apprentice level 3 training;

34.6.2 14th January 2022; the claimant sent an email to Mr Peters and Ms Walters asking for any training that would help keep her employment

34.6.3 17th February 2022; the claimant asked Ms Walters for more hospital based training and clerical and administrative training

34.6.4 21st February 2022; the claimant requested Pressing Pause Reflective Practice Consultation Training

409. We repeat out findings above. We treat not offering the claimant training as being effectively synonymous with it being denied, taking a broad approach to the claim. However, we do not accept that any of this amounted to a detriment. We accept the evidence of Ms Watlers and Mr Peters that where any particular training was appropriate to the claimant's role, it was granted by Ms Walters. To that end, not offering training which was not appropriate to the claimant's role is not a disadvantage.

410. Some training that was offered to the claimant was that she was being trained on the Cellam system by the PA to Rob Clarke. We make this finding because we accept Ms Walters' evidence on this point, as above.

411. In relation to issue 34.6.2, we do not find that this is proven. This is because other training was offered to the claimant, accepting Ms Walters' evidence that the claimant was being trained on the Cellam system by the PA to Rob

Clarke. Also, we accept the evidence of Mr Peters that additional external training was not the best way to support the claimant given that she would benefit more from actual experience than specific training.

412. Also, there was no duty on the first respondent to offer the claimant training for other roles, although it was clear that it was wholly supportive of the claimant being put into different roles.

34.7 Dippa Mistry calling the claimant's grievance a 'nightmare to edit' and saying she 'lost the will to live' on 25 May 2022

413. We find that these expressions as set out in our findings of fact, above, were used in the context of an email to Sarah Hulme in describing the difficulties Ms Mistry had in editing the claimant's document. However, this is not a detriment. We accept the evidence of Ms Mistry and Ms Hulme that the claimant was in no way disadvantaged by this comment being made. This comment was not directed towards the claimant but was about a document, and was a private communication between Ms Mistry and Ms Hulme.

34.8 An issue with the claimant's holiday and sick pay as described under the heading 'Payments reduced and ceased' at paragraphs 18 - 20 of the particulars attached to the claimant's first claim form. The Claimant cites Ms Hulme as responsible for victimising her.

414. A relevant email for this allegation is at bundle page 2130 from Sarah Hulme dated 13 April 2022. We do not find that there is anything disadvantageous to the claimant in the content of this email as it reflects the proper application of the respondents' policies and practices.

415. To the extent that the detriment alleged is that the claimant was paid sick pay, which reduced in accordance with the first respondent's policies, this was not a disadvantage. It was the same for everyone and was not treating her worse than others. The fact that the claimant had not been redeployed

when it is not evidenced that the failure to redeploy was the respondents' fault for any reason means that there is also no disadvantage.

34.9 Ms Dunkerley failing to support the claimant with redeployment during the summer of 2022

416. This claim fails as a matter of fact for the reasons already set out above.

417. We repeat also our findings above about the continued efforts to find the claimant a role in podiatry.

34.10 Ms Dunkerley forcing the claimant to accept the role of Peripatetic Health Centre Receptionist even though she said it was not suitable for her

418. This claim fails as a matter of fact for the reasons already outlined above.

34.11 Paying the claimant less than the advertised salary for the role of Peripatetic Health Centre Receptionist role. The Claimant says this was admitted by Ms Dunkerley on 11 November 2022 and that she, Ms Dunkerley should have ensured that the issue was resolved;

419. This claim fails as a matter of fact for the reasons already outlined above.

34.12 Rejecting the Claimant's application, made in October 2022, for the Gospel Oak Health Centre Administrator role. Again, the Claimant cites Ms Dunkerley as responsible for victimisation;

420. This claim is unproven for the reasons set out above, save that the claimant was in fact rejected for the role.

421. In any event, we do not find that this was a detriment. This is because the claimant had requested to leave that site following the October 2022 incident. The claimant did not actually want to work there. In those circumstances there was no disadvantage to her.

34.13 Rebecca Dunkerley failing to uphold the grievances contained in the Claimant's Workplace Incident Report dated 31 October 2023 and failing to look at the evidence presented?

422. It is right that Ms Dunkerley did not uphold the claimant's complaint contained in the workplace incident report dated 31 October 2023. However, we do not consider that Ms Dunkerley failed to look at the evidence presented. We also do not consider this, objectively analysed, to be a detriment. This is because it would only be a detriment if it were the wrong outcome. We are entirely satisfied that the outcome, from the claimant's perspective, is the best outcome that could have been justified by the evidence given our other findings about this incident. We agree with the respondents that this was nothing other than the ordinary management of alleged misconduct at work and that given it was open to the respondents' to formally discipline the claimant, the outcome was not a disadvantage.

34.14 On 16 November 2022, Ms Dunkerley threatening the claimant with disciplinary action as an outcome to the investigation into the workplace incident that occurred on 26 October 2023;

423. We repeat our factual findings on this issue above.

424. However, we are entirely satisfied that this was nothing other than the normal and proper application of the respondents' disciplinary policies and procedures. In fact, employment law and practice effectively mandates employers to warn employees of potential disciplinary consequences to events. In those circumstance we do not consider that this amounted to a disadvantage to the claimant.

34.15 Refusing further training requests from the Claimant as follows

34.15.1 8th September 2022, the claimant sent an email to regarding staff training including business administration

34.15.2 13th October 2022, the claimant sent an email to Ms Barnett, Ms Dunkerley and Mr White for retraining for a computer based job working from home

34.15.3 18th October 2022, the claimant sent an email to Ms Dunkerley and Mr White asking to have training to be home based

34.15.4 28th February 2023, the claimant asked Mr Hilton for training to do work which was computer based only or IPC on the job training.

34.15.5 18th April 2023, the claimant sent emails to Ms Barnett, Mr White, Mr Hilton, Ms Dunkerley and Mr Bailey seeking training to work from home as set out in her GP fit certificate. No one replied to the training request.

425. We repeat our factual findings on these issues as set out above. The training was rightly and properly refused for the good reasons as we found them to be, above. In those circumstances, namely that the requests were refused for good and proper reasons, there was no detriment to the claimant.

34.16 The first respondent failing to follow its own Workplace Adjustment policy for reasonable adjustments between 17 November 2021 and the last day of the Claimant's employment in that:

34.16.1 No early meeting was arranged with union rep after new diagnosis in April 2023;

34.16.2 The claimant's proposed solutions were ignored;

34.16.3 Adjustment requirements were not recorded in the WAP;

34.16.4 Reasons for decisions were not recorded;

34.16.5 Adjustments were not checked;

34.16.6 Effectiveness of adjustments was not reviewed regularly

426. We find that this allegation is misconceived and fails as a matter of fact. We repeat our findings as above on this issue. The claimant was also not disadvantaged by the way reasonable adjustments were handled by the respondents. All adjustments which were justified by the evidence, and were reasonable, were put in place.

427. In those circumstances there was no detriment to the claimant.

34.17 The first respondent's delay to provide the Claimant with information in an accessible format in response to her SAR request.

428. We repeat our factual findings above. Given that any delay was to accommodate the claimant's requests, this was not a disadvantage to her.

35. By doing so, did it subject the claimant to detriment?

429. Our findings on this issue are on an issue-by-issue basis, above. None of the facts proven amounted to a detriment in the context of this case.

36. If so, was it because the claimant did a protected act?

430. If we are wrong about any of the above, the claimant has failed to establish any primary facts from which we could infer that any of the proven acts were because the claimant did a protected act. There is no evidence from which we could properly make this finding. All of the respondents' actions were as a result of them simply responding to various events and requests made during the claimant's employment.

431. We also accept, as set out above, that neither Carole Walters nor Nigel Peters were aware of the claimant's grievance dated 17 September 2021 at the time of the alleged detriments.

432. In any event, we also fully accept the all of the witnesses evidence to us that none of their actions were because the claimant had done any protected act. There is no good reason to find otherwise. There is no basis on which the claimant establishes a causative link between the alleged detriments and the protected acts.

Unauthorised deductions and right to itemised pay statement

433. From the outset, the burden is on the claimant to establish that she suffered unlawful deductions from her wages. Nothing the claimant has presented to us has established this. Nonetheless, we did consider the allegations made in the context of the evidence available.

37. Did the first respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

434. Save as set out below, this claim is unparticularised. However, to the extent that the claimant made any claim for non-payment whilst she was not off sick and was not attending work, and there was no justification for her not to attend work, in light of our earlier findings, there was no unauthorised deduction of wages.

38. Did the first respondent fail to pay the claimant her full holiday pay for the holiday taken in or about June /July 2022, January 2023?

435. We repeat our findings above, namely that we accept Mr Opio's analysis of whether or not the claimant was not paid her full pay for holiday taken in June, July 2022 and January 2023. No annual leave was deducted from that period, but the claimant was paid sick pay for those dates. However,

additional payments were made of £510.68 for holiday dated 1-24th July 2022; together with a SSP payment for that period, the claimant was not under paid. This equals the amount she should have received for that period. In respect of January 2023, the claimant was paid £920. This appears was an additional amount of money to correct any underpayment made for that month. We accept in full Mr Hilton's evidence about this, as set out in his calculations in the bundle at page 2874.

39. Was the claimant's sickness pay incorrectly recorded causing her to lose entitlement to sick pay on the following occasions:

39.1 17 and 18 February 2022

436. We repeat our findings above, namely on 17 and 18 February 2022 the respondents concedes that the claimant was wrongly marked as sick when she should not have been. However, this did not result in an immediate loss of pay because she was in fact paid her full days' pay in any event, accepting the evidence of Mr Opio on this point. There was no reason to make a deduction at this time because the claimant was still in her rolling sickness period.

