EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
(1) Ms Sarah-Jayne Parsons; and (2) Mr Stuart Parsons	**v**	East of England Ambulance Service NHS Trust

Heard at: Norwich

On: 23, 24, 25, 29, 30, 31 July 2024
1, 5 and 8 August 2024

In Chambers: 14 and 28 August 2024, 21 and 22 October 2024

Before: Employment Judge M Warren

Members: Mrs L Davies and Mr A Hayes

Appearances
For the Claimants: Mr R Downey, Counsel
For the Respondent: Mr J Heard, Counsel

RESERVED JUDGMENT

1. The claimants' complaints of disability discrimination fail and are dismissed.

REASONS

Background

1. Ms and Mr Parsons are husband and wife. They are Paramedics in the employment of the Respondent. On 19 January 2021, seven sets of Employment Tribunal proceedings which between them they had brought against the Respondent, were settled in terms set out in a COT3.

2. After Early Conciliation on the part of each Claimant between 17 January and 28 February 2023, each of them issued proceedings by claim forms filed on 27 March 2023, claiming disability discrimination in the form of

direct disability discrimination, indirect discrimination, failure to make reasonable adjustments, discrimination arising from disability, harassment and victimisation.

3. Both parties have been represented by solicitors and counsel throughout.

4. At a Preliminary Hearing before Employment Judge Boyes on 6 October 2023, the matter was set down for a Public Preliminary Hearing to consider whether any of the claimant's allegations should be struck out as an abuse of process and whether the then a named Second Respondent Ms Joanne Bromley, should be removed as a party to these proceedings.

5. That Public Preliminary Hearing was before Employment Judge Tynan on 21 February 2024. He made a Deposit Order in respect of elements of the Claimants' claims, on the grounds that there was little reasonable prospect of the Tribunal at the Final Hearing concluding that the parties' intentions in entering into the COT3 was anything other than that all claims and potential claims against the Respondents which had arisen as at 19 January 2021 were compromised, including such claims as were not known about at the time.

6. Employment Judge Tynan expressed his concern that the parties had lost sight of their Rule 2 obligation to assist the Tribunal in furthering the overriding objective, echoing an earlier comment in correspondence by Employment Judge Postle. I had the same concerns. The concerns of EJ Tynan were prompted by the fact that the parties had been unable to agree upon a List of Issues. In the hearing on 21 February 2024, it was intimated that the claimants were seeking to introduce 123 new complaints by way of amendment. It is worth noting that the original grounds of complaint ran to 85 paragraphs and was said to already contain 55 allegations. Employment Judge Tynan listed the matter for a two day Case Management Preliminary Hearing to consider the applications to amend.

7. In the meantime, the claimants did not pay the Deposits and accordingly, those stipulated aspects of the claimants' claims were dismissed.

8. The cases came before Employment Judge Tynan again for Case Management on 3 and 31 May 2024, when he considered what he described as,

> "in excess of one hundred proposed and substantive amendments to each of the Claimant's grounds of complaint".

9. Once again, he expressed his observation that the claimants had not approached the matter proportionately and his concern that the parties were not having regard to their obligation to assist the Tribunal in furthering the overriding objective. On that occasion, as in respect of the previous Preliminary Hearings, the claimants were represented by Ms Scarborough of Counsel. The Respondent was represented by Mr Heard.

Employment Judge Tynan did not record in terms the amendments which he allowed, but left it to the Claimants to file and serve Amended Grounds of Complaint incorporating those amendments he had allowed. He directed the parties to co-operate and file a Final List of Issues by no later than 28 January 2024.

10. Amended Particulars of Claim were prepared and filed. Unfortunately, the parties were unable to agree on the List of Issues, (see below).

The Issues

11. The parties were unable to agree on a List of Issues. On Day One, I told them to use the time whilst we were reading, to resolve their differences. On Day Two, one area of disagreement remained, in respect of identifying which, "something arising" pertained to which allegation of unfavourable treatment in the Section 15 claim. In all other respects, the List of Issues was agreed. It is a shame that the many errors in the List of Issues were not corrected at this time. Mr Heard explained that he had originally prepared amendments to the draft reflecting, he says, what Ms Scarborough had said to Employment Judge Tynan when he had asked her to identify which, "something arising" was said to pertain to which allegation. We were told that Ms Scarborough, (representing the Claimants at all previous preliminary hearings, but not at this final hearing) had not reported to those instructing her, (who were not present at the Preliminary Hearing) about those matters, that she was now on holiday and that they were unable to ask her about these issues.

12. When this disagreement was raised with me on Day Two, I directed the Claimants representatives to make contact with Ms Scarborough to ask her whether she agreed what Mr Heard was proposing in the List of Issues. The representatives agreed that the matter did not need resolving during the Claimant's evidence, provided that Mr Heard was given the opportunity to question them further later in the hearing, should that be appropriate.

13. We returned to the problem on Day 5, 30 July 2024. Mr Downey conveyed to us that he had been told Ms Scarborough says that no concessions were made before Employment Judge Tynan and that she had given conditional information, saying that she did not have instructions from her clients. There is no dispute about the accuracy of Mr Heard's note as to what she had said about the, "something arising" and the detriments, there was disagreement as to the basis upon which Ms Scarborough said what she did.

14. After discussion, we agreed, (that is the representatives and the Tribunal) that the Tribunal would write to Employment Judge Tynan in agreed terms and ask him for his recollection. What we wrote to Employment Judge Tynan and his reply is set out below:

"Dear Employment Judge Tynan

3302780/2023 & 3302785/2023
Mr and Mrs Parsons v East of England Ambulance Service
A dispute has arisen in this case about what was said to you by the Claimant's counsel in the Preliminary Hearing before you 31 May 2024 in relation to the Claimant's case under s15 EqA.
Miss Scarborough represented the claimants before you. Mr R Downey represents the claimants before us. Miss Scarborough is on holiday, but has been contacted for her comments.
Mr Heard was counsel for the respondent before you and appears before us.
The representatives have agreed with us the following wording of our enquiry:
On the basis that there is no dispute as to what Miss Scarborough said to EJ Tynan in relation to which something arising was linked to which allegation of unfavourable treatment, we ask EJ Tynan whether he can tell us on what basis she gave that information. Miss Scarborough's position is that she says the EJ put her on the spot during amendment application, on how the Cs put their case, she says she made it clear she did not have instructions, the EJ asked her to do her best, she went through the claims and identified how the claims being put, in the expectation that an order for particulars would be made to confirm what she had said. Mr Heard's position is that Miss Scarborough was asked by EJ Tynan what the Cs' position was on the point. It is agreed she said she was not sure how she could assist without taking instructions. The EJ made reference to this being the 3rd day of discussing the issues, she should know the Cs' position, she said she will try, she proceeded to set out which something arising related to which unfavourable treatment and did not say it was conditional on it being confirmed.
The parties agree we should ask you, did you understand :
"Was Miss Scarborough nailing the Cs' colours to mast? Was she committing Cs to the position that she was setting out, as their pleaded case?"
Kind Regards
EJ M Warren
Mrs L Davies
Mr A Hayes

Dear Judge Warren, Mrs Davies and Mr Hayes,
In answer to your question, I understood Ms Scarborough to be committing the Claimants to the position she set out. Of course, what I cannot say, is whether that is what she intended. I do not now recall Ms Scarborough stating that she was without instructions in the matter, though in fairness the Claimants were not at the hearing, so I can understand why Ms Scarborough may feel that she was simply endeavouring to assist the Tribunal without necessarily committing the Claimants to a position. However, if that was her intention, she did not ask for a further opportunity to confirm the Claimants' position: in contrast you will note from paragraph 2.4 of my case management order that at Ms Scarborough's request the Claimants were permitted additional time in which to address the disadvantages said to have resulted from the contended for PCPs.
Whilst I remained focused throughout the hearings on clarifying the issues, I don't consider that I put Ms Scarborough on the spot in relation to this particular issue. Over the course of three days, we worked our way through the 'Claims' section of Ms Scarborough's draft proposed Amended Grounds of Complaint with a view to securing a better understanding of both the existing and proposed claims. Our discussion of the s.15 complaints was very much in line with the tone and tenor of our discussion of the other issues: focused but fair.

> I am sorry if this does not provide a necessarily definitive answer to the question you have posed, but nevertheless hope it assists in your further discussions.
> Kind regards
> EJ Tynan"

15. That reply was received by the end of Day 5. I explained to the parties that the Tribunal's Clerk would forward the response to them and we would hear what they had to say about it the following morning.

16. On Day 6, 31 July 2024, Mr Downey told us that he wished to speak to Ms Scarborough further. The Representatives agreed that we should park the dispute and deal with it in submissions.

17. In his written closing submissions, Mr Downey argues that the List of Issues is a useful Case Management tool but no substitute for the Claimant's pleaded case, (indisputably correct). He said Ms Scarborough's position was that no concessions were made in relation to which "something arising" may relate to which allegation and the Claimants should not be restricted in any way.

18. The Claimants' pleaded case in a stand-alone paragraph, is that arising in consequence of disability for each of them was:-

    18.1. Absence;

    18.2. Need for phased return to work;

    18.3. Communication style;

    18.4. Part time hours;

    18.5. Stand down during Covid; and

    18.6. Complaint of discrimination and management stand down.

19. There is no attempt to link any of the forgoing to any particular alleged unfavourable treatment. That is obviously unsatisfactory. Because it is unsatisfactory, Employment Judge Tynan asked Ms Scarborough for further and better particulars. She gave those further and better particulars. What she told Employment Judge Tynan became the Claimants' pleaded case. That ought to have been reflected in the Amended Particulars of Claim filed by the Respondents following the Hearing before Employment Judge Tynan and it is right therefore that it should be reflected in the List of Issues.

20. As will become apparent, this is all an unhelpful distraction which ultimately, made no difference.

21. The issues in this case are therefore agreed, (subject to what we have set out above) as cut and pasted below.

The Claimant's Claims

1. The Claimants are pursuing the following claims:

   1.1 Direct disability discrimination – s13 EqA 2010;

   1.2 Indirect disability discrimination – s19 EqA 2010;

   1.3 Failure to make reasonable adjustments – s20/21 EqA 2010;

   1.4 Discrimination arising from disability – s15 EqA 2010;

   1.5 Harassment relating to disability – s26 EqA 2010; and

   1.6 Victimisation – s27 EqA 2010.

Preliminary Issues

2. Do the Claimants have a disability for the purposes of section 6 of the EqA 2010? The alleged disabilities relied upon in respect of all claims are as follows:

   2.1.1 ***First Claimant:*** dyslexia, developmental co-ordination disorder (dyspraxia), PTSD, endometriosis, asthma (resulting in increased susceptibility to pneumonia) and back injury/pain

   2.1.2 ***Second Claimant:*** PTSD, back injury/pain, iGA nephropathy (kidney disorder), alpha1 antitrypsin disorder.

3. Does the following impairments have an adverse effect on the Claimants' ability to carry out normal day-to-day activities? (The Respondent accepts that the other conditions above do have a substantial impact):

   3.1 In respect of the First Claimant: dyspraxia

   3.2 In respect of the Second Claimant: iGA nephropathy, alpha1 amtrypsin disorder

4. Is that effect substantial?

5. Is that effect long-term?

6. Do the Claimants' claims constitute a course of conduct on behalf of the Respondent extending over a period and if so, what period?

7. Where the Claimants' claims constitute a discriminatory failure to act on behalf of the Respondent, on what dates are those failures deemed to have occurred?

8. Is the Claimant's claim in time? If not, is it just and equitable to extend the time limit? The Respondent avers that any allegations pre-dating 18 October 2022 are out of time.

Issues

9. ***Direct disability discrimination – s.13 EqA 2010***

9.1 The alleged less favourable treatment complained of is:

9.1.1 Failing to allocate the Claimants to a fixed "line" shift until September 2023, despite

9.1.1.1 agreeing to do so in the COT3 agreement in January 2021

9.1.1.2 Tom Able, Chief Executive Officer of the Respondent agreeing to do so on 4 March 2022

9.1.1.3 Terry Hicks, Head of Operations, Cambridgeshire, agreeing a fixed stand-alone "line" arrangement at Huntingdon on 22 April 2022

9.1.1.4 the Respondent's Occupational Health Reports dated 21 June 2022 recommending for a fixed "line" shift pattern.

9.1.2 Offering fixed line work to other colleagues in preference to the Claimants and/or without consideration of offering the Claimants fixed line work. The identities of those offered fixed line work are known to the Respondent as detailed in an email from Claire Thwaites, Area General Manager in an email of 23 March 2022.

9.1.3 Marika Stephenson rejecting the Claimants' complaints about failing to implement the fixed line provision of the COT3 agreement on the basis that the Claimants had suffered no financial loss, even though the Claimant was not able to obtain overtime pay due to being unable to return to active duty

9.1.4 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022

9.1.5 At a meeting held on 31st August 2022 with a view to a return to work plan being established for the Claimants, Laura Kitchener refusing to engage with the Claimants and acting in a dismissive and high handed manner towards them when introduced to them by their union rep including asking them who was "dealing" with them, and saying it was not her place to get them back to work before abruptly turning away.

9.1.6 In or around January 2023 the Claimants' colleagues made unacceptable comments on a work related online discussion group regarding fibromyalgia/mental health disabilities including referring to it being categorised in the sections of 'flakey', 'not my fault' 'no apparent problem' and 'chronic issue for the last 20 years (with rolled eyes emoji)'. The Respondent took no effective action to address this

9.1.7 In January 2023, Tom Abel, CEO, amending Mrs Parsons' proposed draft of a letter to go out to staff to clear the air in respect of the dispute between the Trust and the Claimants in a way that implied that it was the Claimants who had had to make adaptations rather than the trust.

9.2 In respect of the alleged acts above:

9.2.1 Did the alleged acts occur?

9.2.2 Did the alleged acts constitute less favourable treatment?

9.3 For the purposes of determining this issue, the comparators are:

9.3.1 The Claimants rely on a hypothetical comparator who does not share the Claimant's protected characteristics in addition to the specific comparators identified above (including those employees known to the Respondent but not to the Claimants who were allocated fixed line work in early 2022 as detailed above)

9.4 If the Claimants are seeking to rely upon real comparators, are the relevant circumstances of the comparators materially different from those of the Claimants?

9.5 Did the Respondent know or reasonably have been expected to know of the Claimants' disability?

9.6 Did the Respondent treat the Claimants less favourably than the comparators?

9.7 If so, was the less favourable treatment because of their disability?

10. ***Indirect disability discrimination – s 19 EqA 2010***

10.1 Did the Respondent apply a provision, criterion or practice? The Claimants state this was as follows:

10.1.1 Placing complainants on 'Management Stand down' during investigations rather than removing/moving the alleged perpetrator

10.1.2 Not providing entry access for individuals on 'Management Stand down'

10.1.3 Requiring annual leave to be taken during 'Management Stand down' and

10.1.4 (in respect of the Second Claimant only) Requiring employees to take sick leave when restricted by illness in instead of being allowed to have home study

10.2 Did the above put persons having the same disability as the First and Second Claimant at a particular disadvantage when compared with other persons? The Claimants states that this disadvantages were as follows:

i. They were more likely to suffer isolation and deterioration of their mental health, with increased difficulty in returning to work after a period of sick leave / 'Management Stand down.'

ii. They were more likely to be seriously affected by a prolonged period of sick leave and/or Management Stand down in their ability to return

to work, their memory recall of their training, and their memory recall of technology and systems, and more likely to suffer isolation and deterioration of their mental health

10.3 Have the Claimants been subjected to that disadvantage?

10.4 Has the Respondent shown that the provision/criterion/practice is a proportionate means of achieving a legitimate aim? The legitimate aims relied upon are set out separately at pp. 229-240 of the Pleadings Bundle.

11. ***Failure to make reasonable adjustments – s20/21 EqA 2010***

11.1 Did the Respondent apply a provision, criterion or practice? The Claimants state this was as follows:

i. Requiring paramedics to work an irregular/unpredictable shift pattern and/or to work with a large number of different colleagues.

ii. Not allowing employees to move to work at a different station

iii. Not providing entry access for individuals on 'Management Stand down'

iv. (in respect of the First Claimant) Rearranging job interviews at short notice

v. Requiring annual leave to be taken during 'Management Stand down' and

vi. (in respect of the Second Claimant) Requiring employees to take sick leave when fatigue set in instead of being allowed to have home study

11.2 If so, did the PCP(s) put the Claimants at a substantial disadvantage in comparison with persons who are not disabled contrary to s.20(3) EqA 2010. The Claimants have set out the alleged substantial disadvantages at pp. 185-186 of the Pleadings Bundle;

11.3 Did the Respondent know or could it reasonably have been expected to know that the Claimants were likely to be placed at a substantial disadvantage in comparison with persons who are not disabled?