39.2 15-28 February 2022

437. We repeat our findings above, namely that the claimant was not marked as off sick for this period. It follows that sickness pay was not wrongly recorded and there was no subsequent loss to the claimant. Even if the claimant was in fact off sick during that period, this is to her benefit because no sickness pay would be deducted from any future eligibility period. We accept Mr Opio's evidence on this point.

39.3 25 January 2023

438. We repeat our findings above, namely that the claimant was not marked as off sick for this period. It follows that sickness pay was not wrongly recorded and there was no subsequent loss to the claimant. Even if the claimant was in fact off sick during that period, this is to her benefit because no sickness pay would be deducted from any future eligibility period. We accept Mr Opio's evidence on this point.

39.4 5 July 2023 onwards?

439. We repeat our findings above, namely, for this period, the claimant was not off sick. She therefore was not eligible for sick pay for this period at all. The claimant was also not attending work at that this stage, as already found above. The claimant was rightly on nil pay. The respondents was correct in not accepting the claimant's backdated fit note for that period in accordance with its policies.

440. We also accept the respondents' submission on this issue, namely that the claimant was not subjected to any underpayment of sick pay, and in fact probably received an overpayment. This is because when the claimant was reinstated in November 2021 she was given continuous service by the respondents but her previous sick leave had not been discounted upon reinstatement. The claimant had an entitlement to 29 full day's pay and 61 days half pay for a total of 90 days or three months, applying the respondents' policy on this. The claimant was off sick from 3 June 2021 until her dismissal in September 2021. As a result of this the claimant was treated as having a full entitlement from November 2021 which she was not in fact entitled to. It follows that even if there were erroneous deductions below, which we have not found, the claimant did not suffer any deductions from her pay as a result.

441. For those reasons the claim for unlawful deductions from wages is unsuccessful.

40. Did the first respondent fail to provide an itemised pay statement on 25 August 2023 or 25 September 2023?

442. This allegation is unsuccessful. The payslips are at pages 3775 and 3777 of the bundle. We are satisfied that these fulfil the criteria in section 8 ERA. There is no apparent reason why they do not given our factual findings above.

Employment Judge Barry Smith
6 December 2024

SENT TO THE PARTIES ON

12 December 2024
.....

.....
FOR THE TRIBUNAL OFFICE

Appendix A – List of Issues

Time limits

1. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2 If not, was there conduct extending over a period?

1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.4.1 Why were the complaints not made to the Tribunal in time?

1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Were the unauthorised deductions complaints made within the time limit in the Employment Rights Act 1996? The Tribunal will decide:

2.1 Was the claim 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?

2.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

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

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

Constructive unfair dismissal

3. Was the claimant's resignation in response to an alleged fundamental breach of her contract of employment as set out below?

4. The term of the contract relied upon by the claimant is the implied term of trust and confidence.

5. In particular, did the first respondent, without reasonable and proper cause, act in a manner that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondents?

6. For the avoidance of doubt, the claimant relies on the following conduct said to be discriminatory or constituting victimisation referred to in the reminder of the list of issues and the by the first Respondent as individually or cumulatively amounting to a repudiatory breach of her contract:

6.1 On 4 March 2022, Carole Walters demanding forcefully that the claimant talk to her on the phone when the claimant has asked that their communications be in writing only;

6.2 Failures in connection with the claimant's grievance dated 10 April 2022 including:

6.2.1 the unreasonable length of time taken to reach an outcome;

6.2.2 the respondents refusing to look at the Claimant's evidence and not explaining why

6.2.3 not initially allowing the Claimant to participate in writing, but instead insisting on face to face or Teams meetings (the Claimant says this was a reasonable adjustment required because of her disabilities)

6.2.4 the grievance outcome

6.3 Seeking to monitor the claimant's activities by sending her a tablet in April/May 2022;

6.4 Forcing the claimant to accept working conditions and hours of work for the role of Peripatetic Health centre role in August 2022 without a written agreement.

6.5 On 8 September 2022, refusing the claimant's application for a season ticket loan without valid legal justification;

6.6 On 3 November 2022, Mark Hilton lying in an email to the claimant saying he had watched the CCTV footage of the incident that occurred on 26 October 2022. The claimant suspected this because of the outcome of the investigation into the incident;

6.7 On 16 November 2022, Rebecca Dunkerley lying in the outcome letter to the claimant saying Mark Hilton had watched the CCTV footage and that there had been a fair investigation;

6.8 On 18 November 2022, Mark Hilton asking the Claimant for a telephone catch up while the claimant was off sick even though she has asked that communications be in writing;

6.9 Forcing the claimant to work in an unsafe working environment without reasonable adjustments in place The claimant alleges that the Peckwater Health Centre was not a safe working environment for her due to her disabilities. The respondents could have transferred her to other premises or agreed that the claimant could work from home. The claimant says that homeworking would solve most problems connected to the claimant's disability related needs;

6.10 Mark Hilton misleading the Claimant by telling her that reasonable adjustments were in place in Peckwater health Centre in January 2023 when they were not;

6.11 The respondents' failure to take into account the impact of the claimant's newly diagnosed hypothyroidism when considering her requirements for reasonable adjustments;

6.12 The delay in organising a new occupational health assessment for the claimant until September 2023 even though the claimant was diagnosed with hypothyroidism on 10 March 2023 and communicated that different reasonable adjustments would be needed by an email dated April 2023 onwards;

6.13 Forcing the claimant to have redeployment discussions on Teams or in person in the summer of 2023 when she had asked that communications be in writing as follows:

6.13.1 On 14 and 22 June 2023 Mark Hilton asked the claimant to meet via Teams with him and Wayne Bailey (HR);

6.13.2 On 5 July 2023, Mark Hiton asked the claimant to attend an OH case conference;

6.14 Requiring the claimant to provide a new fit note for the period from 5 July 2023 onwards. The claimant says this was not necessary as she had already provided the respondents with fit notes that said she was able to work with reasonable adjustments;

6.15 In July and August 2023 making the claimant believe that there could be an option for redeployment to the Camden Integrated Adult Service administrator position when this was not an option because a decision had been taken to reject her application on 12 July 2023;

6.16 In August 2023, Rebecca Dunkerly requiring the claimant to have redeployment discussions by Teams (2 and 30 August 2023 emails);

6.17 Forcing the claimant to accept considerably reduced pay and working hours before redeployment talks can commence. The Claimant relies on the email to her from Ms Dunkerley dated 30 August 2023 which said that the computer based element of a proposed role only amounted to 1.5 days per week and that she would only be paid for 1.5 days per week;

6.18 Rebecca Dunkerley's email dated 23 August 2023 to the claimant that confirmed that the claimant would be treated as being on unpaid leave from 5th July 2023 for the foreseeable future, to be reviewed again after receipt of the OH report and that payroll would write to her with the implications of this decision;

6.19 The failure of payroll to write to the claimant about any such implications. Instead the claimant's salary was stopped from 25 August 2023; and/or

6.20 Stopping the Claimant's pay on 25 August 2023;

6.21 Failing to provide the Claimant with a correct itemised pay slip on 25 August 2023; and/or

6.22 Others acts of discrimination, harassment and/or victimisation as set out in this list of issues.

7. Did the first respondent do those things?

8. If so, did that amount to a breach the implied term of trust and confidence and was it sufficiently serious to have justified the claimant's resignation?

9. Did the claimant waive or affirm any of the alleged breaches of the implied term of trust and confidence?

10. Insofar as the Tribunal finds that there has been a constructive dismissal, was this an unfair dismissal?

Disability

11. 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 first respondent accepts that the claimant is disabled by reason of chronic migraine and anxiety.

The claimant also relies on the following conditions: panic attacks, depression, fibromyalgia, vertigo, restless feet syndrome, high blood pressure and hypothyroidism

12. The Tribunal will decide:

    12.1 Did the claimant have a physical or mental impairment?

    12.2 Did the impairments have a substantial adverse effect on her ability to carry out day-to-day activities?

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

    12.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?

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

        12.5.1 Did they last at least 12 months, or were they likely to last at least 12 months?

        12.5.2 If not, were they likely to recur?

Discrimination arising from Disability (Equality Act 2010 section 15)

13. Did the first respondent treat the claimant unfavourably by:

    13.1 An incident on 26 October 2022 with a colleague, Ms A Bushiri, hitting the claimant's phone out of her hand?

14. Did the following things arise in consequence of the claimant's disability:

    14.1 The claimant's need for fresh air;

    14.2 The claimant seeking to open the door to get fresh air;

    14.3 The claimant's inability to communicate verbally?

    The Claimant says that these three things arise because of a combination of her migraines, depression, social anxiety and panic attacks.

15. Was the unfavourable treatment because of any of those things?

16. Was the treatment a proportionate means of achieving a legitimate aim?

17. The Tribunal will decide in particular:

    17.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

    17.2 could something less discriminatory have been done instead;

    17.3 how should the needs of the claimant and the first respondent be balanced?

18. Did the first respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

19. Did the respondents know or could it reasonably have been expected to know that the claimant had the disability? From what date?

20. A "PCP" is a provision, criterion or practice. Did the first respondent have the following

PCPs:

20.1 A requirement that staff wear face masks in clinical areas;

20.2 A requirement that administrators carry out tasks which were carried out in areas where face masks were mandatory;

20.3 A requirement that meetings be held face to face over Teams or on the telephone, and not in writing;

20.4 A requirement to work in enclosed areas with the doors closed?

20.5 A requirement to work at Peckwater Health Centre during the construction work in March and April 2023

21. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that

21.1 Wearing fact masks triggered the claimant's migraine. The claimant alleges that the dates when she was required to carry out duties in areas where mask wearing was mandatory was 23 November 2021, 24 November 2021, 25 November 2021, 26 November 2021, 8 December 2021, 11 January 2022, 10 February 2022 and every Monday and Thursday until 1 March 2022.