11.4 If so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage? The steps the Claimants allege that the Respondent should have taken are:

11.4.1 Removing/moving the alleged perpetrator in relation to a grievance (September 2021 – December 2022)

11.4.2 Moving the complainant rather than placing on sick leave or 'Management Stand down' or otherwise separating the alleged perpetrator and the Claimants without requiring the Claimants to be placed on standdown

11.4.3 moving the complainant to a different station upon their return to work in December 2022

11.4.4 Giving the Claimant project work or interim work in the period from 4 April 2022 to 5 December 2022

11.4.5 Allowing the Claimants to retain access to the workplace while on stand down

11.4.6 providing mechanisms such as involvement in staff communications or discussion, keep in touch days, or involvement in other staff activities to maintain contact with the Claimants on a welfare/update/social basis and Permitting and encouraging ongoing engagement with colleagues/attendance at the station

11.4.7 (In respect of the First Claimant) Providing adequate notice for job interviews

11.4.8 (In respect of the Second Claimant) Permitting Mr Parsons to work flexibly at home as necessary in order to manage his fatigue

11.4.9 Maintaining contact with the Claimant on a welfare/update/social basis

11.4.10 Permitting and encouraging ongoing engagement with colleagues/attendance at the station.

11.4.11 Providing the uplift to Band 6

11.4.12 Allowing the Claimant priority to lines (shift patterns) which became available.

11.4.13 Neurodiversity coaching for the Claimants and with management

11.4.14 Neurodiversity co-coaching with management

11.4.15 Assistive technology.

11.4.16 Access to quiet spaces,

11.4.17 access to a portfolio mentor.

11.4.18 Not to assign the Claimants to shifts ending after 2am

11.4.19 working with a regular crew mates.

11.4.20 Not requiring the Claimants to return to co-workers whose actions have caused them prior anxiety.

11.4.21 Permitting the Claimants to retain their annual leave to use upon her return to work to support her health and wellbeing.

11.5 If so, would it have been reasonable for the Respondent to have to take those steps at any relevant time?

11.6 What is the time period in which the Claimants allege that the Respondent failed to take those steps? The Claimant avers that the relevant time period is the period between the agreement of the COT3 in January 2021 and the issuing of the Claimant's claims.

11.7 Did the Respondent fail to take those reasonable steps at the relevant time?

12. ***Discrimination arising from disability – s 15 EqA 2010***

12.1 Did the Respondent treat the Claimants unfavourably by:

12.1.1 Placing the Claimants on management stand-down from September 2021 and not allowing them to return to work until December 2022.

12.1.2 Failing to place the Claimants on a fixed "line" shift, despite

12.1.2.1 agreeing to do so in the COT3 agreement in January 2021

12.1.2.2 Tom Abel, Chief Executive Officer of the Respondent agreeing to do so on 4 March 2022

12.1.2.3 Failing to implement the fixed stand-alone "line" arrangement at Huntingdon agreed by Terry Hicks, Head of Operations, Cambridgeshire, 22 April 2022

12.1.2.4 Failing to implement the recommendation for a fixed "line" shift pattern in the Respondent's Occupational Health Reports dated 21 June 2022 until September 2023

12.1.3 Not providing the Claimants with alternative project work despite repeated requests from the Claimants when such work was specifically offered to the following colleagues who did not share the Claimants' protected characteristics (a) Linsday Ward in or about May 2022 (b) Adam Bright in or about November 2022

12.1.4 Offering fixed line work to other colleagues in preference to the Claimants and/or without consideration of offering the Claimants fixed line work. The identities of those offered fixed line work are known to the Respondent as detailed in an email from Claire Thwaites, Area General Manager in an email of 23 March 2023.

12.1.5 Marika Stephenson rejecting the Claimants' complaints about failing to implement the fixed line provision of the COT3 agreement on the basis that the Claimants had suffered no financial loss, even though the Claimant was not able to obtain overtime pay due to being unable to return to active duty

12.1.6 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022

12.1.7 Failing to properly consider or implement the return to work plan proposed by Mrs Parsons in April 2022

12.1.8 Failing/delaying to compensate the Claimants for lost overtime in 2019/20 and 2020/21 in breach of agreement to do so by Terry Hicks, Head of Operations, Cambridgeshire on 22 April 2022

12.1.9 Not renewing the Claimants' access pass to the station and failing to put in place any mechanism for the Claimants to retain contact with the workplace and their co-workers

12.1.10 Refusing, until this was pointed out by Mrs Parsons, to offer the Claimant a guaranteed interview for the post of General Manager North Cambridgeshire in violation of the Respondent's own Disability Confident Employer scheme

12.1.11 Moving Mrs Parsons interview for the above post at short notice three times despite being aware of her difficulties coping with change

12.1.12 Arranging for Mrs Parsons to be interviewed by a panel containing her own HR manager, and own her line manager both of whom had significant involvement with the issues she was experiencing within the workplace in relation to disability

12.1.13 At a meeting held on 31st August 2022 with a view to a return to work plan being established for the Claimants, Laura Kitchener refusing to engage with the Claimants and acting in a dismissive and high handed manner towards them when introduced to them by their union rep including asking them who was "dealing" with them, and saying it was not her place to get them back to work before abruptly turning away.

12.1.14 Advising the Claimants on 2nd September 2022 that their unsocial hours payments were being moved to "section 2" in line with new recruits from 2019.

12.1.15 Mr Tom Abel advising the Claimants that they must use their annual leave entitlement during a period of 'Management stand down' whilst awaiting the investigation of their grievance of discrimination and implementation of reasonable adjustments

12.1.16 In or around January 2023the Claimants' colleagues made unacceptable comments on a work related online discussion group regarding fibromyalgia/mental health disabilities including referring to it being categorised in the sections of 'flakey', 'not my fault' 'no apparent problem' and 'chronic issue for the last 20 years (with rolled eyes emoji)'. The Respondent took no effective action to address this.

12.1.17 Requiring the Claimants to return work under the supervision and control of Luke Squibb and Terry Hicks despite these people having been involved in prior complaints from the Claimants in relation to poor treatment arising from their disability

12.1.18 When the Claimants became aware, on their return to work in December 2022/January 2023 that Luke Squibb was still present in the workplace and became anxious as a result of their disabilities, Terry Hicks admonished the Claimants to manage this appropriately and professionally rather than offering support

12.1.19 Mr Tom Abel, on 31 January 2023, suggesting to the First Claimant that she needed to "consider the tone of your emails and whether this is in line with Trust values";

12.2 Mr Parsons being told to take sick leave when they asked for amendments to the phased return due to fatigue Did the above arise in consequence of the Claimants' disability?

12.3 Was the unfavourable treatment because of something arising from the Claimants' disability? The Claimants allege that the following things arose from their disability:

12.3.1 Their absence, which is alleged to have arisen from their PTSD

12.3.1.1 Applicable to claims: 12.1.1, 12.1.2, 12.1.3, 21.1.4, 12.1.5, 12.1.6 12.1.7, 12.1.8, 12.1.9, 12.1.10, 12.1.11, 12.1.12, 12.1.13, 12.1.14, 12.1.15, 12.1.16, 12.1.17, 12.1.18, 12.1.19.

12.3.2 Their need for a phased return to work which is alleged to have arisen from their PTSD and neurodivergence

12.3.2.1 Applicable to claims 12.1.1, 12.1.2, 12.1.4, 12.1.5, 12.1.6, 12.1.7,12.1.8, 12.1.9, 12.1.13, 12.1.14, 12,1.15 and 12.1.17

12.3.3 Their Communication style, which is alleged to have arisen from their neurodivergence

12.3.3.1 Applicable to claims: 12.1.19.

12.3.4 Their 'stand down' during COVID, which is alleged to have arisen from C1's asthma and C2's iGA nephropathy and alpha1 antitrypsin disorder

12.3.4.1 Applicable to claims: 12.1.1, 12.1.2, 12.1.3, 12.1.4, 12.1.5, 12.1.6, 12.1.7, 12.1.8, 12.1.9, 12.1.10, 12.1.11, 12.1.12, 12.1.13, 12.1.14, 12.1.15, 12.1.16, 12.1.17, 12.1.18, 12.1.19.

12.3.5 Their complaint of discrimination and 'Management Stand down', which is alleged to have arisen from all of their disabilities

12.3.5.1 Applicable to claims 12.1.1, 12.1.2, 12.1.3, 12.1.4 12.1.5 12.1.6 12.1.7 12.1.8 12.1.9 12.1.10, 12.1.11, 12.1.12, 12.1.13, 12.1.15 12.1.16, 12.1.17, 12.1.18, 12.1.19.

12.4 Was the treatment a proportionate means of achieving a legitimate aim? The legitimate aims relied upon are set out separately at pp. 229-240 of the Pleadings Bundle.

13. ***Victimisation – s 27 EqA 2010***

13.1 the Claimants rely on the following protected acts

13.1.1 The Claimants' employment Tribunal claims under references 3334238/2018, 3334312/2018, 3302675/2020, 3302677/2020, 3302676/2020;

13.1.2 Ms Parsons raising a grievance in respect of Joanne Bromley's treatment of her in relation to her disability in November 2020

13.1.3 The Claimants' complaints of discrimination in relation to their disability made on 4th April 2022 by the Claimants raising a further grievance in respect of Joanne Bromley's treatment of the Claimants which highlighted that they were making reports to the police of Hate Crime

13.1.4 The Claimant writing to the Respondent's CEO Tom Abell on 22 July 2022 raising complaints about their treatment in relation to disability

13.1.5 Mrs Parsons' email to Tom Abell of 30th January 2023;

13.2 The detriments relied upon by the Claimants are the following in respect of the Respondents:

13.2.1 In September 2021 the Respondent placed the Claimant on 'Management Stand Down' rather than removing the alleged perpetrator whilst the Claimant's grievance was investigated.

13.2.2 In March 2022 failing to notify the Claimant of available 'lines' (shift patterns)

13.2.3 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022

13.2.4 Failing to allocate a band six uplift to the Claimants at the same time as their contemporary colleagues

13.2.5 31st August 2022 Ms Kitchener making unacceptable comments to the Claimant and turning away.

13.2.6 Advising the Claimant on the 2nd September 2022 that her unsocial hours payments were being moved to 'section 2' in line with new recruits from 2019.

13.2.7 "Failing to manage a return to work in the period September 2021 to December 2022 (including failure to progress the grievances to enable the Claimant to return to work)".

13.2.8 Mr Tom Abel, on 31 January 2023, suggesting to the First Claimant that she needed to "consider the tone of your emails and whether this is in line with Trust values";

13.2.9 Advising Mr Parsons that he must use his annual leave entitlement during a period of 'Management stand down' whilst awaiting the investigation of his grievance of discrimination and implementation of reasonable adjustments.

13.3 If the Claimants were subject to any or all of the above detriments was this because they had carried out the protected act or acts?

14. ***Harassment related to disability – s26 EqA 2010***

14.1 Did the Respondents subject the Claimants to the following conduct:

14.1.1 Offering fixed line work to other colleagues in preference to the Claimants and/or without consideration of offering the Claimants fixed line work. The identities of those offered fixed line work are known to the Respondent as detailed in an email from Claire Thwaites, Area General Manager in an email of 23 March 2023.

14.1.2 Marika Stephenson rejecting the Claimants' complaints about failing to implement the fixed line provision of the COT3 agreement on the basis that the Claimants had suffered no financial loss, even though the Claimant was not able to obtain overtime pay due to being unable to return to active duty

14.1.3 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022

14.1.4 Failing to properly consider or implement the return to work plan proposed by Mrs Parsons in April 2022

14.1.5 Arranging for Mrs Parsons to be interviewed by a panel containing her own HR manager, and own her line manager both of whom had significant involvement with the issues she was experiencing within the workplace in relation to disability

14.1.6 31st August 2022 Ms Kitchener making unacceptable comments to the Claimant and turning away (First Claimant only).

14.1.7 Advising the Claimant on the 2nd September 2022 that her unsocial hours payments were being moved to 'section 2' in line with new recruits from 2019.

14.1.8 In or around January 2023 the Claimants' colleagues made unacceptable comments on a work related online discussion group regarding fibromyalgia/mental health disabilities including referring to it being categorised in the sections of 'flakey', 'not my fault' 'no apparent problem' and 'chronic issue for the last 20 years (with rolled eyes emoji)'. The Respondent took no effective action to address this.

14.1.9 Requiring the Claimants to return to work under the supervision and control of Luke Squibb and Terry Hicks despite these people having been involved in prior complaints from the Claimants in relation to poor treatment arising from their disability

14.1.10 When the Claimants became aware, on their return to work in December 2022/January 2023 that Luke Squibb was still present in the workplace and became anxious as a result of their disabilities, Terry Hicks admonished the Claimants to manage this appropriately and professionally rather than offering support

14.1.11 Terry Hicks informing their allocated support worker "you are not their messenger" when issues were raised on their behalf by them during their return

14.1.12 Mr Tom Abel, on 31 January 2023, suggesting to the First Claimant that she needed to "consider the tone of your emails and whether this is in line with Trust values";

14.2 Was this unwanted conduct?

14.3 Was it related to the Claimants' disability?

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

14.5 If not, did it have that effect?

14.6 Whether, having regard to all the circumstances, including the perception of the Claimants, it is reasonable for the conduct to have the effect of violating the Claimants dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimants?

Remedy

15. What financial losses, if any, has the alleged discrimination caused the Claimants?

16. Has the Claimant mitigated their loss at all?

17. What award, if any, should be made on account of injury to feelings?

18. What declarations and/or recommendations, if any, would be appropriate?

19. Are the Claimants owed interest? If so, how much?

20. Should there be any uplift to an award in respect of the Respondent's failure to follow a relevant ACAS code of conduct?

Evidence

22. For the Claimants, we had witness statements from and heard evidence from Mr and Ms Parsons. They called no other witnesses.

23. For the Respondents, we had witness statements from, (and we heard evidence from each of):-

    23.1. Ms Karen Carter, Head of Employee Relations;

    23.2. Mr Terry Hicks, Head of Clinical Operations, (Cambridge and Peterborough);

    23.3. Mr John Hargreaves, Clinical Practice Specialist, (Cambridge and Peterborough);

    23.4. Mrs Lisa Benstead, at the relevant time, Assistant General Manager at the Respondent's Peterborough Station;

    23.5. Mrs Helen Adams, Head of Resourcing and Shared Services;

    23.6. Mr Tom Abell, Chief Executive;

    23.7. Ms Marika Stephenson, Director of People Services; and

    23.8. Mrs Laura Kitchen, Leading Operations Manager, (Peterborough Station).

24. We had before us three bundles:-

    24.1. Disability Bundle, running to page 490;

    24.2. Pleadings and Orders Bundle, running to page 294; and

    24.3. Documents Bundle, running to page 1,162.

25. One document was added during the course of the hearing at page number 1,163. The document was produced by the Respondent and the Claimants did not object to its being included. It was a rota for Huntingdon dated 25 November 2019.

26. We adjourned on Day 1 to read the witness statements. At the start of Day 2 we confirmed to the parties that we had read the witness statements and we had either read or looked at in our discretion, the documents referred to. I explained to the parties as is usual, we have not read all of the documents and the representatives must make sure they take us to what they consider to be the important passages within the documents during the hearing of evidence.

27. We also had:-

27.1. a Cast List;

27.2. a Chronology;

27.3. the Respondent's written submissions;

27.4. the Respondent's application to exclude evidence, (see below);

27.5. the Claimant's outline closing submissions; and

27.6. Judgment with Reasons in the case of Rayner against the Respondent dated 19 April 2022.

28. This case was originally listed for 15 days. We lost three days due to the unavailability of the Employment Judge or Members of the Tribunal. That is unfortunately, a regular feature of multi day Employment Tribunal hearings in this day and age.

29. What was highly unsatisfactory, was that we lost three further days because the Respondent's solicitors failed to ensure that the Respondent's witnesses were available when they were needed. We were told that there had been, "miscommunication" and so it was that Mr Abell, Ms Stephenson and Mrs Kitchen were not available when they were needed because they were on holiday. Whilst we tried to insist that they must give evidence without the Tribunal losing any time and that given this hearing was being conducted by CVP, there should be no reason why they could not do so, (unless they happen to be abroad in countries which had not given consent for the taking of evidence from their jurisdiction). Unfortunately, it transpired this was not practicable in relation to any of the three witnesses. Having regard to the overriding objective and the balance of prejudice to the parties, we concluded that we should adjourn, notwithstanding that it meant losing 3 further days, so that we could hear evidence from each of three individuals when they were back in the country.

30. As a result, the Tribunal was unable to sit on 2, 6 and 7 August 2024. It had always been the intention that the Tribunal would provide a Reserved Judgment, but deliberation time had been built into the fifteen day listing and that has been lost, which has meant delay in producing this Reserved Judgment, because it has been necessary to accommodate the diaries of the Employment Judge and the two Tribunal Members. I gave an assurance to the claimants that there would be no such delay and I apologise to them that in fact, there was.