21.2 Having meetings by Teams or on the telephone caused the claimant to become anxious and have panic attacks. As a result, her migraines were triggered and the claimant was unable to express herself as her mind would not work properly. The Claimant says this caused the following disadvantages:

21.2.1 The requirement that a meeting be held rather than the claimant making her points in writing caused the grievance to be delayed.

21.2.2 The requirement to have a job interview over Teams meant that the claimant was excluded from the redeployment opportunity.

21.3 The claimant required access to fresh air to avoid symptoms of hypothyroidism (inability to control body temperature), high blood pressure and risk of migraine and panic attacks.

21.4 The background noise and dust generated by the construction work at Peckwater Health Centre further exacerbated the claimant's symptoms as described above in 20.3.

22. Did a physical feature, namely lack of access to fresh air at Gospel Oak Health Centre and Peckwater Health Centre, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she required access to fresh air?

23. Did the first respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

24. What steps could have been taken to avoid the disadvantage?

25. The claimant suggests:

25.1 Assigning tasks which had to be done in clinical areas to other employees;

25.2 Assigning tasks to the claimant which could be done in areas which were not clinical areas;

25.3 Allowing the claimant to put her points in writing rather than attend meetings (at

least initially);

25.4 Allowing the claimant to have constant access to fresh air;

25.5 Transferring the claimant to another health centre with access to fresh air;

25.6 Agreeing to one of the three options put forward in the claimant's flexible working request made in February 2023;

25.7 Agreeing to a job share in the role of Health Care Receptionist with the Claimant performing tasks that could be done remotely at home;

25.8 Training the claimant so that she could undertake a different role from home; and/or

25.9 Allowing the claimant to take paid disability leave. The Claimant is specifically arguing that the respondents should have paid her because it had failed to make reasonable adjustments.

26. Was it reasonable for the first respondent to have to take those steps?

27. Did the first respondent fail to take those steps?

Harassment related to Disability (Equality Act 2010 section 26)

28. Did the respondents do the following things:

28.1 Ms Walter's email sent on 4th March 2022 requesting that the claimant speak to her either by phone or in person (paragraph 16 of the particulars attached to the first claim form);

28.2 Sarah Hulme sending the claimant a tablet for virtual meetings. The Claimant says this was unwanted conduct because she had a computer and that the respondents; s real intention was to secretly monitor her activity;

28.3 Sarah Hulme's letter to the claimant dated 13th July 2022 (paragraph 15 of the particulars attached to the first claim form);

28.4 The incident on 26 October 2022 with colleague, Ms A Bushiri;

28.5 Mr Mark Hilton advising the claimant on 26 January 2023 that the misunderstanding regarding the calculation of holiday occurred because the claimant had sold part of her holiday (which the claimant disputes)

28.6 At a meeting on 28 February 2023, Mr Mark Hilton:

28.6.1 Mr Hilton was not aware of the role that the claimant undertook;

28.6.2 Mr Hilton advised the claimant that she was unable to take breaks or her lunch break;

28.6.3 Mr Hilton started laughing at the claimant.

28.7 Mr Hilton's delay in attending the meeting on 28 February 2023.

28.8 Mr Hilton advising senior managers on 28 February 2023 that the claimant had messed up the time for the meeting.

28.9 The failure by Rebecca Dunkerley and Richard White to reply to the claimant's email setting out her concerns regarding the meeting on 28 February 2023

29. If so, was that unwanted conduct?

30. Did it relate to disability?

31. 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?

32. 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.

Victimisation (Equality Act 2010 section 27)

33. Did the claimant do a protected act as follows:

    33.1 her grievance of 17 September 2021

    33.2 her grievance of 10 April 2022;

    33.3 the contents of the Workplace Incident Report which the Claimant completed on 31 October 2022;

    33.4 her grievance of 12 January 2023?

34. Did the respondents do the following things:

    34.1 The claimant was not made aware of a vacancy for Mrs Walter's personal assistant position.

    34.2 Management of the claimant's sick leave by Ms Walters as described in paragraph 15 of the particulars attached to the claimant's first claim form.

    34.3 Ms Walter made incorrect entries on Health Roster as described at paragraphs 1 - 6 under the heading 'Wrongful Entries in Health Roster not corrected' of the particulars attached to the claimant's first claim form.

    34.4 The requirement of Ms Walters and Mr Peters to discuss matters either face to face or by phone.

    34.5 The claimant was not appointed to the PA Band 4 role in February 2022. The claimant was not offered training on 22 February 2022 after she asked to do training entitled Pressing Pause: Reflective Practice Consultation training. The claimant was also not offered training on medical coding. The Claimant makes this allegation against Ms Walters and Mr Peters.

    34.6 The claimant was denied training by Ms Walters and Mr Peters on the following occasions:

        34.6.1 11th January 2022; the claimant sent an email to Mr Peters and Ms Walters asking for clinical coder apprentice level 3 training;

        34.6.2 14th January 2022; the claimant sent an email to Mr Peters and Ms Walters asking for any training that would help keep her employment

        34.6.3 17th February 2022; the claimant asked Ms Walters for more hospital based training and clerical and administrative training

        34.6.4 21st February 2022; the claimant requested Pressing Pause Reflective Practice Consultation Training

34.7 Dippa Mistry calling the claimant's grievance a 'nightmare to edit' and saying she 'lost the will to live' on 25 May 2022

34.8 An issue with the claimant's holiday and sick pay as described under the heading 'Payments reduced and ceased' at paragraphs 18 - 20 of the particulars attached to the claimant's first claim form. The Claimant cites Ms Hulme as responsible for victimising her.

34.9 Ms Dunkerley failing to support the claimant with redeployment during the summer of 2022

34.10 Ms Dunkerley forcing the claimant to accept the role of Peripatetic Health Centre Receptionist even though she said it was not suitable for her

34.11 Paying the claimant less than the advertised salary for the role of Peripatetic Health Centre Receptionist role. The Claimant says this was admitted by Ms Dunkerley on 11 November 2022 and that she, Ms Dunkerley should have ensured that the issue was resolved;

34.12 Rejecting the Claimant's application, made in October 2022, for the Gospel Oak Health Centre Administrator role. Again, the Claimant cites Ms Dunkerley as responsible for victimisation;

34.13 Rebecca Dunkerley failing to uphold the grievances contained in the Claimant's Workplace Incident Report dated 31 October 2023 and failing to look at the evidence presented?

34.14 On 16 November 2022, Ms Dunkerley threatening the claimant with disciplinary action as an outcome to the investigation into the workplace incident that occurred on 26 October 2023;

34.15 Refusing further training requests from the Claimant as follows

34.15.1 8th September 2022, the claimant sent an email to regarding staff training including business administration

34.15.2 13th October 2022, the claimant sent an email to Ms Barnett, Ms Dunkerley and Mr White for retraining for a computer based job working from home

34.15.3 18th October 2022, the claimant sent an email to Ms Dunkerley and Mr White asking to have training to be home based

34.15.4 28th February 2023, the claimant asked Mr Hilton for training to do work which was computer based only or IPC on the job training.

34.15.5 18th April 2023, the claimant sent emails to Ms Barnett, Mr White, Mr Hilton, Ms Dunkerley and Mr Bailey seeking training to work from home as set out in her GP fit certificate. No one replied to the training request.

34.16 The first respondent failing to follow its own Workplace Adjustment policy for reasonable adjustments between 17 November 2021 and the last day of the Claimant's employment in that:

34.16.1 No early meeting was arranged with union rep after new diagnosis in April 2023;

34.16.2 The claimant's proposed solutions were ignored;

34.16.3 Adjustment requirements were not recorded in the WAP;

34.16.4 Reasons for decisions were not recorded;

34.16.5 Adjustments were not checked;

34.16.6 Effectiveness of adjustments was not reviewed regularly

34.17 The first respondent's delay to provide the Claimant with information in an accessible format in response to her SAR request.

35. By doing so, did it subject the claimant to detriment?

36. If so, was it because the claimant did a protected act?

Unauthorised deductions and right to itemised pay statement

37. Did the first respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

38. Did the first respondent fail to pay the claimant her full holiday pay for the holiday taken in or about June /July 2022, January 2023?

39. Was the claimant's sickness pay incorrectly recorded causing her to lose entitlement to sick pay on the following occasions:

39.1 17 and 18 February 2022

39.2 15-28 February 2022

39.3 25 January 2023

39.4 5 July 2023 onwards?

40. Did the first respondent fail to provide an itemised pay statement on 25 August 2023 or 25 September 2023?

Remedy

41. If there is a compensatory award, how much should it be?

42. What basic award is payable to the claimant, if any?

43. Should the Tribunal make a recommendation that the first respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

44. What financial losses has the discrimination caused the claimant?

45. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

46. If not, for what period of loss should the claimant be compensated?

47. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

48. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that? C claims it has caused her to have hypothyroidism and hypertension which she did not have before

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

50. Did the first respondent or the claimant unreasonably fail to comply with it?

51. If so, is it just and equitable to increase or decrease any award payable to the claimant?

52. By what proportion, up to 25%?

53. Should interest be awarded? How much?

Appendix B – Reasonable adjustments

1. This is the tribunal's decision about the claimant's application for reasonable adjustments dated 15 September 2024.

2. The following reasonable adjustments have already been agreed by the tribunal for the final hearing:

   (a) Assistance of an intermediary, for at least her evidence;

   (b) Regular short breaks will be taken during the hearing whenever the claimant indicates that she needs a break; the length of such breaks will be discussed on each occasion;

   (c) The claimant has permission to move around the room, as long as she remains on camera and with the sound on;

   (d) All participants must take into account the guidance on forms of questioning as set out in the intermediary report dated 3 October 2023, including giving time to process questions and formulate answers, use of a chronology and signposting topics, use of clear language, and avoiding question types such as multiples and negatives;

   (e) Rest days to be timetabled as necessary;

   (f) Closing submissions to be primarily in writing (with no prohibition on oral submissions) with timetabled days for these to be drafted; and

   (g) When giving their decision on any applications or other contested issues, the Employment Judge will pay regard to the recommendations set out in section 9 of the intermediary report dated 3 October 2023.