The Respondent's Application to Exclude Elements of the Claimants' Witness Statements

31. Previous proceedings between Mr and Mrs Parsons, the First Respondent and Ms Bromley were settled by an agreement set out in a COT3 on 19 January 2021. All claims were withdrawn on signing of the COT3, save in

respect of some specific allegations listed in a schedule attached to the COT3, allegations against Ms Bromley. The terms of the COT3 provided that, (Clause 2) should the First Respondent subsequently confirm that no action will be taken against Mr and Mrs Parsons in relation to matters set out in the claims, Mr and Mrs Parsons would withdraw those remaining reserved matters, (in other words the allegations against Ms Bromley). Those reserved claims were withdrawn by letter from Solicitors acting for Mr and Mrs Parsons on 4 March 2022.

32. The COT3 provided at Clause 4, for payment of a sum of money in full and final settlement of not just the claims, but any other claims of whatever nature that Mr and Mrs Parsons may have had against the Respondent or any employee of the Respondent up to the date of the COT3.

33. As I have already recited above, allegations against Ms Bromley in the current proceedings were the subject of a Deposit Order. The specific allegations covered by the terms of that Deposit Order were in summary:-

    33.1. Ms Bromley waving a sick note suggesting Mrs Parsons had forged a signature;

    33.2. Ms Bromley referring Mr and Mrs Parsons to NHS Counter Fraud, and

    33.3. Ms Bromley referring Mrs Parsons to HCPC.

34. The Deposit was not paid, those allegations are therefore automatically dismissed. However, Mr and Mrs Parsons withdrew their claims against Ms Bromley in their entirety as well as those claims being dismissed on withdrawal by a Judgment from Employment Judge Tynan dated 5 June 2024.

35. The Application relates to passages in Mr and Mrs Parsons' witness statements relating to the following:-

    35.1. Ms Bromley in August 2020 challenging Mrs Parsons about her absence during the Covid crisis in August and September 2020 and therefore pre-dating the COT3;

    35.2. Mrs Parsons Feeling overwhelmed in September 2020, before the COT3;

    35.3. An allegation that Ms Bromley had waved Mrs Parson's sick note in the air announcing, "I've got her! She's forged the signature" some time between March and September 2020 and therefore before the COT3, although not discovered by Mrs Parsons until October 2022;

    35.4. Ms Bromley referring Mr and Mrs Parsons to NHS Counter Fraud, (that was in August 2020 and therefore before the COT3), and

35.5. Mr Parsons being harassed by Ms Bromley during August and September 2020.

36. We note that the Claimants did not know of the Counter Fraud reference until March 2021, that is post the COT3, before the COT3.

37. Mr Heard submitted:-

37.1. The matters referred to in the witness statements that are at hand, are not relevant to the issues; and

37.2. Ms Bromley has not been called as a witness because there are no pleaded allegations against her.

38. Mr Downey submits:-

38.1. Just because these specific allegations were not proceeded with, does not mean that they are irrelevant;

38.2. It is wrong in principle to summarily exclude evidence on the grounds of relevance. Having regard to the burden of proof in discrimination cases, the Tribunal has to look at all of the evidence. What happened in relation to the previous claims is part of the factual narrative to this claim;

38.3. The Respondent is guilty of a culture of discrimination, (Mr Heard points out the claimant's pleaded case is not one of culture);

38.4. The Tribunal can decide for itself how much weight to attach to this evidence and if it decides that it is irrelevant, there is no need to challenge it, but if it is relevant, the Respondent has had an opportunity to answer them;

38.5. The Tribunal may wish to draw inferences;

38.6. The claimants' case is that there was an attitude towards them started by Ms Bromley and then continued by others and that is the relevance of this evidence across the issues; and

38.7. It is artificial to exclude evidence at this stage and more proportionate to hear the evidence and decide if it has any bearing on the issues.

39. Mr Heard referred us to HSBC Asia Holdings EV v Gillespie [2011] IRLR 209, quoting the then President, Underhill J (as he then was) uncontroversially citing the basic principle that if evidence is relevant it is admissible and if it is irrelevant it is inadmissible. The relevance of evidence is not an absolute concept, something may be logically or theoretically relevant but too marginal to be sufficiently relevant. Underhill J remarked by reference to the CPR,

> "If anything, it is arguable that Employment Tribunals, while guided by the same principles, should be rather more willing to exclude irrelevant, or marginally relevant, evidence."

40. Underhill J's summary of the law was endorsed by the Court of Appeal in Kalu v Brighton & Sussex University Hospitals NHS Trust [2015] EWCA Civ. 897.

41. In exercising our judgement, we must of course have regard to the overriding objective and the balance of prejudice to the parties:-

    41.1. The claimants appear to be trying to bring into this arena potential claims that had arisen prior to the COT3 and that are therefore excluded by reference to the terms of settlement. That appears to us to be an abuse of process.

    41.2. The claimants may not have been aware of the Counter Fraud referral until after the COT3. The allegation about that was raised in these proceedings, Ms Bromley was a named Respondent and subsequently the claim and allegations against her were withdrawn (as well as being the subject of a Deposit Order and the Deposit Order not having been paid). That too appears to be an abuse of process.

    41.3. Having regard to the List of Issues, it did not seem to us that what Ms Bromley may or may not have done prior to the COT3 was going to assist us in deciding the outcome of this case. The allegations in this case are against other people, not Ms Bromley.

42. The claimant's grievance against Ms Bromley is a protected act in this claim and we will look at the grievance in that context.

43. We conclude that the evidence is not sufficiently relevant and is to be excluded.

44. We were subsequently provided with replacement copies of the witness statements with the offending passages deleted.

The Law

45. Disability is a protected characteristic pursuant to s.4 of the Equality Act 2010.

46. Section 39(2)(d) proscribes discrimination by an employer by subjecting an employee to any detriment.

47. Detriment was defined in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 the Tribunal has to find that by reason of the act or acts complained of, a reasonable worker would or might take the

view that he or she had been disadvantaged in the circumstances in which he or she had thereafter to work.

48. Section 39(5) imposes a duty on an employer to make reasonable adjustments.

49. Section 40 prohibits harassment by an employer.

Definition of Disability

50. For the purposes of the Equality Act 2010 (EqA) a person is said, at section 6, to have a disability if they meet the following definition:

"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.

51. The burden of proof lies with the claimant to prove that they are disabled in accordance with that definition.

52. The expression 'substantial' is defined at Section 212 as, *'more than minor or trivial'*.

53. Further assistance is provided at Schedule 1, which explains at paragraph 2:

"(1) The effect of an impairment is long-term if –

(a) it has lasted for at least 12 months,
(b) it is likely to last for least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur".

54. As to the effect of medical treatment, paragraph 5 provides:

"(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if –

(a) measures are being taken to treat or correct it, and
(b) but for that, it would be likely to have that effect.

(2) 'Measures' includes, in particular medical treatment …"

55. Paragraph 12 of Schedule 1 provides that a Tribunal must take into account such guidance as it thinks is relevant in determining whether a person is disabled. Such guidance which is relevant is that which is produced by the government's office for disability issues entitled, 'Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability'.

56. As Sections A3 through to A6 of that guide make clear, in assessing whether a particular condition is an "impairment" one does not have to establish that the impairment is as a result of an illness, one must look at the effect that impairment has on a person's ability to carry out normal day-to-day activities. A disability can arise from impairments which include mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, unshared perceptions, eating disorders, bipolar affective disorders, obsessive compulsive disorders, personality disorders, post traumatic stress disorder, (see A5) and can also include mental illnesses such as depression. It is not necessary and will often not be possible to categorise a condition as a particular physical or mental impairment.

57. As to the meaning of 'substantial adverse effects', paragraph B1 assists as follows:

> *"The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences and ability which may exist amongst people. A substantial effect is one that is more than a minor or trivial effect".*

58. The Guidance at B4 and B5 points out that one should have regard to the cumulative effect of an impairment**.** There may not be a substantial adverse effect in respect of one particular activity in isolation, but when taken together with the effect on other activities, (which might also not be, "substantial") they may together amount to an overall substantial adverse effect.

59. Paragraph B12 explains that where the impairment is subject to treatment, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or the correction, the impairment is likely to have this effect. The word 'likely' should be interpreted as meaning, 'could well happen', (see SCA Packaging below). In other words, one looks at the effect of the impairment as if there was no treatment. A tribunal needs reliable evidence as to what the effect of an impairment would be but for the treatment, see Woodrup v London Borough of Soutwark [2003] IRLR 111 CA.

60. Paragraph C2 explains that the cumulative effect of related impairments should be taken into account in deciding whether an effect is long term. If there are 2 different impairments which have lasted less than 12 months,

one has to consider whether the second has developed from the first, see Patel v Oldham Metropolitan Borough Council & Others [2010] ICR 603 EAT.

61. Similarly, on the question of whether an impairment has lasted or is likely to last more than 12 months, it is the substantial adverse effect which must have so lasted.

62. As for what amounts to normal day-to-day activities, the guidance explains that these are the sort of things that people do on a regular or daily basis including, for example, things like shopping, reading, writing, holding conversations, using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, taking part in social activities, (paragraph D3). The expression should be given its ordinary and natural meaning, (paragraph D4).

63. As to what amounts to a **'**substantial effect', the guidance is careful not to give prescriptive examples but sets out in the Appendix a list of examples that might be regarded as a substantial effect on day-to-day activities as compared to what might not be regarded as such. For example, in terms of physical difficulties: *'difficulty picking* up *and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage, with one hand'* which would be regarded as a substantial effect, as compared to, '*inability to move heavy objects without assistance or a mechanical aid, such as moving a large suitcase or heavy piece of furniture without a trolley'* which would not be so regarded. Also compare, *'a total inability to walk, or an ability to walk only a short distance without difficulty'* which is a substantial effect to, *'experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile'*. In terms of mental impairments, examples might be: *'difficulty going out of doors unaccompanied…"* or *"difficulty waiting or queuing, for example, because of a lack of understanding of the concept…"* or *"difficulty entering or staying in environments that the person perceives as strange or frightening, because the person has a phobia.."* which would be regarded as substantial effects, as compared to, *'inability to speak in front of an audience simply as a result of nervousness;"* or *"some shyness and timidity…"* which would not be so regarded.

64. The word, "likely" in the context of the definition of disability in the Equality Act 2010, means, "could well happen", or something that is a real possibility. See SCA Packaging Ltd v Boyle [2009] ICR 1056 HL and the Guidance at paragraph C3. This is because we are not concerned here with weighing conflicting evidence and making findings of fact, but are in the realm of medical opinion and assessing risk or likelihood in that sense.

65. The indirect effects of an impairment must also be taken into account, (the Guidance at D22). For example, where the impairment causes pain or

fatigue, that pain or fatigue may impact on the ability to carry out day to day activities to a degree that it becomes substantial and long term.

66. In Goodwin v Patent Office [1999] ICR 302 the EAT identified that there were four questions to ask in determining whether a person was disabled:

1. Did the Claimant have a mental and/or physical impairment?
2. Did the impairment effect the Claimant's ability to carry out normal day-to-day activities?
3. Was the adverse condition substantial? and
4. Was the adverse condition long term?

Reasonable Adjustments

67. Section 20 defines the duty to make reasonable adjustments, which comprises three possible requirements, the first of which might apply in this case set out at subsection (3) as follows:-

> *"(3) The first requirement is a requirement, where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage"*

68. Section 21 provides that a failure to comply with such requirements is a failure to make a reasonable adjustment, which amounts to discrimination.

69. There are five steps to establishing a failure to make reasonable adjustments (as identified in the pre-Equality Act 2010 cases of Environment Agency v Rowan [2008] IRLR 20 and HM Prison Service v Johnson [2007] IRLR 951). The Tribunal must identify:

69.1. The relevant provision criterion or practice applied by or on behalf of the employer;

69.2. The identity of non-disabled comparators, (where appropriate);

69.3. The nature and extent of the substantial disadvantage suffered by the disabled employee;

69.4. The steps the employer is said to have failed to take, and

69.5. Whether it was reasonable to take that step.

70. The employer will only be liable if it knew or ought to have known that the Claimant was disabled and that they were likely to be effected in the manner alleged, see Schedule 8 paragraph 20 and Wilcox v Birmingham CAB Services Ltd EAT 0293/10 where Mr Justice Underhill said of the equivalent provision in the Disability Discrimination Act 1995 that an employer will not be liable for a failure to make reasonable adjustments

unless it has actual or constructive knowledge both that the employee was disabled and that he or she was disadvantaged by the disability.

71. The Equality and Human Rights Commission: Code of Practice on Employment (2011) at paragraph 4.5 suggests that PCP should be construed widely so as to include for example, formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. It may also be a decision to do something in the future or a one off decision.

72. The decision of Mrs Justice Simler DBE, (then President) in Lamb v the Business Academy Bexley UKEAT/0226/JOJ assists with identifying what is and what is not, a PCP. The phrase is to be construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer from disability. It may in certain circumstances include one-off decisions, (paragraph 26). She approved though, the comments of the former President, Langstaff J in Nottingham City Transport Ltd v Harvey UKEAT/0032/12 where he referred to, "practice" as having an element of repetition. In the former case, a teacher was dismissed after a long period of absence during which a grievance was investigated and an outcome provided. The PCP was the requirement to return to work without a proper and fair investigation. There were repeated failures to properly investigate and repeated delays; that was a practice. In the latter case, a claimant suffering from depression, returning to work and confused by a new swipe card system, altered his time sheet. The EAT held that the one-off application of a flawed disciplinary procedure did not amount to a, "practice". More recently in Ishola v Transport for London 2020 EWCA Civ 112, CA, Lady Justice Simler, (as she now is) affirmed that approach, the Court of Appeal holding that the words provision criterion or practice carry the connotation of a state of affairs indicating how similar cases will be treated in the future; a one off act can amount to a practice if there is some indication that it would be repeated if similar circumstances were to arise in the future. She said at paragraph 35 that the words:

> *"…are not terms of art but ordinary English words … they are broad and overlapping… not to be narrowly construed or unjustifiably limited in their application".*

She also said at paragraph 37, that not every unfair act amounts to a PCP. If such an act is found not to be direct discrimination, it would be wrong by a process of abstraction, to seek to convert it into the application of a PCP.

73. A PCP may be formal or informal and there is no requirement that the employee should be expressly ordered, or coerced, into complying. It may be no more than a strong formal request, see United First Partners Research v Carreras [2018] EWCA Civ 323.

74. It is important for the claimant to identify the PCP relied upon and for the Tribunal to makes its decision on the PCP advanced by the claimant, see Secretary of State for Justice v Prospere UKEAT/0412/14.

75. Claimants are not required to prove that they were disadvantaged, it is not a test of causation, it is a comparative exercise to test whether the PCP has the effect of disadvantaging the disabled Claimant more than trivially in comparison with others who are not disabled, see Sheikholeslami v University of Edinburgh 2018 IRLR 1090.

76. The duty is to make "reasonable" adjustments, to take such steps as it is reasonable for the employer to take to avoid the disadvantage. The test is objective. Our focus should be not on the process followed by the employer to reach its decision but on practical outcomes and whether there is an adjustment that should be considered reasonable. It is for the tribunal to determine, objectively, what is reasonable. It is not a matter of what the employer reasonably believed.

77. The EHRC Code at paragraph 6.28 sets out examples of matters we might take into account in evaluating whether proposed steps are reasonable as follows:

    77.1. The effectiveness in preventing the substantial disadvantage;

    77.2. Its practicability;

    77.3. The financial and other costs and the extent of any disruptions that may be caused;

    77.4. The employer's financial or other resources;

    77.5. The availability of financial or other assistance, (eg through Access to Work), and

    77.6. The type and size of the employer.

78. Simler P observed in Sheikholeslami that it is a question of whether the PCP bites harder on the Claimant, she said:

> *"Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability."*

Direct Discrimination

79. Direct discrimination is defined at s.13 as follows:

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

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

80. Section 23 provides that in making comparisons under section 13, there must be no material difference between the circumstances of the Claimant and the comparator. The comparator may be an actual person identified as being in the same circumstances as the Claimant, but not having their protected characteristic, or it may be a hypothetical comparator, constructed by the Tribunal for the purpose of the comparison exercise. The Claimant must show that they have been treated less favourably than that real or hypothetical comparator.

81. In a case of direct disability discrimination, the comparator would be a person in the same circumstances as the claimant, but who is not disabled as defined in the Equality Act 2010, see London Borough of Lewisham v Malcolm [2008] UKHL 43.

82. How does one determine whether any particular less favourable treatment was, "because of" a protected characteristic? There is no difference in meaning between the term, "because of" in section 13 and "on the grounds of", under the pre-Equality Act legislation, (see Onu v Akwiwu and Taiwo v Olaigbe [2014] IRLR 448 at paragraph 40).