3. We agreed that the following reasonable adjustments should also be in place:

(a) The claimant may use the chatbox function for short and inconsequential communications during the hearing which are not about important issues. However, the claimant cannot use it for her evidence to the tribunal. The claimant must also not use ChatGPT (or similar) when communicating via the chatbox.

(b) The claimant may supply in advance written questions for the respondent's witnesses to the tribunal and respondent. The questions will be asked by the tribunal, subject to the tribunal's discretion, as cross-examination of those witnesses.

4. Our full reasons are below.

5. This is the tribunal's decision on the claimant's application for reasonable adjustments dated 15 September 2024. We have made this decision without an oral hearing because we have decided that it is in the interests of justice to do so. The respondent did not expressly agree to this decision being made without a hearing but has not demonstrably been prejudiced by only making written submissions. Although the claimant was absent from the hearing when the prospect of making this decision was raised, the claimant's express request throughout has for all or some of the decisions in this case to be made without an oral hearing. We therefore consider that making a decision in this way is consistent with the claimant's wishes. Also, both the claimant and respondent were given an opportunity to make written submissions and provide written submissions in reply. Although we did not receive initial written submissions from the claimant, the claimant's written application is detailed and thorough. She also did send in some reply submissions and so appears to be fully engaged with the case and the issues. We also consider that the claimant has had sufficient time to prepare written submissions. This firstly because it is not apparent that any additional submissions to her written application are necessary. Also, although the claimant was signed off as unfit to work until 24 September, this is not the same as medical evidence that she is unfit to prepare written submissions for the tribunal, or to attend a tribunal hearing.

6. The claimant made an application to postpone the continuation of the hearing until Tuesday 24 September 2024. It is clear from the claimant's medical evidence submitted in support of her application to postpone the hearing dated 18 September 2024 that she was discharged from hospital at around 3am on 18 September 2024 and the next steps were for her to have a follow up visit on 21 November 2024. Having decided that the medical evidence did not support delaying the claimant's evidence beyond Monday 23 September 2024, we considered that it was fair and appropriate for the claimant to know in advance of her giving evidence what adjustments to the hearing process had been agreed by the tribunal.

7. We also note that although the claimant's reply submissions on this matter also requested a postponement of the final hearing and recusal of the judge, we did not find that this was a good reason to delay making a decision about reasonable adjustments. Those applications will be decided at a later stage.

8. The principal document we considered was the claimant's written application for reasonable adjustments dated 15 September 2024. In this she requests the following additional reasonable adjustments in order for her to fairly participate in her final hearing:

    (a) use of written communication during the hearings, specifically having her responses in writing through the CVP chat box, after which someone would read them aloud; linked to this is essentially the same request to give written responses to any questions asked in cross-examination and any submissions made during the hearing;

    (b) a hearing process based entirely on written material; and

    (c) Use of ChatGPT, generally.

9. We can reassure the claimant that any bare allegation made by the respondent will not affect our judgment. We will decide the claims based on the evidence we have, taking into account the arguments made by both sides.

10. The respondent resisted the claimant's application in 8 pages of written submissions. In summary, the respondent says that the claimant's application is not sufficiently supported by evidence, had in whole or in part already been refused by the tribunal on previous occasions and there had been no material change of circumstances, and the changes would not be fair to the respondent in any event.

11. When deciding this application we fully took into account the claimant's diagnoses and position as a litigant in person.

12. We also considered that the following evidence in the main hearing bundle, in particular, was potentially relevant to the application.

13. In a letter dated 8 March 2023 the claimant's GP advised of her diagnoses, including high blood pressure, and anxiety, depression and panic attacks. It includes

    '*Due to the severity of her anxiety she prefers not to communicate verbally and rather communicate in writing. she* [sic] *finds the verbal communication too stressful'. She would benefit from access to fresh air and have regular food breaks. this* [sic] *again would reduce her stress and anxiety. Regarding the actual tribunal interview, she would find prolonged verbal communication very difficult and again prefers to communicate in writing. Prolonged periods of verbal communication are overwhelming for her.'*

14. We note that this evidence records a preference, rather than a requirement, for the claimant to not communicate verbally. Also, we note that the extent of this evidence is that the claimant would find prolonged verbal communication difficult. However, we also considered that prolonged verbal communication could be avoided by the claimant taking sufficiently frequent breaks. Also, we noted that there were limits to the weight we could give to this evidence because it was not part of a recent or comprehensive assessment specifically for the purposes of assessing what the claimant could or could not do, medically speaking, in tribunal proceedings. It also does not directly address the question as to what

extent her difficulties can be mitigated through other means or expressly state that communication only in writing is what she reasonably requires.

15. A fit note dated 2 March 2023 states that the claimant may be fit for work taking into account the following advice '*She requires to fresh air. Adequate breasks* [sic] *for air and food (including lunch break)…* We consider that this is very limited evidence which was not commissioned to specifically address the adjustments the claimant reasonably required to participate in tribunal proceedings.

16. A letter dated 14 September 2023 from the claimant's GP stating '*She also suffers from severe anxiety, depression and panic attacks…. She finds being in a tribunal / Court / assessment setting extremely stressful. She is unable to verbalise in these settings as this will severely elevate her blood pressure'.* We considered that there were limits to the extent of this evidence. It does not form part of a comprehensive assessment specifically to address the reasonable adjustments she requires in order to fairly participate in tribunal proceedings. Also, it does not address the impact that other steps would have to mitigate against the stress that the claimant's difficulties. Also, this evidence pre-dates later case management hearings during which the claimant is not recorded has having needed to participate through the CVP chatbox function, including a significant case management hearing over three days to address the claimant's amendment applications.

17. We also took into account a letter from the claimant's counsellor (undated) and the other documents referred to by the claimant. We were conscious that parts of the claimant's witness statement and updated disability impact statement were also relevant.

18. We also took into account the events of the hearing on 17 September 2024 and the medical evidence arising from the claimant's hospital admission after the hearing. This included a request by a treating doctor that

'*She has asked that we request from the judge to take into account her high blood pressure and the impact of her anxiety on this. We ask that where possible the court facilitates alternative forms of communication for Ragne as her blood pressure is indeed very high and … is very likely to be impacted by her anxiety and panic attacks. The known potential risk and complications of very high blood pressures … include stroke, heart attacks and kidney injury*.'

19. We gave limited weight to this evidence. Firstly, this was not evidence commissioned specifically to address the adjustments that the claimant would require to participate in tribunal proceedings and it did not take into account the adjustments already in place. Also, it did not appear to be based on much information directly provided by the claimant. This is because the notes include that the history was taken via the claimant's partner, although the claimant answered some questions by typing on her phone. It is also based on incorrected information. This is because there was no threat of adverse costs made during the hearing by the tribunal, although this was stated as being the case to the clinicals treating the claimant. We therefore could not be satisfied that the account given to them was accurate. Also, although the claimant says she was unable to participate in the hearing due to a panic attack and vomiting at around 10:45, she did not attend A&E until 20:15 on the same day. In addition, the claimant was plainly under a misunderstanding about the presence of an intermediary: although there was no intermediary, because one had not been booked, the tribunal did not refuse the use of an intermediary during the hearing. An intermediary was ordered and did attend the following day. The hospital evidence, above, also does not specify what alternative communication should be.

20. The claimant has the benefit of an intermediary and the tribunal has already agreed and ordered one to be present and that this should remain in place for at least the extent of the claimant's evidence.

21. The claimant was twice assessed for intermediary support. The first report was dated 11 August 2023 but is of limited assistance because it was not

a full assessment following early termination. It recommended further assessment. The second report 3 October 2023 followed a full assessment. This found that the claimant benefited from informal breaks, she had difficulty consistently processing sentences containing more than four key words, she was unable to reliably answer questions such as those involving multiple parts and negatives, she had difficulty with some idioms, and difficulty retaining details from a passage of complex verbal information. She also sometimes required refocussing and referring to specific dates. The report recommends that the claimant has the support of an intermediary to attend to and process information and retain key information. Specifically, this report does not identify difficulties in communication or recommend a purely written form of hearing, or that the claimant be permitted to give her answers (whether in cross-examination or otherwise) only in writing. General recommendations are provided which include use of clear language and giving the claimant time to process questions, and construct her responses. During the hearing, the claimant should be given frequent breaks, and it recommended that questions be provided in advance. This specific recommendation has already been rejected by the tribunal, with reasons given, and there has been no material change of circumstances to revisit this particular adjustment. Further recommendations are made about keeping to a clear chronology, introducing each topic, giving the claimant time to process each question and formulate an answer, use of short questions, avoiding multiple part questions, and avoiding negatives.

22. During a hearing on 20 October 2023 EJ Klimov conducted a ground rules hearing and agreed that the claimant should, for the next preliminary hearing, have an intermediary, all participates should have regard to the general recommendations of the intermediary report dated 3 October 2023 (above), there should be regular short breaks at the claimant's request, the claimant may stand and move around during the hearing provided she remains on camera and the sound is one, and the tribunal will consider the recommendations in section 9 of the intermediary's report dated 3 October 2023. EJ Klimov records at paragraph [18] of the orders that '*I was glad to*

observe that despite her medical issues Mrs Joerand was able to engage and fully participate in the hearing. She asked for a couple of short breaks to take her medications, but otherwise the hearing proceeded at a reasonable pace… [19] *During the hearing Mrs Joerand did not ask Mr Firkins* [the intermediary] *to help her with understanding or passing communications. Mr Firkins did not intervene to ask for the communication style or language to be changed*. […]

23. At paragraph [20] EJ Klimov records that the claimant expressed anxiety about being able to sustain a multi-day hearing and whether the claim could be decided on the papers, and the proceedings conducted by way of written communications only. '*I explained why, considering the scope and complexity of her case, this was not a viable option. I understand this option has already been considered and decided by the Tribunal*.'

24. On 5 February 2024 EJ Davidson ordered that the previous ground rules orders remained in place for the final hearing: paragraph [3].

25. On 10, 12 and 17 June 2024 EJ E Burns conducted an extensive case management hearing including determination of the claimant's lengthy amendment application. This timetabled a number of rest days for the claimant and provided five days for her evidence. The orders record that the claimant finds face to face communication difficult (whether in person or on video) at paragraph [32] of the Background. At [56] EJ Burns specifically rejected the need for cross-examination questions to be provided in advance as follows:

I also considered the recommendation in the intermediary report that the respondents counsel share her cross-examination questions with the intermediary in writing in advance. I considered this was not necessary in the interests of justice and both parties agreed with me. If the claimant does not understand any questions, she knows that she simply needs to say this and then the judge and the intermediary can become involved in clarifying them for her. This was the way the hearing in front of me was conducted and it worked well, albeit that it was not a fast process. I have therefore added time to the original hearing to ensure that the claimant

has plenty of time to take breaks and seek clarification during her cross examination as necessary. There is also an opportunity for her to rest when her cross examination is finished.

26. We also took into account the documents sent and referred to by the claimant in her reply submissions dated 19 September 2024. The PIP documents had limited weight and did not directly support the claimant's contentions. Also, we consider that limited use of the chatbox, to the extent it was in fact permitted by previous judges, is very different to the claimant's evidence under oath or affirmation compared with case management issues.

27. It follows that the claimant already has the following reasonable adjustments agreed:

    (a) Assistance of an intermediary, for at least her evidence;

    (b) Regular short breaks will be taken during the hearing whenever the claimant indicates that she needs a break; the length of such breaks will be discussed on each occasion;

    (c) The claimant has permission to move around the room, as long as she remains on camera and with the sound on;

    (d) All participants must take into account the guidance on forms of questioning as set out in the intermediary report dated 3 October 2023, including giving time to process questions and formulate answers, use of a chronology and signposting topics, use of clear language, and avoiding question types such as multiples and negatives;

    (e) Rest days to be timetabled as necessary;

    (f) Closing submissions to be primarily in writing (with no prohibition on oral submissions) with timetabled days for these to be drafted; and

    (g) When giving their decision on any applications or other contested issues, the Employment Judge will pay regard to the

recommendations set out in section 9 of the intermediary report dated 3 October 2023.

28. It is also the case, although we understand that the claimant may not be aware of this, that there is no prohibition on the claimant taking notes during her evidence. She will also be given sufficient time to formulate her answers. Neither of these are in fact reasonable adjustments because they are available to all witnesses.

29. Also, the number of breaks can and will be set in a predicable way, for example, at specified times, or after a predetermined length of time, but also effectively on demand if required. This is the normal approach of the Employment Tribunals.

30. The claimant is also attending by CVP and from home, so she should have ready access to fresh air and be in a comfortable environment.

31. We also take into account throughout that the claimant is a litigant in person and that English is not her first language.

32. In making this decision, and for all of the final hearing, we took into account the relevant sections of the Equal Treatment Bench Book, the claimant's medical history and diagnoses, all relevant medical reports, and the Presidential Guidance on Vulnerable parties and witnesses in the Employment Tribunal, and the resources at the Advocate's Gateway.

33. Adjustments to the hearing process can be put in place under rule 29 Employment Tribunals Rules of Procedure (2013). A relevant authority includes the review at *Shui v University of Manchester* [2018] ICT 77 EAT (HHJ Eady at [26-34]).

34. We consider that although the tribunal is under a duty to ensure the fair participation of the parties by making adjustments to the hearing process, this is only required so far as is necessary, reasonable, and allows a fair hearing for all parties. Also, requests for adjustment should be supported by evidence adequate to justify the particular adjustment that is requested. We do not consider ourselves to be strictly bound by any of the medical

assessments or intermediary assessments. However, we must make our decisions based on all of the evidence, including the most recent events, giving appropriate weight to each piece of evidence as is appropriate.

35. We agree with the respondent, firstly, that in light of the above circumstances, the claimant's request for a fully written procedure should be refused because it has already been decided by the tribunal and there has been no material change of circumstances.

36. If we are wrong about this, then we would refuse it for the same reasons. We do not feel that there is sufficient cogent evidence to support such a procedure. Also, it is difficult, and potentially impossible, to see how a fully written procedure would be fair for the parties. This is particularly so given the need to challenge many witnesses, including the claimant, on important issues of fact. These include allegations of dishonesty made by the claimant.

37. We agree with the respondent that, to a degree, the claimant's request to communicate only in writing has been addressed by the tribunal in the past and there has been no material change in circumstances. In particular, the strongest evidence in support of this was the GP letter dated 8 March 2023. However, we repeat the weaknesses in that evidence and also it is clear that some verbal communication is possible given how the claimant presented before EJ Klimov and EJ Burns. We acknowledge that giving evidence at a final hearing may be more stressful for the claimant. However, there is no clear evidence that this cannot be sufficiently mitigated by the use of additional breaks for the claimant, with additional rest days if required.

38. We have also separately considered whether or not the reasonable adjustments request to given answers using the chatbox, particularly to answer questions in cross-examination, should be allowed, even putting aside previous decisions of the tribunal about reasonable adjustments. We agree with the respondent's submission that this request is not supported by adequate evidence in any event. This is because the evidence above,

taken at its highest, does not provide enough clear support for the claimant's request to be granted.

39. It is also right to note that the claimant does not have a diagnosis of mutism. The claimant's preference as to how she communicates is not the same as a diagnosis of this.

40. We take into account that the adjustments sought are not those that have been recommended by the comprehensive intermediary assessment which specifically addresses the adaptations required for the claimant to fairly participate in the hearing. It is also relevant that in the claimant's written brief before an intermediary assessment by Zoom (8 August 2023) she had already requested that she be able to give her evidence in writing, and this was not something that was subsequently recommended by the intermediary's assessment for reasonable adjustments. This is therefore not a new issue.

41. We also do not consider the events of the hearing on 17 September 2023 and subsequent medical evidence supports the claimant's application enough for it to be granted. Firstly, we gave the evidence limited weight because of its limitations (as above). Secondly, although the claimant plainly became visibly distressed during the hearing, it is right to acknowledge that she did not have the benefit of an intermediary during the hearing. An intermediary will now be in place for the claimant's evidence.

42. We also take into account the fact that the claimant has previously been able to fully participate in the previous hearings and there is no clear evidence to support a change in her medical situation.

43. We also find that it would not be appropriate or practicable for the claimant to respond to cross-examination by use of the chat function on CVP. This is because there would be no guarantee to the tribunal that the claimant was the person providing the answers. Also, the claimant has expressed a desire to use ChatGPT and the tribunal would have no way of knowing

which answers were the claimant's own words, particularly given that the claimant is to be given sufficient time to formulate her answers.

44. However, we do find that it would be reasonable and workable for a some parts of the hearing process to be conducted in writing. Specifically, if the claimant had very short and inconsequential communications via the chatbox, which were not on important issues, this is unlikely to create practical difficulties, as long as it is not during her evidence or with the assistance of ChatGPT (or similar). Also, the claimant can be permitted to put her own questions to the respondent's witnesses in writing and they can be read out by the tribunal, subject to the tribunal's discretion not to ask an inappropriate, or repetitive question, and the tribunal's ability to rephrase any question as it saw fit. This is consistent with the tribunal's duty to control all questions of witnesses, whether in writing or otherwise. The respondent, however, would be fully aware of the questions to be asked in advance, using this method. Also, the written closing submissions are already to be done primarily in writing.

45. We therefore permit the claimant to (a) use the chatbox function for short and inconsequential communications during the hearing which are not about important issues and (b) supply in advance to the tribunal and respondent written questions for the respondent's witnesses to be asked by the tribunal, at the tribunal's discretion. However, the claimant cannot use it for her evidence to the tribunal. The claimant must also not use ChatGPT (or similar) when communicating via the chatbox.

46. Regarding the use of ChatGPT, we cannot prohibit the claimant from using this tool for written submissions. However, the claimant is warned that ChatGPT is unlikely to be a reliable source of legal research. Also, to the extent that the tribunal is aware that the claimant is using it, the tribunal may give any material generated by ChatGPT less weight than the claimant's own words. The claimant is therefore not encouraged to use ChatGPT by the tribunal. Also, ChatGPT should not be used by the claimant where her own words are plainly required by the tribunal, such as responses during the hearing.

47. We remind the claimant that, ultimately, it is also her responsibility to monitor her own health during the proceedings. The tribunal is highly limited in what it can do in a remote video hearing. The claimant should request a break as and when this may be required for her own purposes. If this requires that her questioning is conducted at a very slow pace then that is what the tribunal will do. We will also require the respondent's counsel to only cross-examine only so much is necessary for a fair hearing, as is the normal practice of the Employment Tribunals.

48. For completeness, it is also ultimately the claimant's choice whether to give evidence or not. However, if the claimant does not give evidence then the tribunal may give little or no weight to her witness statement, particularly in relation to anything that is disputed by the respondent and is unsupported by independent evidence. If the claimant wishes for her case to proceed without her evidence then it is open for the claimant to choose to do this, although if she makes this choice it should be fully in the knowledge that some claims may fail if they are not supported by sufficient cogent evidence of the facts relied on by the claimant.

49. For completeness, we do not accept that the claimant's submissions about alleged misconduct by the respondent and or its representatives are supported by sufficient cogent evidence and we therefore make no such finding.