83. The leading authority on when an act is because of a protected characteristic is Nagarajan v London Regional Transport [1999] IRLR 572. Was the reason the protected characteristic, or was it some other reason? One has to consider the mental processes of the alleged discriminator. Was there a subconscious motivation? Should one draw inferences that the alleged discriminator, whether he or she knew it or not, acted as he or she did, because of the protected characteristic? - (see paragraphs 13 and 17).

84. The disability does not have to be the only, nor even the main, reason for the treatment complained of, but it must be an effective cause. Lord Nicholls in Nagarajan referred to it being suffice if it was a, "significant influence":

> *"Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."*

Disability Related Discrimination

85. Disability Related discrimination is defined at s.15 as follows:

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

86. Determining whether treatment is unfavourable does not require any element of comparison, as is required in deciding whether treatment is less favourable for the purposes of direct discrimination. There is a relatively low threshold of disadvantage for treatment to be regarded as unfavourable. It entails perhaps placing a hurdle in front of someone, creating a particular difficulty or disadvantaging for a person, see Williams v Trustees of Swansea University Pension and Assurance Scheme [2019] UKSC.

87. The difference between Direct Discrimination on the grounds of disability and Disability Related Discrimination is often neatly explained in these terms: direct discrimination is by reason of the fact of the disability, whereas disability related discrimination is because of the effect of the disability.

88. As for the difference between making a reasonable adjustment and disability related discrimination, in General Dynamics v Carranza UKEAT 0107/14/1010 HHJ Richardson explained that reasonable adjustments are about preventing disadvantage, disability related discrimination is about making allowances for that persons disability.

89. There are 2 separate causative steps: firstly, the disability has the consequence of causing something and secondly, the treatment complained of as unfavourable must be because of that particular something, (Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14/RN)

90. Simler P, (as she then was) reviewed the authorities and gave helpful guidance on the correct approach to s15 in Pnaiser v NHS England [2016] IRLR 170 which may be summarised as follows:

    90.1. The tribunal should first identify whether the claimant was treated unfavourably and if so, by whom.

    90.2. Secondly, the tribunal should determine what caused the treatment, focussing on the reason, (not motive) in the mind of the alleged

discriminator, possibly requiring consideration of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive is irrelevant. There may be more than one cause of the treatment, the "something" need not be the main or sole reason, but it must have a significant, (more than trivial) influence and amount to an effective cause of the unfavourable treatment.

90.3. Thirdly, the tribunal must then determine whether the reason for the unfavourable treatment arose because of the claimant's disability. There could be a range of, more than one, causal links. However, the more links there are, the harder it may be to establish the required connection. The question of causation is an objective test and does not entail consideration of the thought processes of the alleged discriminator. There is no requirement that the respondent know of the causal link between the disability and the, "something arising".

91. If there has been such treatment, we should then go on to ask, as set out at s.15(1)(b), whether the unfavourable treatment can be justified. This requires us to determine:

91.1. Whether there was a legitimate aim, unrelated to discrimination;

91.2. Whether the treatment was capable of achieving that aim, and

91.3. Whether the treatment was a proportionate means of achieving that aim, having regard to the relevant facts and taking into account the possibility of other means of achieving that aim.

92. The test of whether there is a proportionate means of achieving a legitimate aim, (often referred to as the justification test) mirrors similar provisions in other strands of discrimination, such as in respect of indirect discrimination under s19 of the Equality Act, the origins of which lie in European Law. There is however, a difference, in that in the context of disability related discrimination, one is looking at the effect on the individual, whereas with indirect discrimination, one is looking at the effect on a group of people.

93. There is guidance in the Equality and Human Rights Commission's Code of Practice on Employment, which reflects case law on objective justification in other strands of discrimination and which can be relied on in the context of disability related discrimination.

94. Thus, in Hensam v Ministry of Defence UKEAT/10067/14/DM the EAT applied the justification test as described in Hardy & Hansons Plc v Lax [2005] EWCA Civ 846. In Gray v University of Portsmouth UKEAT/0242/20 Mrs Justice Eady said that employment tribunals should carry out a critical evaluation, adopting the same approach as in indirect discrimination cases, following Hardy & Hansons. The test is objective. In assessing

proportionality, the tribunal uses its own judgment, which must be based on a fair and detailed analysis of the working practices and business considerations involved, particularly the business needs of the employer. It is not a question of whether the view taken by the employer was one a reasonable employer would have taken. The obligation is on the employer to show that the treatment complained of is a proportionate means of achieving a legitimate aim. The employer must establish that it was pursuing a legitimate aim and that the measures it was taking were appropriate and legitimate. To demonstrate proportionality, the employer is not required to show that there was no alternative course of action, but that the measures taken were reasonably necessary.

95. The tribunal has to objectively balance the discriminatory effect of the treatment and the reasonable needs of the employer.

96. "Legitimate aim" and "proportionate means" are 2 separate issues and should not be conflated.

97. The tribunal must weigh out a quantitative and qualitative assessment of the discriminatory effect of the treatment, (University of Manchester v Jones [1993] ICR 474).

98. The tribunal should scrutinise the justification put forward by the Respondent, (per Sedley LJ in Allonby v Accrington & Rosedale College [2001] ICR 189).

Indirect Discrimination

99. Indirect discrimination is defined at s.19 as follows:

> *"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –*
>
> *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
>
> *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
>
> *(c) it puts, or would put, B at that disadvantage, and*
>
> *(d) A cannot show it to be a proportionate means of achieving a legitimate aim."*

100. See above for what amounts to a PCP.

101. Section 6 (3) provides that in relation to disability, reference to a person with a particular protected characteristic, or a shared protected characteristic, is reference is reference to a particular, or the same, disability.

102. The obligation is on the employer to show that the PCP complained of is a proportionate means of achieving a legitimate aim, ("objective justification") the law relating to which is set out above.

Harassment

103. Harassment is defined at s.26:

> *"(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…*
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
>
> *(a) the perception of B;*
>
> *(b) the other circumstances of the case;*
>
> *(c) whether it is reasonable for the conduct to have that effect.*
>
> *(5) The relevant protected characteristics are—*
>
> *…*
>
> *disability;*
>
> *…"*

104. We will refer to that henceforth as the proscribed environment. There are three factors to take into account:

104.1. The perception of the Claimant;

104.2. The other circumstances of the case, and

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

105. The conduct complained of that is said to give rise to the proscribed environment must be related to the protected characteristic. That means the Tribunal must look at the context in which the conduct occurred.

106. HHJ Richardson observed in Hartley v Foreign and Commonwealth Office Services UKEAT/0033/15/LA at paragraph 23:

> *"The question posed by section 26(1) is whether A's conduct related to the protected characteristic. This is a broad test, requiring an evaluation by the Employment Tribunal of the evidence in the round — recognising, of course, that witnesses will not readily volunteer that a remark was related to a protected characteristic. In some cases the burden of proof provisions may be important, though they have not played any part in submissions on this appeal. The Equality Code says (paragraph 7.9):*
>
> *'7.9. Unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.' …"*

107. The motivation and thought processes of those accused of harassment may be relevant to the question of whether their conduct amounted to harassment, see Unite the Union v Nailard [2018] IRLR 730 at paragraphs 108 -109.

108. The EAT gave some helpful guidance in the case of Richmond Pharmacology v Dhaliwal [2009] IRLR 336. It is a case relating to race discrimination, but the comments, (by Underhill P, as he then was) apply to cases of harassment in respect of any of the proscribed grounds.

> *"We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. Whilst it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred). It is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."*

109. Those sentiments were reinforced by Sir Patrick Elias in Grant v Her Majesty's Land Registry [2011] EWCA Civ 769. Of the words, "intimidating, hostile, degrading, humiliating or offensive" he said that Employment Tribunals, "*should not cheapen"* the significance of those words, they are an important control to prevent trivial acts causing minor upsets being caught up in the concept of harassment.

110. In Pemberton *v Inwood* [2018] EWCA Civ 564 Underhill LJ said at paragraph 88:

> *" In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the proscribed effects under sub-paragraph (1) (b), a tribunal must consider both (by reason of sub-section (4) (a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4) (b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.*"

Victimisation

111. Section 27 defines victimisation as follows:

> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*
> *(2) Each of the following is a protected act—*
> *(a) bringing proceedings under this Act;*
> *(b) giving evidence or information in connection with proceedings under this Act;*
> *(c) doing any other thing for the purposes of or in connection with this Act;*
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*
> *(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
> *(4) This section applies only where the person subjected to a detriment is an individual.*
> *(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

112. The meaning of, "detriment" is explained above.

113. Whether a particular act amounts to detriment should be judged primarily from the perspective of the alleged victim. However, an alleged victim cannot establish detriment merely by showing that they had suffered mental distress, they have to show that such was objectively reasonable in

all the circumstances; see St Helens Metropolitan Borough Council v Derbyshire [2007] IRLR 540 HL.

114. To be an act of victimisation, the act complained of must be, "because of" the protected act or the employer's belief. For analysis of what the means, see Lord Nicholls in Nagarajan v London Regional Transport [1999]ICR 877 discussed above. "Significant influence" does not mean that it has to be of great importance, but an influence that is more than trivial, (see Lord Justice Gibson in Igen v Wong cited below).

Detriment, harassment, victimisation and direct discrimination

115. Section 212, the definitions section of the Equality Act, at subsection (1) provides that, "detriment" does not include conduct which amounts to harassment. This means that it is not possible to have the same conduct defined as direct discrimination and harassment, or victimisation and harassment. One might say that harassment has priority; if the conduct is harassment, it is not a detriment and not therefore either victimisation or direct discrimination.

Burden of Proof

116. In respect of the burden of proof, s.136 reads as follows:

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

117. The Court of Appeal gave guidance on how to apply the equivalent provision of s.136 under the previous discrimination legislation, in the case of Igen Ltd v Wong and Others [2005] IRLR 258. There, the Court of Appeal set out a series of guidance steps, that guidance may still be relied upon, see Underhill LJ at paragraph 14 in Greater Manchester Police v Bailey [2017] EWCA Civ 425. We have carefully observed those steps in this case.

118. The effect of s136 and the burden of proof in a case of alleged disability related discrimination is that the claimant has to show:

118.1. That they were disabled at the relevant time;

118.2. That they had been subjected to unfavourable treatment;

118.3. A link between the unfavourable treatment and the, "something", and

118.4. Evidence from which the tribunal could properly conclude that the, "something" was an effective cause of the unfavourable treatment.

119. It the claimant proves facts from which the tribunal could conclude that there was section 15 discrimination in this way, the burden of proof shifts to the respondent to prove a non-discriminatory explanation, or justification.

120. The effect of s.136 in a case of alleged indirect discrimination, is that it is for the claimant to show *prima facie* the existence of a provision, criterion or practice, (PCP) and that such PCP placed the claimant's group sharing their protected characteristic at a disadvantage as compared to another group that does not share the protected characteristic and that the PCP was applied to the claimant which resulted in them being subjected to that disadvantage. These are primary facts which the tribunal has to find before the burden of proof shifts to the respondent, see Project Management Institute v Latif [2007] IRLR 579 and Bethnal Green and Shoreditch Education Trust v Jeanne Dippenaar UKEAT/0064/15/JOJ.

121. In a case of alleged failure to make reasonable adjustments, s136 requires that the claimant prove that a PCP was applied and that it placed them at a disadvantage. The claimant should put forward some potentially reasonable adjustments. If they do that, the burden of proof shifts to the respondent to prove that it would not have been reasonable for them to make the adjustment, see Rentokil Initial UK Limited v Miller [2024]EAT 34.

Time

122. Section 123 of the Equality Act requires that claims of discrimination must normally be made within 3 months of the act complained of, or such further period as the Tribunal considers just and equitable. Where an act continues over a period of time, time runs from the end of that period, from the last act.

Findings of Fact

123. The Respondent is an NHS Ambulance Service with approximately four thousand employees.

124. Mr Parsons joined the Respondent on 1 May 2014. Mrs Parsons joined on 1 August 2016. Both were originally employed as Emergency Medical Technicians, (EMT). In September 2017, they both commenced the Respondent's "Internal Pathway" to qualify as Paramedics. That entailed University study, whilst continuing to work as EMTs.

125. Mrs Parsons had been working a 23 hour week and Mr Parsons a 28.75 hour week because of medical conditions. It is not clear when that started.

126. The Respondent has a, "Disability Confident Employer Scheme" which begins at page 1160. This provides that applications by people with disabilities are encouraged, by offering an interview to an applicant who declares themselves as having a disability provided they meet the minimum criteria. The document contains a stated intention to support existing employees who acquire a disability for long term health conditions, so as to enable them to stay in work.

127. Between 2018 and 2020, the claimants issued a total of seven Employment Tribunal claims against the Respondent, (five of which are relied upon in these proceedings as protected acts). Those claims were against their Line Manager, Ms Bromley. Amongst their claims, was complaint that the Respondent had not permitted them to undertake Paramedic Training because of their disabilities and part time worker status.

128. On 18 April 2019, Mr Hicks, (about whom we will hear more later) chaired a hearing to determine a grievance raised by Mrs Parsons. The hearing proceeded in her absence. Mrs Parsons relies upon this as evidence relevant to inferences we may draw about Mr Hicks' subsequent conduct toward her and as evidence of an anti-disability culture. The hearing comes after an investigation by somebody else into Mrs Parsons' Grievances at the time. The Investigating Officer reported that Occupational Health had advised that they considered Mrs Parsons to be unlikely to be regarded as meeting the definition of disability and specifically that it was unlikely her diagnosis of Endometriosis would be classed as a disability. The HR Advisor noted that neither Endometriosis nor Fibromyalgia had been declared during Mrs Parsons' employment screening, all that had been noted was a long standing back injury. Mr Hicks asks,

> "From a disability perspective, what legal rights does she have as she hasn't declared these disabilities?"

129. The Investigating Officer stated that Mrs Parsons had only mentioned suffering from Endometriosis when she applied for short notice leave and it was refused. The Advisor is quoted as saying,

> "Disability is only seen to occur when SJP has had toil refused, which is also the first mention of grievance."

130. The HR Advisor notes that Mrs Parsons had stated that she was diagnosed with PTSD in 2016 but that she provides no evidence of this. She also notes,

> "Every time she asks for something and it gets refused a new disability appears to arise."

131. Mr Hicks notes that the terms and conditions and application forms call for a disclosure of disability and that Mrs Parsons had not done that, she had

only disclosed her back injury. He also notes that she had not disclosed it to Occupational Health.

132. Mr Hicks does note that arrangements were made to agree reasonable adjustments once the Team knew about the Endometriosis. The Grievance was not upheld.

133. Mr and Mrs Parsons began Paramedic Training in September 2019. They completed their training in March 2021 and registered with the Health and Care Professions Council, (HCPC) on 1 September 2021.

134. In March 2020, Mr and Mrs Parsons were stood down during the Covid crisis due to their vulnerability because of their medical conditions. They were able to continue to undertake their online Paramedic Training.

135. Unbeknownst to Mr and Mrs Parsons at the time, Ms Bromley referred them to NHS Counter Fraud.

136. On 9 September 2020, Mrs Parsons commenced a prolonged period of absence due to ill health. Mrs Parsons' sickness history, (page 174) confirms that she was absent between 10 September 2020 and 16 January 2022, a total of 494 days by reason of,

> "anxiety / stress / depression / other psychiatric ill".

137. The sickness history for Mr Parsons, (page 175) shows that he was absent from work for the same reasons for seven days between 7 and 13 January 2020 and then for 483 days between 25 September 2020 and 20 January 2022.

138. In both cases, the available sickness history is to 22 May 2023.

139. On 22 September 2020, Mr and Mrs Parsons submitted a joint grievance which is nine pages long and begins in the Bundle at page 25. The complaint in summary is about Ms Bromley telephoning them all the time whilst they were stood down during the Covid crisis, (they had been stood down by a previous Manager) and about Ms Bromley asking them for medical evidence in relation to their having been stood down, that request having been instigated by a Mr Squibb, the suggestion being made to them by Ms Bromley that their absence might be treated as unauthorised, a suggestion that their treatment amounted to victimisation, (because of the then ongoing legal action) and a suggestion that they had been subjected to detriment for having raised Health and Safety issues.

140. On 6 November 2020, Mr and Mrs Parsons and one other person, (whose identity has been redacted) raised a grievance with regard to Ms Bromley, (page 1011). They accuse her of disability discrimination. This grievance complains of:-

140.1. Mr and Mrs Parsons being accused of false stand down during Covid;

140.2. Mrs Parsons being accused of producing a fraudulent sick note and being in need of sacking;

140.3. Of their being harassed, overly managed regarding their absence and being repeatedly asked why they are off work and when they are returning; and

140.4. Being implicitly threatened with a disciplinary process because of their absence.

141. An Occupational Health Report for Mrs Parsons was provided dated 11 January 2021, (page 61). The report referred to the pending Employment Tribunal hearing and said that her GP had signed her off work until after that Hearing. It said that a Dyslexia Assessment was being set up for Mrs Parsons. The Respondent was advised that Mrs Parsons was not ready to return to work and recommended a further OH Assessment after the Tribunal Hearing.

142. That Tribunal Hearing commenced on 19 January 2021 and during the course of the first day, whilst the Tribunal was reading, terms of settlement were agreed, utilising ACAS, as set out in a COT3, exerts from which are as follows:-

> "4. The Claimants accept that the Payment is in full and final settlement of:-
>
> a. the Claims;
> b. all or any other claims of whatever nature which the Claimant has or may have against the Respondent and / or against any employee, worker, agent or officer of the Respondent arising out of or in connection with the Claimant's employment with the Respondent up to the date of this COT3, whether or not any such claims exist or are known to the parties or are recognised by law at the date of signing this COT3, whether such a claim arises under statute or otherwise and whether falling within the jurisdiction of an Employment Tribunal or not, excluding the Remaining Claims and any claims in respect of any personal injury unknown to the Claimants and / or accrued pension rights pension;
> c. any grievances that remain outstanding at the date of the signing of this COT3 except those relating to the Remaining Claims.
>
> …
>
> 8. The Respondent agrees that in the event of the Claimants completing their Paramedic qualifications it will permit them to

work a shared line. The Claimants have until 5pm on Tuesday 26 January 2020 to contact Karen Carter… by email and elect either:

a. one 12 hour line working out of Kempston starting from 5 April 2021, pursuant to the attached Rota at Schedule 3, to which will be added relief hours to ensure the Claimants achieve their contracted hours with these additional hours being worked in accordance with the Respondent's relief pattern;
b. the Claimant's [sic] shall continue to work on a relief contract, however they will be provided with the first 12 hour line that becomes available in either St Neots or Huntingdon, to which will be added relief hours to ensure the Claimants achieve their contracted hours with these additional hours being worked in accordance with the Respondent's relief pattern.
c. In the event the Claimants or either of them do not complete their Paramedic qualification…

…

10. The Claimants agree that all grievances, with the exception of any grievances relating to the Remaining Claims, will be withdrawn from the date of this COT3. However, should the Respondent confirm that no action will be taken against them in relation to the matters set out in those claims, the Claimants shall immediately withdraw any grievance relating to the Remaining Claims."

143. Schedule 2 to the COT3 listed the Remaining Claims which included the following alleged conduct:-

"(a) Being accused by Joanne Bromley in her letters dated 18 September 2020 of unauthorised absence between 23 March 2020 and 9 September 2020;

(b) Joanne Bromley demanding Medical Evidence from their GP in her letters dated 18 September 2020;

(c) Joanne Bromley contacting the Second Claimant by telephone to inform him there were concerns about his overtime payment claims;

(c) By Joanne Bromley making oppressive "welfare" checks in respect of the Claimants as detailed in paragraph 18 of their Grounds of Claim."

144. The distinction between fixed line and relief shifts is that a Paramedic working a fixed line shift pattern works a fixed pattern of shifts within a rota which is structured and predictable. Relief shifts entail being rostered to fill in gaps in the rota. There is no structure to those working relief shifts.

145. At this time, there were no fixed shifts available.

146. On 26 January 2021, the Claimants elected to remain on relief shifts based at the Kempston Station, (option 8(b)). At this point they had not completed their Paramedic qualifications.

147. An Occupational Health Report dated 1 March 2021 for Mrs Parsons was prepared after the scheduled date for the Employment Tribunal hearing as anticipated, a copy is at page 81. This reports Mrs Parsons being relieved that the Tribunal Proceedings had been completed, saying that she continued to experience heightened anxiety with regards to the Grievance which remained unheard and that this was a trigger and barrier to her return to work. The report refers to PTSD symptoms. The Report states that she has completed her university studies and has qualified as a Paramedic. The Advisor expresses the opinion that Mrs Parsons would be able to return to work once the grievance process has been resolved but that without resolution, a return will continue to be delayed and would be likely to further trigger PTSD symptoms. The report recommends a return to work program with a phased return to work once the Grievance has been resolved.

148. On 2 March 2021, Mr Marcus Bailey wrote to Mr and Mrs Parsons expressing that he was keen to look at the outstanding areas following the COT3. It refers to discussions with a Mr Steve Mason with a view to matters being the subject of an independent investigation. Mr Steve Mason was Chief Executive of an HR Consultancy known as Real World, who were brought in by the Respondent to assist with its outstanding employee relations case load.

149. Mr Bailey wrote again on 5 March 2021 to say that he had discussed the matter with Mr Mason, who said that he will oversee the review and proposes that they meet. They reply to say, amongst other things, that Mrs Parsons would welcome the opportunity to discuss their case with Mr Mason. She referred to the Grievance lodged in September 2020 and complains that no further action seems to have been taken. She reiterates as set out in her recent Occupational Health Report, that it is only the outstanding grievance that is stopping her from returning to work.

150. We note that on 11 March 2021, Mr Bailey wrote to Ms Carter to enquire as to whether a decision had been made on the Disciplinary Investigation. The reply he received reads:

> "Counterfraud [sic] have recently advised that we cannot do anything internally until it has been decided whether a criminal case will be pursued. This impacts on the ET as SJP/SP had indicated they would withdraw if the Trust took no action which obviously we couldn't agree to."

151. Mr Bailey replied:

"Do we know when they will make a decision?

I think our issue here is not being able to tell them anything or try to resolve because of it which will create its own problems."

152. At this point, Mr and Mrs Parsons do not know that a referral had been made to Counter Fraud by Ms Bromley. They clearly knew that there was the potential for some disciplinary action.

153. A Diagnostic and Cognitive Profile Report for Mrs Parsons was provided by an organisation known as Genius Within dated 5 May 2021, (page 93). The author is a Chartered Psychologist. This referred to Mrs Parsons as having a neuro-diverse cognitive profile, Dyslexia, Development Co-ordination Disorder and symptoms consistent with ADHD. It said that she had difficulties with reading, writing, memory and concentration and working with numbers. The report said that Mrs Parsons would be likely to:-

- "Find it difficult to hold information in mind for some time.
- Find it difficult to process large amounts of information at once, particularly if it is only presented verbally.
- Find it challenging to listen to and follow instructions, or remember messages, actions and appointments that are only given verbally.
- Find it challenging to concentrate on difficult tasks in a busy environment where there are lots of distractions or a high level of background noise.
- Benefit from strategies to help with attention and working memory difficulties."

154. Sometime later during in March or April 2021, Mr Bailey met with Mr and Mrs Parsons and revealed to them that they were the subject of a Counter Fraud Investigation in response to information provided by Ms Bromley. They were not told precisely what the investigation was about. Not surprisingly, this information caused raised anxiety.

155. The confidential Diagnostic and Cognitive Profile for Mr Parsons was produced by Genius Within, their report dated 8 May 2021. This stated that he had been referred for assessment because he struggled to remember details, taking notes and writing quickly. The Report stated that he had a neuro-diverse cognitive profile and he was Dyslexic. Whilst his perceptual reasoning was well above competent, he was assessed as being below competent in terms of working memory. The Report suggested that he was likely to:-

- "Have difficulty holding information in mind for a short amount of time.
- Benefit from strategies to compensate for working memory difficulties.
- Need strategies to help with attention and concentration.
- Find it challenging to hold onto and process more than one piece of information at a time.
- Find it challenging to listen to and follow instructions or remember messages, actions and appointments that are only given verbally.
- Find it challenging to concentrate on complex tasks in a busy environment where there are many distractions or a high background noise level."

156. During May 2021, (we have no document on this that we were taken to) Mr Bailey informed Mr and Mrs Parsons that the Counter Fraud Investigation was concluded and there would be no further action. He also told them what it had been about, namely the suggestion they had forged signatures on GP Fit Notes, forged information about their medical conditions, their time sheets, making claims for their university hours and a breach of lockdown rules.

157. A further Occupational Health Report for Mrs Parsons was produced dated 2 July 2021, (page 167). Opinion is expressed that Mrs Parsons is fit to return to work subject to recommended adjustments in relation to her Dyslexia, Development Co-ordination Disorder and ADHD. It refers to her being able to return to work after the Grievance has been resolved. There are recommendations made to assist with her dyslexia, it is suggested she would benefit from working with an experienced crewmate, that she alternate driving duties with that crewmate and if on a night shift, she drive for the first half of the night only. There is no mention of a fixed rota.

158. A further Occupational Health Report was provided for Mr Parsons dated 21 July 2021, (page 170). This report refers to Mr Parsons reporting that he was feeling low, that his workplace issues were complicated and ongoing, that he would struggle to return to Paramedic duties given his lengthy absence and lack of time to consolidate his learning. Recommendations are made to help him with his dyslexia. The Advisor recommends that Mr Parsons would benefit from Talking Therapy prior to his return to work, that he is unable to return to work pending investigations but once complete, he should have a phased return to work. He should have short breaks to de-compress, be allowed short notice leave and flexible working. There is no mention of a fixed rota. There is no

reference to his not being able to return to work until the Grievance has been resolved.

159. In August 2021, Mr Abell joined the Respondent as Chief Executive. At the time, the Respondent had 170 employee relations cases to sort out. Mr Abell created a system for tracking them. It was recognised the Respondent had a cultural problem, principally in relation to sexual harassment, but also in relation to all protected characteristics. This is why Real World had been engaged to assist the Respondent and its Human Resources department, which had insufficient capacity to tackle the issues.

160. On 1 September 2021, the claimants were registered with the HCPC and thereby, became qualified paramedics.

161. On 28 October 2021, Ms Karen Carter wrote to the then Head of Operations, (shortly to be replaced by Mr Hicks) Mr Monahan with regard to the COT3 Agreement by reference to 8b of the same, she wrote:

> "SJP and SP will continue to work on a relief contract, however, they will be provided with the first 12 hour line that becomes available in either St Neots or Huntingdon, to which will be added relief hours to ensure SJP / SP achieve their contractual hours if these additional hours being worked in accordance with SJP / SP's relief pattern."

162. In December 2021, Ms Stephenson joined the Respondent as Director of People's Services.

163. On 25 January 2022, steps were taken to ensure Mr and Mrs Parsons, who up until then had been on full pay as sick pay, were stood down so that they did not move onto half pay, but continued to receive full pay. This was to be implemented from the point their last Fit Note expired. Emails to this effect are at pages 176 – 178 passing between Ms Carter and Mr Mason.

164. On 15 February 2022, (page 184) Mrs Parsons emailed Mr Mason saying that she and Mr Parsons had been told by their solicitors that due to a clause in the COT3 Agreement, their ongoing complaint about Ms Bromley's treatment of them must be dropped. She then set out their complaints about the way they had been treated by Ms Bromley.

165. A decision is made by the Respondents that Mr Abell should become involved.

166. Mr Abell met with Mr and Mrs Parsons on 4 March 2022. What was discussed was set out in a follow up letter which is at page 190. He began by formally apologising for the way the Trust had handled their cases and the failings they had experienced. He said that the Respondent would be flexible over how they went about Mr and Mrs Parsons' return to work so that they were appropriately supported, suggesting that thought should be

given to phasing their return to work, considering the location of their return, the appointment of somebody to mentor them and the possibility of undertaking project work in the meantime.

167. Mr Abell assured Mr and Mrs Parsons that the Respondents would make sure that their disabilities were appropriately recognised. He said that they would agree on a joint communication upon their return to work,

> "…to dispel any myths and to set the record straight for you both".

168. Mr Abell recorded that a number of outstanding issues were discussed, including their concerns about outstanding annual leave, (he assured them the Respondent would work to resolve those), similarly, to resolve issues regarding overtime, incentive losses and back pay to Band 6 in relation to their qualification, (he said he would speak to Human Resources in that respect in order to ensure that they were treated equally to other staff members on those issues).

169. By letter dated 4 March 2022, (page 192) solicitors for Mr and Mrs Parsons, Messrs. Thompsons, wrote to formally withdraw their remaining claims and to confirm that they have no outstanding claims against the Respondents.

170. We note that Mr Hillman wrote to Mr Abell in respect of his meeting with Mr and Mrs Parsons, "heartfelt thank you" see page 193.

171. On 7 March 2022, (page 195) a Ms Thwaites, Assistant General Manager Central Cambridgeshire, Cambridgeshire and Peterborough wrote to Paramedics at four of the Respondent's Ambulance Stations, (Huntingdon, St Neots, St Ives and March) on the transfer list, referring to line allocation to fill vacant lines on a permanent basis, warning them that they will have seven days to respond to any offers that they in due course receive.

172. On 18 March 2022, Mr and Mrs Parsons' Trade Union Representative Mr Hillman, wrote to Mr Abell to raise a number of matters, but in particular to make reference to the above mentioned email from Ms Thwaites, as illustrating that the Respondent was in breach of the COT3 in relation to line allocation.

173. On 22 March 2022, Mr Abell wrote to Mr and Mrs Parsons, (page 201):

    173.1. He records that the claimants had met with Mr Monahan. They were said to be reflecting on the next steps in relation to their phased return to work and where that might be. He said that they were considering the name of the suggested mentor. He said that Ms Stephenson would be in touch to discuss the possibility of project work.

    173.2. In relation to annual leave, he attached their annual leave records and sickness absence records and put forward proposals for

agreement on what the Respondent would pay them in this respect. He invited them to respond if there are differences to be reconciled.

173.3. In respect of overtime and incentive losses, he put forward proposals for payment.

173.4. In relation to uplift and back pay to Band 6 he wrote,

> "There has been a number of challenges raised by staff regarding delays relating to progression to Band 6. Following discussions, the Trust is currently finalising communications which will be going out to all staff that have been impacted upon to provide an update and advise as to a way forward.
>
> You can expect to receive a letter from the Trust within the next couple of weeks and will be treated the same way as any other member of staff on this issue."

173.5. He proposed further discussions with Mr Monahan and in the meantime, he invited their thoughts on the proposals that he had put forward in his letter.

173.6. He noted that a further issue had been raised via Mr Hillman in relation to a potential breach of the COT3. He explained that he was about to go away on leave and had asked Ms Stephenson to look into it.

174. Sometime in March 2022, responsibility for the claimants' case was handed by Mr Mason back to the Respondent's Human Resources department. Ms Carter told us that there was confusion as to whether the COT3 had closed off the grievances raised by Mr and Mrs Parsons, or whether they still needed to be investigated. Having regard to Clauses 4 and 8 and Schedule 2 of the COT3, and the withdrawal of claims by Thompsons, we can understand why the Respondent would think that the Grievance no longer required investigation. It is a shame that had not been overtly articulated and recorded.

175. In April 2022, Ms Carter was appointed Head of Operations for Cambridge and Peterborough, (she had formerly been Head of Operations for Norfolk and Waveney).

176. On 4 April 2022, Mr and Mrs Parsons met with Ms Stephenson in the company of their Trade Union Representative, Mr Hillman. Mr and Mrs Parsons alleged that Ms Stephenson accused them of not wanting to return to work. That is disputed. Ms Stephenson dealt with this at paragraph 8 of her witness statement, where she said she had been keen to understand from all of those who had been away from the Trust for some time, whether they genuinely wanted to return to work or whether they wanted to explore a negotiated exit. That is understandable and natural. Mr and Mrs Parsons say, (Mrs Parsons at paragraph 39) Ms

Stephenson had accused them of not wanting to return to work and that the stand down could not last indefinitely. It would be understandable if Ms Stephenson were also to have made reference to the fact that stand down could not last indefinitely. In the List of Issues it is suggested that Ms Stephenson accused the claimants of not wanting to return to work. Our finding is that Ms Stephenson approached the matter as she suggested in her witness statement, which was a natural enquiry at which the claimant's have taken offence. Ms Stephenson did not accuse them of not wanting to return to work.

177. The List of Issues alleges that Ms Stephenson also rejected Mr and Mrs Parsons' complaint about the Respondent's failure to implement the fixed line provision of the COT3 on the basis that they had suffered no financial loss. At paragraph 10 of her witness statement, Ms Stephenson acknowledges that the Claimants did raise their view that the COT3 had been breached. She responded that she had looked at the COT3, took the view that there had not been a breach because they had not yet returned to work and were therefore not in a position to work on either a fixed line or a relief line. She says she reassured them that as soon as they were fit to return to work, they would be allocated a suitable line. She acknowledged she did say if there had been a breach of the COT3, they had not suffered any financial loss as they were on full pay. Mr and Mrs Parsons allege, (Mrs Parsons paragraph 37) that Ms Stephenson's response to their raising the question of a breach of the COT3 was that there was nothing they could do about it because there was no financial disadvantage and so they couldn't take the Respondent to the Tribunal.

178. We find that Ms Stephenson did say she had believed there had been no breach of the COT3 and having regard to the terms of the COT3, we can understand why she would make such a statement, it is certainly arguable there has been no breach. It is also arguable that there has been. We find that Ms Stephenson did make reference to there having been no financial loss, which was unwise. We find that the comment has been interpreted by the claimants in the way it is put by them. In terms of the issue as appearing in the List of Issues, Ms Stephenson did not reject the suggestion there had been a COT3 breach on the basis there was no financial loss, but because of the way it is worded.