50. We should also note that the claimant's email sent at 12:09 AM on 20 September 2024 contained apparent links to a googledrive rather than sending the documents to the tribunal directly. The parties were advised by email that the tribunal could not access those documents and requested that they be resent if the claimant relied on them by 12:00 on 20 September 2024. Those documents were resent by the claimant and considered by the tribunal before making a decision.

51. We also do not accept the claimants request for further intermediary assessment for reasonable adjustments. This is because we do not consider there to have been a material change of circumstances that

would justify further assessment, two assessments having taken place already.

52. The claimant's application for recusal and postponement of the hearing dated 19 September 2024 will be determined at the resumed hearing on Monday 23 September 2024.

53. The tribunal also rejects the claimant's contentions about the 17 September 2024 hearing. The hearing did not progress to a stage where reasonable adjustments could be fully considered, and the tribunal had in fact already read the claimants written application for reasonable adjustments. It was necessary to clarify the position regarding an intermediary and the hearing was aborted prematurely.

54. Save for the additional reasonable adjustments expressly permitted above, the claimant's application is refused for all of the above reasons.

Appendix C – recusal and postponement

1. These are the tribunal's written reasons for refusing the claimant's application for the judge to recuse himself, for the hearing to be postponed dated 19 September 2024, and also the requests for further Communicourt or medical assessment. The decisions were made by the tribunal on Monday 23 September 2024 after the claimant was given an opportunity to attend or submit anything in writing. The tribunal also heard submissions from the respondents at that hearing and gave brief oral reasons. It was in the interests of justice to proceed in the absence of the claimant because she was aware of the hearing and the tribunal considered that the claimant had been given sufficient opportunity to attend. Also, her evidence and written submissions were available to be considered. Also, by that time all reasonable adjustments that were supported by the evidence were in place, including an intermediary.

2. The respondents relied on Dobbs v Triodos Bank NV [2005] EWCA 468 at [7]:

'*It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant — whether it be a represented litigant or a litigant in person — criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised — whether that criticism was justified or*

not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard.'

3. The claimant did not respond to calls from the tribunal clerk to her mobile phone that morning.

4. Under Rule 30A(2) if an application for postponement is made less than 7 days before the hearing start date then, in the circumstances of this case, it can only be postponed where (c) there are exceptional circumstances. We accepted that being unable to attend an hearing due to medical reasons may amount to exceptional circumstances. We also applied the Presidential Guidance – Seeking a Postponement of a Hearing, including that '*When a party or witness is unable for medical reasons to attend a hearing. All Medical certificates and supporting medical evidence should be provided in addition to an explanation of the nature of the health condition concerned. Where medical evidence is supplied it should include a statement from the medical practitioner that in their opinion the applicant is unfit to attend the hearing, the prognosis of the condition and an indication of when that state of affairs may cease'.* We accepted that this is, ultimately, guidance, and that in appropriate circumstances it must be applied fairly, taking into account all of the circumstances of the case.

5. The claimant's letter '*Subject: Request for Appointment of a New Judge Due to Concerns of Apparent Bias'* asked the Judge to recuse himself on the basis that the approach taken during the hearing on 17 September 2024 amounted to a failure to accommodate the claimant's medical and communication needs. We also considered the claimant's letter headed '*Request for Appointment of New Judge and New Communicourt Assessment Due to Procedural Failures and Health Deterioration'* dated 19 September 2024. This was 8 pages long and made detailed references to the evidence and wider supporting material.

Recusal

6. The relevant test can be found in Porter v Magill [2002] 2 AC 357: whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased. We did not conclude that this test was met in this case.

7. The claimant submits that the claimant should have been allowed during the hearing to use written submissions, use the chat box, and use an intermediary.

8. The claimant has mischaracterised the very short hearing in her submissions. The hearing did not get as far as hearing submissions before the claimant left the hearing. Although a request was made for the claimant to briefly speak, at that stage the claimant had not been granted as a reasonable adjustment permission to use the chat box for submissions. Also, there was an initial attempt by the tribunal to ascertain that the claimant's microphone was working. Ultimately, the claimant did not at that time (or subsequently) have medical evidence that she was unable to speak and that communicating exclusively in writing should be granted as a reasonable adjustment. Also, there was no suggestion that the claimant was not permitted to rely on her extensive written submissions which the Judge had already considered before the hearing had started. Further, it was not the case that the claimant was not permitted intermediary support. It is correct that an intermediary was not present and had not in fact been booked by the tribunal administration for the first morning of the full merits hearing. The Judge was at that stage trying to ascertain whether or not the parties were anticipating an intermediary (this was the case) and also whether or not there had been an express order for an intermediary to attend.

9. It is relevant that the claimant accepts that she has not previously used the intermediary extensively.

10. The claimant was also not denied breaks, nor did she clearly request a break. The hearing did also not last long enough for it to be the case that a break might have been reasonably anticipated.

11. The claimant's submission that the Judge took a dismissive approach is also not supported by evidence. Also, it was right that the claimant be reminded that she had not been granted as a reasonable adjustment use of the chatbox to make submissions at that stage.

12. Also, the period at which the claimant was visibly distressed was not long enough for the Judge to take any more steps than he did. The hearing also did not progress to a stage where the Judge could explore reasonable adjustments, breaks, or other introductory matters with the claimant.

13. On 17 September 2024 the claimant's connection ended at around 10:46. The claimant had only participated for a very short period of time before then. At around midday, the claimant was still not present. The claimant was twice called by the clerk; this rang through but the phone was not answered. The parties were emailed at 12:24 asking to return at 14:00. At 14:00 the claimant still had not returned.

14. Although the claimant takes issue with being reminded that non-attendance at a hearing may result in it being dismissed under Rule 47, this was only referred to in communications from the tribunal to ensure that she was aware of the potential consequences if she did not attend for good reason. It was nothing more than an expression of rules that apply to all cases, and the claimant was reminded of this because she was a litigant in person. The tribunal considered the medical position as was evidenced throughout, as explained in further reasons below and elsewhere.

15. We also did not consider that any of the claimant's assertions which amounted to a failure to apply the principles in the Equal Treatment Bench Book were supported by the evidence or what happened during the

hearing. The tribunal had due regard to those principles throughout all of the proceedings.

16. We also agreed with the respondents' submissions that in reality the claimant was more expressing dissatisfaction with the tribunal as opposed to actually demonstrating evidence of bias or apparent bias.

17. In summary, there was nothing about the hearing on 17 September 2024 that would meet the test for apparent bias. We considered that the recusal application, in the circumstances, was entirely without merit.

Postponement

18. The letter dated 19 September 2024 also asserted '*Given the severity of my condition and the pending application for a new judge and updated communication assessment, I request a postponement of the hearing until after November 16, 2024, when I am medically fit to participate.'*

19. We note that in the claimant's reply submissions on reasonable adjustments it was asserted that *'my health has materially deteriorated since the hearing on August 9, 2024, particularly following strike-out application. This event, combined with the subsequent hearing on September 17, 2024, has triggered severe anxiety, selective mutism, and dangerously high blood pressure, all of which have been medically documented. My GP prescribed me on September 13 2024 extra supply of strong antianxiety medication Diazepam in addition to regular medication as me to be able to take part in Employment Tribunal hearings'.* However, we did not feel that the claimant's assertion that her health had deteriorated since 9 August 2024 was supported by medical evidence, considering everything that was available to us. Also, it is important to note that on 9 September 2024 the claimant had emailed the respondents and tribunal stating '*the Claimant is ready for the Employment Tribunal Hearing starting from 17. September 2024.'* The claimant did not say that her health had deteriorated or that she required reassessment for reasonable adjustments in that email.

20. In the claimant's reply submissions dated 19 September 2024 she requested a new Communicourt assessment to reassess her communication needs in light of her deteriorating health. This application was rejected. The claimant's health was not, on the medical evidence available, deteriorating. Also, there was no material change of circumstances that would have justified a further Communicourt assessment. The claimant had already been twice assessed for intermediary support and an intermediary had been granted. Also, the claimant at no stage had attended the tribunal for the final hearing when (a) there was an intermediary present and (b) the claimant had used all the reasonable adjustments granted as a result of her application dated 15 September 2024. Further, a further assessment would have necessitated a postponement of the final hearing. This would have involved a postponement of at least 12 months. Such a postponement would have been wholly contrary to the overriding objective and caused very serious prejudice to the respondents in terms of costs. Also, memories would have likely faded significantly, particularly given the age of some of the allegations. There was no good reason to justify further intermediary assessment in the circumstances.

21. The claimant also make a generalised request for a medical assessment. It was unclear to us exactly what power we might have to order such an assessment. However, assuming we did have such a power, this request was refused. The starting position is for the parties to support applications with medical evidence. The claimant has already had the benefit of two tribunal-commissioned intermediary assessments. There was nothing that would justify a generalised medical assessment in the circumstances of the case.

22. The tribunal notes that from 19 September 2024 the claimant was able to, and did, provide the tribunal with lengthy written submissions referring to the evidence. This is not indicative of a party that was unable to participate on the proceedings for medical reasons, particularly given the extensive reasonable adjustments granted by the tribunal in the decision above, of which the claimant was aware from Friday 20 September 2024 (so in

advance of the tribunal reconvening on Monday 23 September 2024). Also, intermediary support was available from Monday 23 September 2024 onwards until it was clear that the claimant was not attending the hearings. The claimant was aware of this from a communication from the tribunal dated 18 September 2024 at 12:19pm (this included provision for the claimant's reply submissions about reasonable adjustments, which she drafted). The claimant was also informed '*It is ordered that the claimant be assisted by an intermediary for her substantive evidence and cross-examination in these claims'*. The evidence was timetabled to start Monday 23 September 2024. The tribunal's position was then to keep the requirement for an intermediary under review.

23. The 18 September 2024 communication also included that:

'*The tribunal has considered the claimant's application to postpone the hearing dated 18 September 2024. In light of the claimant's attendance at hospital it is in the interests of justice to delay the claimant's attendance at the remote tribunal hearings. However, there are limits to the evidence in support of this about how long is required for her to recover. For example, evidence about fitness to work is not the same as evidence that someone is unfit to attend a tribunal. In the circumstances, the tribunal will use 18, 19 and 20 September 2024 as reading days with a view to starting the claimant's evidence on Monday 23 September 2024.'*

24. It is relevant to note, therefore, that the claimant was aware from at least 18 September 2024 that there would be limitations to any evidence about fitness to work.

25. The claimant's fit note dated 17 September 2024 to 24 September 2024 did not say that she was unfit to attend tribunal proceedings, nor did it clearly contain any kind of assessment of the claimant. It stated the condition was 'panic attacks' and she was not fit to work. This was insufficient evidence to fully postpone the final hearing. The claimant was not expected to attend until Monday 23 September 2024, when the claimant had an opportunity to attend with very extensive reasonable

adjustments in place. The claimant did not attend the hearing on Monday 23 September 2024 or at all thereafter.

26. The further fit note dated 19 September 2024 simply referred to the condition of 'panic attack' and stated the claimant was not fit for work until 16 November 2024. It did not contain any analysis or full assessment of the claimant. There was also nothing to suggest that any medical professional was aware of the tribunal's decision on reasonable adjustments dated 20 September 2024 and stating that she would still be unfit to attend with those adjustments. This is particularly relevant where the condition is 'panic attack' which is, by its nature, something that would be relatively short term as a condition and the risk of panic attacks can be mitigated by appropriate reasonable adjustments being in place, which we considered was the case.

27. The claimant's UCL Hospital notes form 17 September 2024, set out in part in Appendix A, do not state that she is unfit to attend the tribunal.

28. We also note that the staff at UCL Hospital were given an inaccurate account of the hearing on 17 September 2024. For example, it was not the case that the claimant was not permitted to have an intermediary. Rather, one had not been booked, the judge had clarified that no express order for an intermediary had been made, and therefore that issue would have to be considered. Also, there was no threat of adverse costs made against the claimant. This therefore meant that it was difficult to give significant weight to the views of the treating professionals dated 17 and 18 September 2024.

29. In any event, to the extent that the notes included the passage in paragraph 18 of the reasonable adjustments decision in **Appendix A** above, this did not establish that the claimant was unfit to attend. Also, we consider that the adjustments granted are consistent with the request for alternative forms of communication referred to in that passage.

30. We also note that there are serious limitations to the 17/18 September 2024 evidence as set out in Appendix A, above, and the fact that the

material expressly states that the history was taken from the partner's partner, and the assertion of selective mutism came from the claimant's partner, and is not something from a medical assessment. The fact that the claimant answered some questions to the staff at A&E on her phone did not persuade us that this was a reliable and sufficiently comprehensive assessment such that would justify postponing the hearing.

31. The claimant's wider evidence, such as about personal independence payments or other disability-related benefits, did not support a postponement of the hearing.

32. However, we did consider that, given that the claimant had been in A&E until the early hours of the morning of 18 September 2024, it was fair to reconvene the hearing not before the following Monday 23 September 2024.

33. We were aware that the claimant has had high blood pressure for a significant period of time, throughout the proceedings, and before. In that context it was difficult for us to give significant weight to the claimant's photos of her blood pressure readings around the time of the hearing on 17 September 2024. In the absence of a medical opinion, it was unclear to us what significance her reading on the day had.

34. We considered written submissions, purportedly from the claimant's partner dated 18 September 2024, however there was nothing in this that changed the evidence of the medical position.

35. In all the circumstances, we did not consider that the medical evidence showed that the claimant was unfit to attend the tribunal proceedings. The claimant was on notice that this was the relevant test.

36. Also, the claimant's medical evidence in support of a postponement did not comply with the Presidential Guidance on postponement of hearing for medical reasons. There was no statement of a condition following assessment and there was no prognosis. Also, the evidence did not amount to the claimant being unfit to attend tribunal proceedings.

37. To postpone would have also been wholly contrary to the overriding objective and would have caused very serious prejudice to the respondents as outlined above. The claimant had already been granted a short postponement and the evidence about her medical position remained insufficient.

38. Also, to the extent that the claimant sought in her submissions to suggest that the Communicourt report dated 3 October 2023 were predicated on the basis of an in-person hearing, these submissions were made on an incorrect basis. The report at paragraph 1.15 clearly stated that the recommendations were based on the claimant's presentation at a remote hearing and not an person hearing. It is correct that at paragraph 3.3 the report expressly states that although the report was prepared on the assumption that the final hearing would be in person, it also says that the intermediary will be required to advise on any changes to the proposed recommendations on the day of the hearing which would only take a short amount of time and could be done orally at the start of the hearing. We considered the adjustments that would be required for a remote hearing at Appendix 2 to that report, and none of those would have caused any difficulty save for preparing questions for the claimant in advance, which had already been refused by the tribunal by way of separate order.

39. We also did not consider that there was sufficient medical evidence of the claimant suffering a migraine such that she was unfit to attend tribunal proceedings.

40. We note for completeness that to the extent that the tribunal had been asked to reconsider any previous decisions, there was no basis for doing so.

41. The applications were refused for the above reasons.

42. However, in fairness to the claimant who was not in attendance, the tribunal decided to start with the respondents' evidence first. This would enable the claimant to give evidence later if she wanted to. Also, bearing in mind that the tribunal had given the claimant permission to pose

questions for the respondents witnesses in writing (in advance) as a reasonable adjustment, the tribunal did not start the respondents witnesses until the following Monday 30 September 2023. The claimant was permitted to send any cross-examination questions to the tribunal by 9am 30 September 2024 to give her sufficient time to prepare them. Although this involved some further delay to the hearing, we considered that this time should be given in fairness to the claimant because this was when those witnesses were originally timetabled to give evidence and it would also give the claimant sufficient opportunity to participate in the process, to a degree, in writing and also fulfil the reasonable adjustments we had already granted to the claimant.

43. Also, the tribunal did not consider that it would further the overriding objective to have an intermediary booked if the claimant was not going to attend. However, she was given sufficient opportunity to confirm her request for intermediary support for the rest of the case, but this was never made by the claimant. In the circumstances the intermediary was not booked for the rest of the hearing.

Further reasons

44. Although the claimant never returned to the hearing, she continued to send various documents and medical evidence as further requests for reconsideration of the tribunal's early decision. Where appropriate, we treated them as standalone applications to postpone the hearing. However, at no stage did the evidence or submissions from the claimant establish that she was unfit to attend the hearing or that a further postponement was justified. We considered whether it was fair to proceed in the claimants absence throughout, and found that it was. The claimant had not established that she was unfit to attend and also she had been granted very extensive reasonable adjustments to the extent that was supported by the evidence. The claimant continued to send in medical evidence and make lengthy written submissions, however she did not choose to send in any questions for the respondents' witnesses or closing submissions.

45. On 23 September 2024 the parties were emailed as follows:

'EJ B Smith, sitting with members, orders as follows:

1. At the continued hearing today, 23 September 2024, the claimant's application for the judge to recuse himself was dismissed. The claimant's application to postpone the final hearing was also refused. The application was not supported by sufficient medical evidence. For example, the medical evidence did not include a statement from a medical practitioner that in their opinion the claimant was unfit to attend the hearing. It also did not include a clear prognosis of the condition or sufficiently clear indication of when that state of affairs may cease: Presidential Guidance (England & Wales) – Seeking a Postponement of a Hearing (2013). Oral reasons were given for the above decisions during the hearing. The tribunal may, at its discretion, prepare written reasons for these decisions or they can be requested from the tribunal within 14 days of the end of the hearing.

2. The respondents today stated that an application would be made to strike out the claimant's case:

a. The respondent's written application must be sent to the claimant and tribunal no later than 9am on Tuesday 24 September 2024;

b. The claimant may send in written representations in response by 10:00am on Wednesday 25 September 2024; and

c. The application will be decided by the Tribunal on Wednesday 25 September 2024. The parties are not required to attend before 11:00am.

3. The final hearing will then (subject to the outcome of the application) continue with the respondent's witnesses on Monday 30 September 2024. The claimant must email the tribunal and respondent a list of questions for the witnesses by 9am Monday 30th September 2024 if she does not wish to ask the questions herself. All questions will be at the tribunal's discretion. It is the intention of the tribunal to complete the final hearing within the original final hearing dates. The respondent's witnesses

will be questioned first so that there is still time within the original dates for the claimant to give evidence if she wishes.

4. *The respondent must send to the claimant and tribunal an updated proposed timetable of witnesses by 16:00 today 23 September 2024.*

   Any request by the claimant for continued intermediary support at the hearing, whether on Wednesday 25 September or on Monday 30 September 2024 onwards, must be made to the tribunal (copying in the respondent) by 16:00 24 September 2024.'

46. A further postponement application was dated 30 September 2024. Although this referred to a stay of proceedings this is, in effect, the same thing. The application was sent using the claimant's email address at 5:05am and purported to be from her partner. It included that the claimant's partner had attended a consultation with the claimant's GP on 25 September. The claimant did not attend the consultation because, according the claimant's partner, the claimant was unable to attend the consultation due to her health challenges and was also unable to talk for herself. According to a screenshot, the consultation was online only. The application states that she had brought all relevant documentation to facilitate a support letter that aligned with the Presidential Guidance for Postponement of Hearings. It included that it may take up to 28 days to this letter from the claimant's GP. The claimant had made a self-referral to a telephone support service, which was supported by screenshot evidence. However, this self-referral was of limited evidential value in the circumstances. The email also includes that '*there was no intermediary present as before in hearings and as Ragne was expecting who could help her during panic attack.'* We considered that this suggested a misunderstanding about the role of an intermediary, which is to facilitate communication, and not directly help an individual suffering from a panic attack. The email also asserted that as a result of the 17 September 2024 hearing '*This severe episode of hypertension, along with other symptoms, being under migraine attack almost all week has left her unable to participate in any subsequent ET hearings and the upcoming ones'.* We

noted that this does not acknowledge the claimant's preparation of detailed written submissions in respect of her application for reasonable adjustments, recusal and postponement during this period (the claimant's reply submissions on reasonable adjustments being 4 pages, and submissions alleging Equal Treatment Bench Book violations being 8 pages, both dated 19 September 2024).