179. Another issue arising out of this meeting is that the Respondent's position is that in this meeting, Mr and Mrs Parsons indicated that they wanted to work on a shift from ten in the morning until ten in the evening, sometimes referred to as a 10:10 shift, sometimes as 10:22. Mr and Mrs Parsons deny that. We note that the table drawn up by Ms Stephenson for action following this meeting, which begins at page 223, records at Items 1 and 4 that Mr and Mrs Parsons wanted a 10:10 shift, at Huntingdon or St Neots. We find that Mr and Mrs Parsons did express the wish for a 10:10 shift.

180. Mr and Mrs Parsons wrote a long letter to Ms Stephenson and Mr Abell on 4 April 2022, which begins at page 210. The primary purpose is to set out

their complaints about Ms Bromley, including the fact that she had referred them to Counter Fraud, (which they had not known about before the COT3). They complain that Ms Bromley is mistreating them because they had complained about her discriminating against them, (victimisation in the legal sense). The tone and content of the second paragraph of this letter and the penultimate paragraph at page 213 corroborates the above findings we have made about what was said by Ms Stephenson.

181. On 6 April 2022, Mrs Parsons wrote to Ms Stephenson, Mr Abell and Mr Mason with proposals for what she called a "potential line" that could be implemented at Huntingdon or St Neots for part time staff. She said the line was devised for 4 staff members on 23 hour contracts avoiding the need for night shifts for those with disabilities, (page 207).

182. In April 2022, Mr Hicks replaced Mr Monahan as Head of Clinical Operations for Cambridge and Peterborough. He was briefed by Ms Carter about Mr and Mrs Parsons. He then met with Mr Hargreaves on 22 April 2022 to discuss Mr Hargreaves assisting in facilitating Mr and Mrs Parsons' return to clinical practice. He saw their case as a complex case and Mr Hargreaves had in particular, experience and expertise he would be able to draw upon. Return to Practice, (sometimes abbreviated to RTP) entails ensuring Medical Practitioners who have been absent from work for a long period of time have the appropriate confidence and competence to work safely in a clinical situation. The situation with Mr and Mrs Parsons was that they had been absent for over two years and although they had qualified as Paramedics in the meantime, they had not practiced as such.

183. Mr Hicks wrote to Mr and Mrs Parsons on 22 April 2022, (page 240) in which he covered the following:-

183.1. He was working with Ms Thwaites to draw up a stand alone line at Huntingdon once they have completed their return to work plan. The details had not yet been finalised. He said he had received the proposed rota pattern Mrs Parsons had submitted and he was working through logistical aspects of that such as the requirement for a vehicle and equipment, but he does not anticipate that to be an issue.

183.2. He was investigating issues Mr and Mrs Parsons had raised with regard to calculations in respect of overtime and annual leave, which he described as requiring a, "forensic review".

183.3. On Band 6 uplift he wrote,

> "Work is currently being undertaken in relation to progression to Band 6 delays, communications will be going out to all affected staff in the very near future. In addition to the general

delays, consideration will also be given to any other delays you have experienced."

183.4. On the subject of homeworking project work, he firstly invites them to complete statutory and mandatory training that may be outstanding online from home. He encouraged them to look at something called the "Edward Jenner Program" which they could do in their own time from home, (a program about leadership). In respect of project work he said that he was liaising with somebody called Mr Mercer to establish what might be available.

183.5. An Occupational Health appointment was pending and once that report had been obtained, he anticipated putting together a plan to discuss.

184. Also on 22 April 2022, (page 244) Mr Hillman received an email from Ms Thwaites offering him a transfer onto a new line. Mr and Mrs Parsons say that this is evidence of lines being offered to others, showing that there were lines available that could have been offered to them.

185. The anticipated Occupational Health Report for Mrs Parsons dated 26 April 2022 is at page 249. This refers to her diagnosis of Dyslexia, Dyspraxia and ADHD, the combination of which have had a significant impact on her ability to manage aspects of her role effectively. She is said to be absent from work pending resolution of an ongoing grievance process and that she was anxious to return to work. Reference is also made to the long standing diagnosis of Endometriosis which has impacted on her ability to complete day to day activities. Mrs Parsons is said to be fit to return to work and would benefit from workplace adjustments which are then set out. It is not suggested the Respondents failed to implement any of them.

186. The report for Mr Parsons is page 252. This report refers to his diagnosis with Dyslexia, that he is likely to have ADHD and that he is accessing Talking Therapy. The ADHD had not at that point been formally diagnosed. He is also diagnosed with Alpha 1 Anti-trypsin deficiency in respect of which he was not currently receiving treatment. He is also said to have a history of back and shoulder issues, prolapsed T5/6 disk and tendinopathy on his left shoulder. Mr Parsons was said to be fit to return to work and adjustments are recommended to, "support his physical and emotional wellbeing". Again, there is no suggestion that the recommended adjustments were not implemented.

187. On 6 May 2022, Mr Hicks wrote to the Claimants with a further report which included the following:-

187.1. An assurance they will receive a stand-alone line at Huntingdon;

187.2. The work is being undertaken in relation to the Band 6 delays, communications to all affected staff anticipated imminently; and

187.3. Mr Mercer has said that at this time there were no short term pieces of work, project work, that they could do.

188. On 11 May 2022, Mr Parsons emailed Mr Hicks about a number of matters, including in particular the situation with regard the Band 6 uplift. He complains that Mr Abell had said he would look into this in March 2022, but that had still not been resolved. He noted that Mr Hillman and others had received the uplift in mid-2021 with a back payment to May 2020. He says that they, Mr and Mrs Parsons, are in the same situation and should have been dealt with the same way.

189. On 12 May 2022, Mr Hillman wrote an email raising a number of matters with Mr Abell. In relation to Mr and Mrs Parsons, he queried that Ms Stephenson had assured them there would be an investigation into the behaviours of Ms Bromley and Mr Squibb in relation to the treatment of them which had led to the Employment Tribunal and nothing had been heard since. Mr Hillman notes that Mr Squibb is due to return to the Respondent, (apparently he had been away somewhere on secondment) in early June and nothing has been investigated.

190. In the copy of this email in the Bundle, we have the benefit of annotations from others to assist Mr Abell in composing his reply. Included within those annotations is that an investigator needs to speak to Mr and Mrs Parsons as soon as possible and with their permission, matters should be taken forward as a Dignity at Work complaint. Assurances were given that progress had been made with regard to Ms Bromley and Mr Squibb. It is also suggested that Mr Hicks will stand down Mr Squibb pending the investigation.

191. On 8 June 2022, Ms Carter emailed the Claimants with regards to the letter to Mr Abell in which she wrote:

> "On reviewing the Grievance, it appears that whilst a commissioning Manager and an Investigator have been assigned this has not progressed, sincere apologies for this. Furthermore, given the nature of the concerns raised, I would like to propose that the Grievance be closed and that all outstanding matters are transferred to, and investigated under, the Trust's Dignity at Work Policy. The Dignity at Work Policy is deemed to be the most appropriate procedure applicable in consideration of the concerns raised."

192. Mrs Parsons replied on 14 June 2022 to say that she and Mr Parsons were happy for the matter to be progressed,

> "in whichever way you feel is most appropriate".

193. In June 2022, Mrs Parsons applied for promotion, to a vacancy as a General Manager:-

193.1. On 30 June she was invited for interview to take place on 13 July 2022, (page 277).

193.2. On 8 July 2022 she was informed that one of the candidates was a re-deployment candidate who in accordance with Policy, must be interviewed before everybody else in a non-competitive process. The interview was rearranged for 20 July 2022, (page 1045).

193.3. On 13 July 2022, Mrs Parsons complained because she had discovered that the candidate at risk and given priority was Ms Bromley.

193.4. The re-deployment candidate was unsuccessful at interview.

193.5. On 19 July 2022, Mrs Parsons was informed that the interview was further rearranged for 29 July 2022 because one of the candidates was on leave on the scheduled interview day and the interviewing Manager, (Mr Hicks) wanted to review everybody on the same day, (page 1046).

193.6. Nobody was successful at interview for that post.

194. On 21 June 2022 a Workplace Needs Assessment Report was produced in relation to Mr Parsons. This was not seen by the Respondents until 31 August 2022 because Mr Parsons delayed in authorising its release, (page 322). The Report said that Mr Parsons could feel burnt out working on a night shift and recommended that rather than working as a Relief Worker, he would benefit from having a regular crew mate until he felt more confident and had gained more experience. It recommended that he work a fixed line, rather than as a relief worker.

195. Similarly, a Workplace Needs Assessment Report was produced for Mrs Parsons, (page 285) on 21 June 2022, but not released until 25 July 2022. This Report made a number of recommendations, including that rather than working as a Relief Worker, she would benefit from having regular crew mates until she felt more confident and had gained more experience, she should also finish her shifts by 2am where possible. As with Mr Parsons, it was recommended that she work a fixed line, rather than as a relief worker.

196. On 29 June 2022, Ms Stephenson sent letters to Mr Parsons and Mrs Parsons in relation to the Band 6 issue. This explained:

> "As you were not initially employed on a Student Ambulance Paramedic but undertook the Paramedic Pathway as an Emergency Medical Technician the Trust recognises that there may have been delays which impacted on your ability or opportunity to progress through the Paramedic Pathway and register with the HCPC prior to the implementation of NQP on 1 September 2016 or within the transition period 31 March 2017."

They are therefore invited to submit evidence and complete a pro-forma.

197. On 22 July 2022, (page 296) Mr and Mrs Parsons sent a letter of complaint to Mr Abell. The matters which they raised included:-

197.1. With regard to their return to work, it had been four months since their meeting with Ms Stephenson on 4 April 2022 and there appeared to be no progress. A proposed progress meeting for 22 July 2022 had been cancelled.

197.2. They have booked annual leave for August, "This was meant to allow us to have a break away from the stress and issues surrounding work. This is vitally important for the health and psychological wellbeing of us and our young daughter. Sadly, once again this leave will be tarnished with the ongoing concerns around work and the feeling that we are being ignored and segregated."

197.3. On outstanding annual leave and overtime they had been told by Mr Hicks that there would be a forensic review, "we have heard nothing further and no payment has been made".

197.4. In relation to Band 6 uplift they request they be uplifted as has happened to their peers and as had been promised previously.

197.5. They suggested that the amount of time that things were taking felt like victimisation.

198. On 28 July 2022, Mr Hicks wrote to the claimants, (page 305). He refers to the letter to Mr Abell of 22 July 2022. He regrets they feel the return to work situation had not progressed and acknowledges that timelines may have slipped for several reasons, including delay in receiving the Genius Within Report. He repeated his earlier statement that they will have a stand alone line at Huntingdon following completion of their return to work program with a 10:22 shift as requested.

199. With regards to outstanding payments in lieu of annual leave and overtime, Mr Hicks referred to Mr Abell's letter of 22 March 2022 which set out proposals and notes that there does not appear to have been a response. They are invited to confirm their agreement to the figures proposed by returning signed forms known as HR2s, or to explain their thoughts if there is no agreement.

200. With regard to the Band 6 uplift, he refers them to the letter they will have received dated 26 June 2022 and sent to them on 29 June 2022, reiterating that they will need to submit evidence in order to confirm their eligibility for the Band 6 uplift and back date.

201. Mrs Parsons was on leave throughout August 2022, Mr Parsons was on leave from 8 – 28 August 2022.

202. On 3 August 2022 Mr Parsons emailed Mr Hicks with regard to the payment for annual leave issue, (page 310). He said that the figures were wrong and sets out why he thinks that is so.

203. On 31 August 2022, Mr Hicks met with Mr and Mrs Parsons and Mr Hillman at the Peterborough Station. The meeting was initially held with Ms Carter in attendance and subsequently with Mr Hargreaves.

204. Mr Hicks wrote a summary of the meeting with Ms Carter in a letter to Mr and Mrs Parsons dated 1 September 2022 which is at page 353. He noted that:-

204.1. Ms Carter had confirmed that she was working her way through the annual leave data;

204.2. The rota line at Huntingdon discussed previously had been agreed in principle and will be in place when they are ready to return to front line duties;

204.3. Mrs Parsons had raised that they were fearful on returning to work, there may be retaliation from Ms Bromley and they were assured she was not part of the local Management Team; and

204.4. They were told that their Dignity at Work complaint had been assigned to a Case Investigator and a Commissioning Manager would oversee the investigation.

205. Mr Hargreaves wrote to Mr and Mrs Parsons with a summary of their meeting, which is at page 356 and includes:-

205.1. Mr and Mrs Parsons had been concerned the time scale for the Return to Practice would be too narrow and they would feel adversely pressurised. They had expected a three month time scale. Mr Hicks had suggested that may be an underestimate. Mr Hargreaves said the time frame would be adjusted pro rata having regard to their reduced working hours. They had all agreed that the Return to Work program would become less effective as memories may fade at the end of a very long Return to Work Plan.

205.2. Mr Hargreaves had discussed with the claimants various aspects to the Return to Practice Plan including training needs, its format, the need for local support and communications. He set out actions for Mr and Mrs Parsons to complete and provided them with the HCPC Guidance on Return to Practice.

205.3. He concluded by saying:

> "Once I have received your completed ITN documents I will work to create an effective Return to Practice Plan. This will be a collaborative piece of work, where you and I will agree the

> best ways to support you. The final Plan will be approved by Terry Hicks to ensure that any proposals are achievable and deliverable."

206. On a separate note at page 338 on what appears to be a reproduction of HCPC Guidance, Mr Hargreaves has highlighted aspects to that Guidance indicating details discussed with Mr and Mrs Parsons as to what needed to be done.

207. We note that on 31 August 2022, Mrs Parsons wrote to Ms Carter saying, (at page 332),

> "Thanks for today good to meet you".

208. There is a controversial aspect to the 31 August 2022 and a conflict of evidence we need to resolve. First, that at the Peterborough Station with Mr Hillman they came across Ms Kitchen, Leading Operations Manager at the Station. In the List of Issues it is alleged Ms Kitchen refused to engage with them, acted in a dismissive and high handed manner towards them when introduced to her, asked who was "dealing" with them and said it was not her place to get them back to work, before abruptly turning away.

209. In her witness statement at paragraph 55, Mrs Parsons said that Mr Hillman had tried to introduce them to Ms Kitchen who was, "clearly not impressed to meet us". She records her as having said, "of course I know who they are", she asked who was dealing with them and asserted that she could not do so as she was too busy but said to them, "it isn't my job to get you back" then turned and walked away. Ms Kitchen's account is that she knew the claimants historically simply as people she would sometimes encounter when their paths crossed when on duty. As to the events on 31 August 2022, she said that she was working at a printer, she noticed that Mr Hillman had entered the room, said hello to him and he then introduced Mr and Mrs Parsons. To which she had replied, "Of course I know who you are". She acknowledges that in the subsequent short conversation she did say it would not be her place to get them back to work in the context she says, that it is not within her role. She says she was not privy to any of the issues regarding Mr and Mrs Parsons and their Return to Work Plan and when she asked who would be dealing with their Return to Practice, it was a polite enquiry only. As the conversation naturally ended, she turned back to the printer. She describes the conversation as lasting about 90 seconds.

210. The claimants say that the document at page 573 corroborates their account. This is an email exchange almost a month later between Ms Benstead and Ms Kitchen about Mr and Mrs Parsons' Return to Practice, Ms Benstead informs Ms Kitchen that Mr Hargreaves has been tasked with supporting their Return to Practice and explains that they will be undertaking some training at the Peterborough premises. Ms Kitchen's

response, which is prayed in aid of the claimants account of the events on 31 August 2022 was,

> "Further to this, given the number of learners we currently have, the struggles we have supporting our own staff currently, and the fact that the Team is short staffed, can the Central MST Team not support this?"

211. It seems to us this email corroborates Ms Kitchen's account, not Mr and Mrs Parsons'. It corroborates that she was unaware of the arrangements surrounding their Return to Practice. It also corroborates her statement that the Peterborough Station was short staffed and would have had difficulty in supporting their Return to Work if they had been asked. That is how Ms Benstead interpreted the Response, as we see at page 572. We note that Mr Hillman has not been called to give evidence to corroborate Mr and Mrs Parsons' account.

212. Our finding is that this was an innocuous encounter with a busy person which Mr and Mrs Parsons have misinterpreted. Ms Kitchen did say that she knew who they were and did say she would not be the person managing their Return to Work. But, she was busy, she did not know why Mr and Mrs Parsons were there or what the plans were for their Return to Work.

213. On 1 September 2022, Mr and Mrs Parsons, (and many others amongst the Respondent's employees) received an email under the title, "Agenda for Change Section 2 Arrangements". As a consequence of the NHS Agenda for Change Pay Review in 2018, changes were made to the pay arrangements for unsocial hours. Prior to 1 September 2018, payments were made pursuant to something referred to as, "Annexe 5". After 2018, unsocial hours were paid subject to something referred to as, "Section 2". Annexe 5 was regarded as more favourable than Section 2. Employees of the Respondent who commenced service after 1 September 2018, (or who moved role after 1 September 2018) would henceforth be paid for unsocial hours in accordance with Section 2.