47. The tribunal heard submissions from the respondents on this renewed application to postpone on 30 September 2024. The application was refused because, as before, there was insufficient medical evidence that the claimant was not fit to attend tribunal proceedings. There was nothing in the 30 September 2024 that reached the required threshold. It did not comply with the Presidential guidance on postponement of hearings, there being no clear statement from a medical practitioner that the claimant was unfit to attend, clarity on the condition, or any real prognosis. Also, the evidence was of extremely limited weight because it was clear that the communications with the GP were being done not by the claimant, but by her partner (and online only). A postponement would not be in the interests of justice in those circumstances. Also, applying the overriding objective, the tribunal was unable to confidently make a finding about when the claimant's perception of her position would change. There was no cogent evidence as to prognosis even if the position was as the claimant asserted it to be. We recognised that a postponement would cause very significant prejudice to the respondents, including individually named respondents, given the impact of the proceedings on staff, the potential for witnesses to leave employment, and for memories to fade. The respondents would also be put to very significant additional costs in the event of a postponement.

48. The claimant sent a written document (19 pages) on 1 October 2024 requesting written reasons regarding the decisions made on 17 and 18 September 2024 and questioning the tribunal's decision on reasonable adjustments. The claimant also submitted a document dated 1 October 2024 requesting a copy of the recording for the 17 September 2024 (a two-page document).

49. By email sent at 3:46pm on 2 October 2024 the claimant asked for all previous decisions to be reconsidered and asserted that she would like to take part in the proceedings but only could do it with reviewed reasonable adjustments and if given until 30 November 2024 to recover. We noted that postponement until that time was not possible within the tribunal's listing and this, in reality, would have meant a postponement for at least a year. The evidence in support of this email included a further fit note dated 27 September 2024 which stated that the conditions were: severe anxiety, migraine, fibromyalgia, and the claimant was signed off work until 30 November 2024. Again, this was not a statement that the claimant was unfit to attend tribunal proceedings and did not confirm what assessment had actually been carried out.

50. Additional evidence submitted at this stage included a letter from the claimant's GP dated 27 September 2024 that reads as follows:

'*To whom it may concern*

[claimant's name, date of birth, and address]

Miss Joerand Suffers from severe anxiety and takes diazepam as required for the acute episodes. Her symptoms have worsened recently due to the forthcoming tribunal. The severity of her anxiety has now caused selective mutism and she is unable to communicate verbally. She is currently communicating with us through her partner. Miss Joerand feels that she is unable to communicate verbally at the tribunal due to the severity of her anxiety. I would be grateful if this information could be taken into consideration.'

51. This was insufficient to change the position on any of our earlier decisions. This is because, again, it did not say that the claimant was unfit to attend the tribunal proceedings. Also, there was no indication that the reasonable adjustments the tribunal had granted had been drawn to the doctor's attention. The letter is not expressly written to the tribunal and it was unclear to what purpose the author thought the letter would be put. We noted that it included that the claimant 'feels that she is unable to

communicate verbally' as opposed to confirming that this was in fact the case. Also, to the extent that the letter (on its face) appears to say that her symptoms have worsened and this has caused selective mutism, there is no confirmation that this is in fact a diagnosis from the GP as opposed to what is simply being reported to the GP. Also, it was clear from the face of the letter that this was also on the basis of communications not with the claimant herself, but through her partner. It also did not suggest that there had been a face-to-face assessment, or necessarily a further assessment since the claimant's partner attended the virtual appointment on 25 September 2024 on the claimant's behalf. In all the circumstances, this was not clear and cogent evidence that the claimant in fact had the diagnosis of selective mutism or was unfit to attend the tribunal, particularly with extensive reasonable adjustments and intermediary support in place.

52. On 4 October 2024 the claimant sent a written request for further reasons (dated 4 October 2024) to the tribunal. This was received by the judge on 8 October 2024. It is 50 pages long and seeks to revisit the tribunal's earlier decisions. There is nothing in that document that changes the tribunal's earlier decisions. It is notable that within that document – and elsewhere in the claimant's written submissions – that she includes:

*1.16 Request for Reasonable Adjustments and Health Worsening:***

1.17. Before the decision was made on September 20, 2024, I also submitted a request on September 15, 2024, seeking a review of reasonable adjustments in light of my significantly worsening health and heightened anxiety. The situation deteriorated particularly after August 9, 2024, when the respondents sought to strike out all my claims, which substantially increased my anxiety levels.'

53. We noted that the suggestion that the claimant's health had deteriorated since the hearing on 9 August 2024 was not supported by medical evidence. Moreover, it is undermined by the claimant's email dated 9 September 2024 (bundle page 4151) during which she confirmed she was ready for the hearing and did not suggest that her health had deteriorated

or that her reasonable adjustments should be revisited. She also resists any further delays to the hearing.

54. These submissions included that, because selective mutism can be part of anxiety disorder the tribunal was wrong to rely on a lack of a specific diagnosis of selective mutism. However, the fact that a particular disorder may have a particular side effect does not mean that, in her case, it did so. We were careful to evaluate all of the medical evidence. However, we did not feel that the claimant had in fact evidenced that she had selective mutism as part of her anxiety disorder.

55. The claimant made further written submissions dated 6 October 2024. These were thirty (30) pages long. They included requests for written reasons and sought to revisit the tribunal's earlier determinations.

56. There was nothing in these submissions that established a good reason for any of the tribunal's previous decisions to be changed.

57. Also, the claimant provided further documents on 8 and 9 October. On 8 October 2024 the claimant provided a medical letter dated 8 October 2024 from UCL Hospitals. This was a telephone follow up visit at the Pharmacology department. The letter says that the claimant was reviewed as an outpatient and as a GPs action states '*Addressing underlying anxiety as cause of hypertension is key – please refer to local psychiatry services and review support for Ragne as regards her ability to attend her court case (she reports being unable to do this in person, as it causes a panic attack'.* The notes include the claimant having reported that '*you needed to attend the E&R after a panic attack when your court case started. You are very stressed about this, as the court case is now ongoing, but your anxiety prevents you from attending in person.'* The author is a consultant in Nephrology and GIM (Clinical Pharmacology).

58. We noted that the format of the hearing had been inaccurately reported to the doctors as being 'in person'. Again, we did not consider that this was sufficient to revisit our earlier decisions. It did not establish that the claimant was unfit to attend the hearing or that she required reasonable

adjustments other than those we had already granted her. We noted that selective mutism was not included as a diagnosis or 'active problem'.

59. Also, for completeness, the documents frequently referred to by the claimant in support of her various contentions (such as personal independence payment assessments, or similar from Estonia), although were demonstrative of matters of a general nature, did not in fact support the exact conclusions that the claimant asked us to reach (such as whether she should be permitted as a reasonable adjustment to give her evidence via the chatbox).

60. We also considered, throughout, that the claimant's assertion that she was unfit to attend the tribunal was seriously undermined by the length and level of detail of her written submissions about postponement (including some of those as set out above), particularly given that she had permission to provide cross-examination questions in writing and to provide closing submissions in writing, and also to make some use of the chatbox in proceedings.

61. We were also satisfied that, throughout, the claimant had been given a fair trial and a fair opportunity to participate with reasonable adjustments in place. It should be stressed that almost all of the claimant's requests for reasonable adjustments were in fact granted by the tribunal, including extensive permission to communicate in written form, save in respect of her own evidence under oath or affirmation. An intermediary was expressly approved for the witness evidence (claimant and respondent) and the tribunal would have readily considered any request for an intermediary for the remainder of the hearing if any such request had been made. At no stage was there clear and cogent medical evidence that the claimant was unfit to attend the hearing or that other reasonable adjustments were required.

Postscript

62. In preparing these written reasons the tribunal also reviewed a recording of the hearing on 17 September 2024. We noted that, after the initial concerns about whether the claimant's microphone was working, the claimant returned to the hearing for a brief moment when the respondents' counsel was not present and the claimant said '*hello good morning can you hear me now'* and the judge indicated that everyone else was rejoining. This gave the impression that the claimant could, at least to a degree, speak. The claimant also, when asked by the Judge, said '*yes good morning*'. The Judge asked the claimant whether she was expecting an intermediary at the hearing, and, when she typed 'yes' he acknowledged that she had asked for typing as a reasonable adjustment in her application, and he asked whether there was any reason why she couldn't speak '*at least at this stage'*. The clerk intervened to say he would send an email, to see if she is able to communicate. The Judge confirmed that he would deal with the application, and wanted to speak to the claimant first, and he referred to the fact that she had spoken at the very start, and asked her to say something to which she said '*yes good morning'.* The Judge then acknowledge the claimant's request for an intermediary, and then when the claimant typed an answered the Judge said *'as you seem to be able to speak, I would ask that you do so'*, she then said '*yes´* twice to the judge's question. The Judge asks the claimant whether she wants any decisions to be made without the intermediary present, or whether she wanted the tribunal to wait until an intermediary was present. She then says '*I cannot speak, would you please read my application.'* The Judge immediately then recognises that the claimant appeared visibly distressed and that the connection then ended very shortly thereafter.

63. Whilst this was not material directly available to the full tribunal when making its decisions about recusal or postponement, the recording is corroborative of the Judge's recollection of what happened whilst making the decision about postponement and recusal.