214. The email which the Claimants and others received on 1 September 2018 informed them that because they had commenced a training course after 1 September 2018, they should be in receipt of Section 2 payments for unsocial hours, but were in fact wrongly, still receiving payments in accordance with Annexe 5. Thirty days' notice was thereby given with effect from 1 October 2022, that such payments would be made in accordance with Section 2.

215. Mrs Parsons emailed Mr Abell protesting that it had been discussed during their grievances that as they had originally been accepted onto Paramedic Training in April 2017 and that internal delays prevented their progression before 1 September 2018, Section 2 would not apply to them.

216. On 1 September 2022, (page 353) Mr Hicks wrote to the claimants:

216.1. He assured them work was continuing on the annual leave data.

216.2. He confirmed that a rota line in Huntingdon for them was agreed in principle and would be in place when they were ready to return to frontline services.

216.3. He assured them that Ms Bromley was not part of the local management team.

216.4. He gave them the names of the Case Investigator and Commissioning Manager appointed to deal with their Dignity at Work complaint.

217. Ms Carter wrote to the claimants on 2 September 2022 to update them that she was still working on calculations in respect of their annual leave.

218. On 6 September 2022, Mrs Parsons wrote to Mr Hargreaves, (page 379) acknowledging his earlier email of 1 September 2022, which had attached the Cognitive Assessment Report from Genius Within. She also returned Return to Practice documentation.

219. On 8 September 2022, Mr Hillman wrote to Mr Abell on behalf of Mr and Mrs Parsons to propose they produce a statement to be distributed to all colleagues upon their return to work. Mr Abell replied that he was,

> "Happy to look at something."

220. On 12 September 2022 Ms Benstead, (the Assistant General Manager of Peterborough) wrote to management colleagues at the Respondent's Peterborough Station to explain that a Return to Practice Plan was being prepared for Mr and Mrs Parsons. She explained that it was proposed that over the next two weeks, they would attend Peterborough to undertake iPad familiarisation training, for which they would need access to a training room. She wrote that their Return to Practice Plan would likely involve additional support from the Peterborough Management Team in the future, (page 573). Ms Kitchen responded as quoted above.

221. Ms Benstead replied on 27 September 2022, (page 572) to explain that Mr and Mrs Parsons would start their Return to Practice at Peterborough and would then will return to Central.

222. Mr Hargreaves sent draft Return to Practice Plans to Mr and Mrs Parsons on 13 September 2022, (page 488). He wrote that the plans were draft. He said:-

> "Please look through the RTP plans and let me know your responses to them. The plans are detailed and allow us to achieve all the learning outcomes that have been identified so far. However, there will be challenges with the plans that have not been factored in yet – please let me know what the challenges are so that the plans can be

> adjusted accordingly. I need you to tell me what how the plans will and won't work against the background of your own personal, professional and childcare needs."

223. Mrs Parsons' email of 2 September 2022 complaining about the proposal that she and Mr Parsons move to Agenda for Change Section 2 had been copied to those in Human Resources dealing with the changes to terms and conditions. She chased for a response on 14 September, attaching a copy of documentary evidence showing that they had been accepted onto their Paramedic Course in March 2017 and that due to errors, did not commence that course, (page 373).

224. Also on 14 September 2022, Mrs Parsons wrote to Mr Hicks to complain about a number of matters:-

224.1. The proposal that they move to Section 2;

224.2. That they have heard nothing further relating to Band 6 or annual leave or overtime payments;

224.3. To protest about the way she and Mr Parsons had been spoken to by Ms Kitchen on their visit to Peterborough;

224.4. That they had met with the Investigating Officer relating to issues surrounding Ms Bromley and for the first time, had learned of the allegations she had made against them;

224.5. That the Return to Work Plan had come to them as a shock, it did not reflect what had been discussed, they would only be given a few weeks before being fully back at work, that it was unrealistic. She wrote that they felt they were not being treated as individuals with needs and disabilities. She wrote a detailed critique of the proposal, (page 491).

225. The same day, Mr Parsons wrote to Mr Hargreaves, (page 487). He wrote,

> "I am finding it difficult to express in words my disappointment in the plan and feel that little regards to our welfare and the issues surrounding our absence has been taken in to account with this plan."

226. Mr Hargreaves replied, (page 486):-

> "The first thing that I would like to say in reassurance to you is that this is a draft plan (watermarked as such) and when issuing it to you both it was my full expectation that it will need to be revised and adjusted. In sharing this draft with you I asked you to tell me what how the plans will and won't work against the background of your own personal, professional and childcare needs, and I am glad to see that you have done that – thank you."

227. On 20 September 2022, (page 519 and 521) Ms Carter wrote to Mr and Mrs Parsons with completed annual leave and overtime calculations and a formal authorisation for them to sign. Mrs Parsons replied that day, (page 516):

> "We appreciate your efforts in this. These figures now look much better than before so we are happy for you to process this."

228. Mr Hicks had been on holiday when Mrs Parsons had written her email of 14 September 2022 about the Return to Practice Plan. He replied on 20 September, (page 578) to say that he had just read her email and asked her to give him a week to review it and get back to her, adding,

> "I stand by what was said at the meeting, and if there is any conflict or mis-interpretation then we will work through this."

229. Mrs Parsons replied confirming that the annual leave and overtime payments issue had been resolved, Section 2 remained a worry as did the Band 6 issue and in respect of the Return to Work Plan wrote,

> "Whilst I am aware it takes time for John to put this together it remains disappointing that we have to go over and over things multiple times before something is resolved."

230. On 26 September 2022, Mrs Parsons emailed Mr Abell chasing for a resolution to the Agenda for Change Section 2 issue and the Band 6 issue.

231. On 27 September 2022, Mr Hillman wrote to Mr Hicks in relation to Section 2 and Band 6, referring to the Genius Within and Occupational Health Reports suggesting the contractual matters should be resolved before Mr and Mrs Parsons return to work.

232. Mr Hillman also wrote on the same day to Mr Abell on the same theme, suggesting that others, including himself, had resolutions to the Band 6 issue already.

233. On 28 September 2022, Mr and Mrs Parsons, (and many others) received written confirmation that they would remain under Annexe 5 and not move to Section 2, (page 1116).

234. Mr Abell had asked Ms Stephenson and Ms Carter for assistance in replying to Mr Hillman. Ms Carter replied that she took exception to Mr Hillman's email, saying they had spent an inordinate amount of time trying to resolve Mr and Mrs Parsons issues, including that with regard to annual leave which had now been resolved. She wrote that reply on 3 October 2022 and pointed out that by then, Mr and Mrs Parsons had been informed that they would not move to Section 2. Ms Stephenson wrote that she agreed with Ms Carter and that she did not appreciate the tone of Mr Hillman's emails. She said,

> "This needs to stop".

235. Mr Parsons wrote to Mr Abell raising issues on 18 October 2022, (page 600). He wrote of feeling victimised and that he felt that Mr Abell was turning a blind eye to the way that he and Mrs Parsons were being treated. He complained that the Trust had failed to return he and his wife to work. He referred to having to, "battle" for annual leave payments, with regard to Annexe 5, the delay in progress, to breaches of the COT3 and he described the Return to Work Plan as a disgrace. He said that,

> "Once again we had to "make complaints"".

He also wrote,

> "We do not accept this letter being passed down the line of management but for you or a minimum of Katie Vaughton to respond to the issues put forward."

236. A Mr Simon King, (Head of Operations) had been appointed Chair to the Dignity at Work complaint by Mr and Mrs Parsons. He reported on 18 October 2022 that he had completed the same in so far as he could, "take it for now". He said that he had met with Mrs Parsons and fed back his findings. He wrote that he had a conversation with Mrs Parsons about having a fresh start, encouraging her perhaps to transfer to Kempston. He wrote,

> "The guys at Kempston may not thank me for newbies with additional support needs but I wonder if it might just break the cycle."

Mr and Mrs Parsons complain about this sentence.

237. On 21 October 2022, Mr Abell wrote to Mr Parsons replying to his earlier letter, (page 637). His opening paragraph reads:-

> "I am very sorry to read that you believe the Trust is "trying to rid the problem by forcing us to constantly speak out against things labelling us as trouble" I want to assurance you [sic] that I am not aware of any such label, in fact the opposite, that much effort is being put into supporting you to return you to your substantive posts within the workplace."

238. Mr Abell sought to give assurance that they were not dragging their heels and that they fully supported Mr and Mrs Parsons' return to work in the role of Paramedic. He wrote:

239. He believed there had been a misunderstanding with regards to Ms Stephenson's comments, asking them whether they wished to return to the Trust.

240. He said that the outcome of their complaint was expected during the week commencing 24 October 2022.

241. He noted the time scales with regard to resolving the annual leave and overtime payments.

242. He encouraged them to take annual leave during their management stand down:

> "Whilst you both remain on a 'manager stand-down', it is noted that Sarah-Jayne has booked annual leave... Stuart you have no leave booked during October and it would reasonably be expected for you to have been at work during this period. Please do not hesitate to make us aware should you wish to book annual leave at this time which can be granted.
>
> I must make it very clear to you that whilst a return-to-work plan is being discussed and formulated with you, you do have, and have taken, the opportunity to book annual leave, it is expected that you will use your annual leave allocation for 2022 / 23."

243. He acknowledged there had been regrettable delays in regard to the Band 6 issue, that all affected employees were being required to provide evidence of delays experienced in progression.

244. He confirmed that it had been confirmed to them in May 2022 that they would have a stand alone line at Huntingdon once they completed their Return to Work Plan, with a 10 – 22 shift pattern.

245. About 350 employees had been affected by the Band 6 issue. Panels were set up to review the evidence they were submitting. Three panel meetings were convened on 9 November 2022, 12 January 2023 and 22 February 2023. Mr and Mrs Parsons were prioritised and scheduled to be dealt with at the first of those meetings. On 16 January 2023, Mrs Adams, who had sat on the panel, wrote to Mr and Mrs Parsons to confirm that they would be moved onto Band 6, back dated to 4 September 2020. Unfortunately that was not the end of the issue, (see below).

246. Mr and Mrs Parsons refer to an email of 24 November 2022, copied at page 1005, as evidence that there was project work available that they could have done during this period of management stand down, but which was not allocated to them. The email referred to was from an individual called Mr Bright, who referred to having been working on a project investigating means of reducing the distances ambulance crews were sometimes asked to cover when responding to 999 calls. Mr Hicks explained in his witness statement, (paragraph 31) that particular project work was not suitable for the claimant's because it required up to date working knowledge of the Trust's systems, which they did not have. We accept his evidence. In the List of Issues, reference is made in the context

of project work, to a Lyndsay Ward, (Issue 12.1.3). Mr and Mrs Parsons presented no evidence about this. Mr Hicks wrote at paragraph 30 of his witness statement that she did not carry out project work. He was not challenged about that and we accept his evidence.

247. On 30 November 2022, Mr and Mrs Parsons met with Mr Hicks and Mr Hargreaves to plan their return to practice. In this meeting, they raised the fact that their ID pass cards no longer worked. The Respondent had changed its ID card system and had overlooked replacing the cards for Mr and Mrs Parsons. Mr Hicks remedied the situation by making arrangements for Mr and Mrs Parsons to be provided with replacement ID cards.

248. Revised Return to Practice Plans were sent to Mr and Mrs Parsons on 9 December 2022, (page 651). Mr Parsons replied with some observations on 13 December 2022, (page 653). On 19 December 2022, Mr Hargreaves replied with a revised Return to Practice Plan, (page 668). Mrs Parsons replied on 21 December 2022 to say,

> "The plan is fine for us thank you for your time doing this".

See page 667 / 8.

249. On 22 December 2022, Mr Hicks emailed Mr and Mrs Parsons, noting that the Return to Work Plan had been agreed, setting out arrangements for their attending work at Peterborough and noting that he has the new ID card for Mrs Parsons, he was still waiting for Mr Parsons' ID card to arrive and he would arrange for it to be available when they go to Peterborough.

250. On 29 December 2022, Mr and Mrs Parsons went back to work at the Respondent's Peterborough Station. On their first day there, they saw Mr Luke Squib, who had been the subject of some of their earlier grievances and the settled Tribunal proceedings. We accept Mr Hicks' evidence about what occurred. Mr Squib was General Manager. He had been on secondment. He was returning to Clinical Practice, attending Peterborough that day for that purpose, unbeknownst to Mr Hicks. Ms Rooke who was mentoring Mr and Mrs Parsons, reported to him that morning that they had been visibly upset when they saw Mr Squib. They had seen him as they walked past the Duty Manager's office. Mr Hicks told Ms Rooke to tell Mr and Mrs Parsons that they could stand down if they felt they could not continue. He understood the offer to have been declined. Later that day, he saw Mr and Mrs Parsons and asked them about their encounter with Mr Squib, asking them how they were feeling. He explained that Mr Squib was himself returning to work and he had not expected him to be there that day, but it was his base station so they could not expect him not to work there. There would be no reason for them to interact with him. He did not admonish Mr and Mrs Parsons in any way and he was supportive. Mr and Mrs Parsons were not in any way expected to work under the supervision or control of Mr Squib. He and they would have had no involvement with each other at all. The general

tone of this encounter is corroborated by Mr Hicks' email to Ms Stephenson that day, (page 726).

251. According to the email of 22 December 2022, (page 660) Mr and Mrs Parsons were due to attend the Peterborough Station on a number of subsequent occasions with Ms Rooke, including 5 and 6 January 2023, 12 and 13 January 2023, 19 and 20 January 2023.

252. On 6 January 2023, Ms Rooke wrote to Mr Hicks, (with the knowledge of Mr and Mrs Parsons) reporting on a number of adverse comments they had made during conversations about how they felt, for example:

252.1. That they felt they were not being protected;

252.2. That they felt they were being imposed on everybody who had to deal with them;

252.3. Whether this was all going to end up going back to a legal matter;

252.4. That whilst they had been told there was no rush, they were being told just to get on with it even though Mr Squib was there, and

252.5. That they were made to feel like they were whinging.

There were many other such comments reported. Mr Hicks replied,

> "Thanks Abbie – really appreciate the support that you are giving them through this.
>
> As I said when we spoke, these issues are not related to their RTP phase, so please continue to direct them to me."

253. Issue 14.1.11 alleges that Mr Hicks informed their allocated Support Worker, (whom we take to be Ms Rooke) that she was not, "their messenger". Mrs Parsons did not give evidence to that effect in their witness statements. We find that Mr Hicks openly encouraged Ms Rooke to encourage Mr and Mrs Parsons to raise such concerns with him and not with her. We find that Mr Hicks did not become angry as Mr and Mrs Parsons allege. Their evidence in that respect is hearsay and we found Mr Hicks a credible witness.

254. On 16 January 2023, Mr and Mrs Parsons received emails confirming they would be eligible for a back dated Band 6 payment, (page 746 and 748).

255. On 17 January 2023, Mr Parsons emailed Mr Abell with a proposed statement to be released to their colleagues on their return to work, (page 750). The proposed statement reads:

> "As many of you are aware, Sarah-Jayne and Stuart Parsons have been absent from Central Cambs for some time. I have made the

decision to contact you about this as I am aware there are many rumours regarding this issue currently circulating.

Both Sarah-Jayne and Stuart have been absent due to their safety and well being having been placed at risk by the failings within the Trust. The Trust take full responsibility for these failings and no blame rests on Stuart or Sarah. As the CEO, I have personally recognised that the Trust have wronged both in a number of ways, including behaviour aimed towards them from other members of staff. I have subsequently offered full apologies as no members of staff should be put through this and we wish to change previous culture. Now that the environment has been made safe to return to, Sarah and Stuart have returned at the earliest opportunity.

I expect that upon their return that they are welcomed back fully into the team and recognise that it will feel somewhat alien to be back initially."

256. Mr Abell sought input from Ms Stephenson and Mr Hicks. Ms Stephenson proposed a re-draft which reads:

"As many of you will be aware, Sarah-Jayne and Stuart Parsons have been absent from Central Cambs for some time. I would like to take this opportunity to welcome them back and ask for your support in helping them to settle back in.

As a Trust we continue to work hard to change the culture of this organisation and become more compassionate and focused on our Team's safety and well-being. We take full responsibility for what has happened in the past and continue to strive to improve every day. Welcoming Sarah-Jayne and Stuart back is a big milestone in our journey.

I ask for your continued support to make them feel welcome. Please continue to provide your guidance, support and kindness as they return to practice helping to keep our community safe."

257. Mr Hicks' comment was, (page 756) that he observed there was an ongoing case in which they were involved, (which we take to be a reference to another Employment Tribunal case involving somebody else) he queried whether the statement,

"we take full responsibility for what has happened in the past"

as,

"potentially influence the outcome of that case".

258. On 24 January 2023, Mr Abell wrote to Mrs Parsons proposing a version of the statement as prepared by Ms Stephenson.

259. In the meantime on 17 January 2023, Mr and Mrs Parsons commenced Early Conciliation through ACAS. The Conciliation period ran to 28 February 2023.

260. On 26 January 2023, Mrs Parsons wrote to Mr Abell, (page 784). She wrote in her first paragraph,

> "The following may come across as angry but…"

261. She complained that their correspondence about the proposed statement had been copied to Mr Hicks, referring to this as, "less than acceptable from a CEO". She complained that the proposed wording did not dispel myths or set the record straight and expressed bewilderment. She made reference to the involvement of ACAS. She complained about correspondence in a WhatsApp group referred to as the "North Cambs Virtual Crew Room" with disparaging disability related remarks. She wrote,

> "I do not feel safe in this organisation and every time I speak out, I feel I add another bullet to the gun. I have given you the time to make things change but so far in North Cambs nothing has, you hide behind a desk with the door closed and fail to engage… You only hear what your managers are telling you."

She said that Mr Abelll only heard what his managers told him. She wrote of their feeling exhausted and:

> "We need time between our classroom work and road based but despite you telling us it would be slow and steady with regular breaks and possibly other tasks this hasn't happened.... We need downtime, and we will be discussing this tomorrow. This shouldn't be at the expense of our annual leave either. It would be good if you would at least grant a week of home study."

262. Mr Abell responded swiftly apologising if his copying in Mr Hicks had upset her, explaining that as Head of Operations he needed to be involved. He said that he would look into the matters that she had raised and get back to her.

263. On 30 January 2023, Mrs Parsons wrote again to Mr Abell saying that she was fed up with constant excuses. She referred to him being fed information by his management team and condoning further discrimination and victimisation.

264. Mr Abell provided a substantive reply on 31 January 2023. He began by writing,

> "I would ask that you take a step back and consider the tone of your emails and whether this is in line with Trust Values."

265. He reiterated that it was important to have copied Mr Hicks in on the correspondence. He noted Mrs Parsons' objection to the revised proposed statement to colleagues, which would therefore not be sent out. He expressed the view that the Respondent was clear in taking responsibility for past events and encouraging a welcoming and supportive return. He thanked Mrs Parsons for raising the matter of the Virtual Crew Room comments, which he confirmed had been the subject of complaints from others and which was being investigated. In response to Mrs Parsons referring to being exhausted and asking for a stand down, he wrote:

> "With regard to completing study the RTP programme is flexible and can be changed to meet your needs, which can include some study. It is not appropriate to agree to a week of home study.
>
> You refer to being exhausted and I respectfully suggest that rather than me agreeing to a stand down, that if you need to take a break from work that you book annual leave or if there is concerns for your health it would be more appropriate for this to be managed as sickness absence with referrals to OH to address these concerns."

266. We turn now to the Virtual Crew Room messages referred to, which were in a WhatsApp group. They are at page 1007. The messages were in relation to a new system for iPads that the Paramedics use. A question is posed,

> "Are the iPads getting a fibromyalgia button in the impressions section of the EPCR?"

267. That is a genuine question which prompted some unfortunate responses such as,

> "The button next to it it's not my fault";
>
> "Just below flakey";
>
> "They are putting it on the next update, next to chronic issue for the last 20 years button"; and
>
> "Tick the no apparent problem".

268. Those comments prompted a number of laughing emojis and thumbs up. There was what we are told was intended as a serious response from one person,

> "Isn't it under the mental health tab?"

269. This was investigated by Ms Benstead, Assistant General Manager of the Peterborough Station, from whom we heard evidence. She produced a report on 8 March 2023, (page 1082). She spoke to each of the people who had made the remarks. They all apologised, expressed embarrassment and confirmed their understanding of why what they had written was inappropriate.

270. On 9 February 2023, a Janice Scott wrote to Ms Stephenson having investigated and therefore setting out, matters that remained outstanding in relation to Mr and Mrs Parsons' settlement agreement. Of note within this is that it is observed from Mr and Mrs Parsons' perspective that they had agreed to drop their grievances without knowing about the fraud referral that had been made by Ms Bromley and had they known about it, they would not have signed the agreement.

271. On 24 February 2023, Mr Hargreaves reported to Mr Hicks and to Ms Thwaites that Mr and Mrs Parsons were progressing well with their Return to Practice Plan.

272. These proceedings were issued on 27 March 2023.

273. Remarkably, on 30 March 2023 Mr and Mrs Parsons were informed there had been an error in the timing of when they would move up to the Band 6 level of pay:

> "The Panel … had not recognised the fact that you had not completed your Consolidation of Learning (COL) period and therefore the agreed back pay as outlined previously will not be applicable to you until such time that your COL is completed."

See pages 822 and 823.

274. As we see from page 835, Mr and Mrs Parsons were two of seven people in respect of whom this mistake had been made.

275. On 31 March 2023, Mr Hargreaves reported on Mr and Mrs Parsons' progress with regard to the Return to Practice, which he described as 'satisfactory'.

276. On 30 March 2023, Mr Parsons emailed Mr Abell with protest about the latest development in the Band 6 pay saga. On 12 May 2023, he chased for a resolution, (page 839). He complained that others had benefitted from the uplift whereas they have not. He referred to evidence that many staff had not completed their Consolidated Learning but had received the uplift.

277. After a period of leave, Mr Parsons wrote to Mr Hargreaves in similar terms on 5 June 2023, (page 851). He complained that this issue was impacting on their ability to re-integrate. He wrote in similar terms to Mr Hargreaves on 16 July 2023, (page 875).

278. Assessments dated 19 July 2023 for both Claimants indicated that they had demonstrated excellent practice, (see pages 878 and 884). That said, concerns were expressed that they might not be ready to return to practice, evidenced in a Teams message of 22 August 2023, (page 889).

279. Nonetheless, on 5 September 2023, Mr and Mrs Parsons successfully completed their Return to Practice, (page 921). They were working on their chosen fixed line at their chosen location.

280. In November 2023, Mr and Mrs Parsons were informed of the outcome of their Dignity at Work Grievance. We were not taken to a document about this. Mrs Parsons commented at paragraph 99 of her witness statement simply that they had received communication that the Grievance had been concluded and the outcome was that no wrongdoings had taken place. No complaint is made about that and no issue has been raised about it.

281. On 14 January 2024 and in a follow up email of 30 January 2024, (to Mr Abell) Mr and Mrs Parsons complained of a number of matters, including the Band 6 situation. Mr Abell replied by letter dated 31 January 2024, (page 961). With regard to the Band 6 situation, Mr Abell acknowledged that errors had been made, some people had received backdated payments which they were not entitled to. An agreement had been reached with the Union on the way forward. In line with that agreement, it had been identified that Mr Parsons should receive back dated pay and with regard to Mrs Parsons, she would have to complete her Consolidation of Learning.

282. Subsequently however, by letter dated 5 February 2024, in which it was recognised that Mrs Parsons could have completed the course in March 2018 with COL completed in September 2020. The Panel had therefore agreed to amend its original decision and her Band 6 pay would, on completion of her Consolidated Learning, be back dated to 17 March 2020. Mr Parsons received a letter of that same date confirming he had been moved to Band 6 with effect from 13 September 2021.

Conclusions

Disability – Mrs Parsons

283. The Respondent accepts that Mrs Parsons was disabled at all material times by reason of Dyslexia, PTSD, Endometriosis, Asthma and back injury pain. It does not accept that she was disabled by reason of Dyspraxia. Mr Heard's written submissions explain the Respondent's position in this regard. Mr Downey makes no submissions. In practical terms, it makes no difference. However, it is a loose end that we ought to tie up.

284. The Respondent accepts that Mrs Parsons has Dyspraxia but disputes that it had a substantial adverse effect on her ability to carry out normal day to day activities, disputes that any adverse effects were long term and

disputes that there were any adverse effects prior to diagnosis in April 2021. Dyspraxia is a life long condition; it was not something that Mrs Parsons somehow acquired shortly before April 2021 or something that is going to go away. We do not accept Mr Heard's arguments in that regard.

285. However, the question of whether or not Mrs Parsons Dyspraxia had a substantial adverse impact on her day to day activities is more problematical. There is no medical evidence before us about the impact of Dyspraxia on Mrs Parsons' day to day activities. Mrs Parsons does not set this out in her Impact Statement either. All that she tells us, at paragraph 2 of her Impact Statement, is that the effects of her Dyslexia, Dyspraxia and ADHD overlap. Mrs Parsons does not rely upon ADHD symptoms as amounting to a disability. The Respondent accepts that Mrs Parsons experienced substantial adverse impacts on her day to day activities caused by her Dyslexia, PTSD, Endometriosis, Asthma and back pain as corroborated by the medical evidence and Occupational Health Reports. Medical evidence and the evidence of Mrs Parsons, does not support a finding of substantial adverse impact caused by the Dyspraxia.

286. We find that Mrs Parsons was not disabled by reason of Dyspraxia for the purposes of the Equality Act 2010.

Disability – Mr Parsons

287. The Respondent accepts that Mr Parsons was disabled by reason of PTSD and back injury / pain. It does not accept that he was disabled by reason of iGA Nephropathy nor by reason of Alpha 1 Antitrypsin Deficiency Disorder. The Respondent accepts that Mr Parsons has these two latter impairments, but it does not accept that they have a substantial adverse effect on his day to day activities. There is no medical evidence before us that we were taken to suggesting such a substantial adverse impact. The only evidence which we have is Mr Parsons Impact Statement, paragraphs 10 and 11 of which, (at pages 249 – 250 of the Medical Bundle) deal with these two impairments. It does not describe there, substantial adverse impact on day to day activities in respect of either condition.

288. In relation to iGA Nephropathy, Mr Parsons refers to an increased need for urination, but he does not explain to what degree, or how that differs from others and why it is something that is substantial.

289. In respect of both conditions he refers to having to refrain from drinking alcohol or smoking, neither of which would the Tribunal regard as substantial adverse impacts on one's day to day activities. For these reasons, we find that Mr Parsons was not disabled as defined in the Equality Act 2010 by reason of Alpha 1 Antitrypsin Deficiency Disorder or iGA Nephropathy.

Conclusions on the issues

290. We approach our substantive conclusions by reference to the list of issues. In each instance, we have considered whether there are facts from which we could properly conclude, absent explanation from the Respondent, that there was discrimination. Unless we say otherwise, we have concluded not. We deal with harassment first; there are duplications in the allegations and were we to uphold any particular allegation and find it to be harassment, pursuant to section 212, that same set of facts could not also be held to be direct discrimination or victimisation.

Harassment related to disability – s.26 EqA 2010

291. In respect of each allegation, we consider whether on the facts as we find them, they could be said to have in the reasonable perception of Mrs and / or Mr Parsons, (having regard to all the circumstances) created the proscribed atmosphere.

14.1 Did the Respondents subject the Claimants to the following conduct:

14.1.1 Offering fixed line work to other colleagues in preference to the Claimants and/or without consideration of offering the Claimants fixed line work. The identities of those offered fixed line work are known to the Respondent as detailed in an email from Claire Thwaites, Area General Manager in an email of 23 March 2023.

292. We note that there is no email of 23 March 2023, a recurring theme in the list of issues. This could be either a reference to the email of 7 March 2022 to those on the transfer list, or to the email to Mr Hillman of 22 April 2022.

293. Overall, it is logical and understandable that the Respondent did not offer the claimants a fixed line until it knew that they were about to return to work. Otherwise, they would have been creating a shift for which they would have to keep finding others to cover. The claimants perceived that the Respondent was creating the proscribed environment, but it was not reasonable for them to do so. The Respondent explained a number of times that they would be allocated a fixed line as soon as they were ready to return to work, (and did so) but the Claimants would not, unreasonably, accept that as sufficient.

294. It remains logical and reasonable for the Respondent to resolve any issues with rotas and with people waiting for transfers, without considering the Claimants until such time as they were ready to go back to work, which was to entail a predictably lengthy Return to Practice process.

14.1.2 Marika Stephenson rejecting the Claimants' complaints about failing to implement the fixed line provision of the COT3 agreement on the basis that the Claimants had suffered no financial loss, even though the Claimant was not able to obtain overtime pay due to being unable to return to active duty.

295. On our findings of fact, what Marika Stephenson said, including the reference to no financial loss, could not reasonably be regarded creating the proscribed atmosphere.

> *14.1.3 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022.*

296. On our findings of fact, what Marika Stephenson said could not reasonably be regarded as creating the proscribed atmosphere. She did not accuse the claimants of not wanting to return to work.

> *14.1.4 Failing to properly consider or implement the return to work plan proposed by Mrs Parsons in April 2022.*

297. This is a misrepresentation of what happened. What Mrs Parsons proposed was considered. The Respondents worked with the claimants to devise a Return to Practice Plan which considered their proposals. The Respondent and the claimants jointly came up with an agreed plan that included the provision of a fixed 10:22 line when they started back at work. The claimants participated in a process that came up with a solution. That could not reasonably be said to have created the proscribed atmosphere.

> *14.1.5 Arranging for Mrs Parsons to be interviewed by a panel containing her own HR manager, and own her line manager both of whom had significant involvement with the issues she was experiencing within the workplace in relation to disability*.

298. As Mr Heard pointed out, Mrs Parsons accepted in cross examination that she had no problem with Mr Hicks being on the selection panel. She also confirmed that the other member was a General Manager, not an HR manager. She raised no complaint at all about the composition of the panel. The composition of the panel did not create the proscribed atmosphere.

> *14.1.6 On 31 August 2022 Ms Kitchener making unacceptable comments to the Claimant and turning away (First Claimant only).*

299. This person's name is Ms Kitchen, not Kitchener. On our findings of fact, what Ms Kitchen said and did could not reasonably be said to create the proscribed atmosphere.

> *14.1.7 Advising the Claimant on 2 September 2022 that her unsocial hours payments were being moved to 'Section 2' in line with new recruits from 2019.*

300. This is unfortunate, but the same thing happened to many others. It would have been very annoying, but it could not reasonably be said to create the proscribed atmosphere and it was not related to disability.

> *14.1.8 In or around January 2023 the Claimants' colleagues made unacceptable comments on a work related online discussion group regarding fibromyalgia/mental health disabilities including referring*

to it being categorised in the sections of 'flakey', 'not my fault' 'no apparent problem' and 'chronic issue for the last 20 years (with rolled eyes emoji)'. The Respondent took no effective action to address this.

301. Certainly, the comments in the group are inappropriate and are capable of amounting to harassment. The claimants did not have fibromyalgia and the comments were not aimed at them. In those circumstances, the comments could not reasonably be said to give rise to the proscribed atmosphere for the claimants.

302. It is not right to say that the Respondent did not take effective action. The posts were taken down and investigated. The person investigating spoke to all involved, they apologised, expressed embarrassment and acknowledged that their posts were inappropriate. The action taken by the Respondent in response to Mrs Parsons complaint, (others had complained too) could not reasonably be said to create the proscribed atmosphere.

14.1.9 Requiring the Claimants to return to work under the supervision and control of Luke Squibb and Terry Hicks despite these people having been involved in prior complaints from the Claimants in relation to poor treatment arising from their disability.

303. The claimants did not return to work under the supervision of Luke Squibb. Their return to work was managed by Mr Hicks. We understand the complaint about Mr Hicks to be that he had been chair of an earlier investigation into a grievance raised by Mrs Parsons in April 2019. She did not complain about Mr Hicks at the time. Although she did not attend the grievance hearing, she had seen the minutes afterwards. The claimants did not suggest that Mr Hicks was an inappropriate person to manage their return to work and he in fact managed their return to work in a professional manner that could not reasonably be criticised. Mrs and Mr Parsons overall, worked well with him. His involvement could not reasonably be said to create the proscribed atmosphere.

14.1.10 When the Claimants became aware, on their return to work in December 2022/January 2023 that Luke Squibb was still present in the workplace and became anxious as a result of their disabilities, Terry Hicks admonished the Claimants to manage this appropriately and professionally rather than offering support.

304. On our findings of fact, that is not what happened. Mr Hicks did not admonish them, as suggested here or at all. His remarks as found, could not reasonably be said to create the proscribed environment.

14.1.11 Terry Hicks informing their allocated support worker "you are not their messenger" when issues were raised on their behalf by them during their return.

305. On our findings of fact, that is not what happened. What Mr Hicks said to Ms Rooke could not reasonably be said to create the proscribed atmosphere.

> *14.1.12 Mr Tom Abell, on 31 January 2023, suggesting to the First Claimant that she needed to "consider the tone of your emails and whether this is in line with Trust values".*

306. Mr Abell's warning in the context of the wording of the correspondence received from Mrs Parsons, is not unreasonable. In his letter, Mr Abell goes on to carefully and politely engage with and answer Mrs Parsons at length. In the circumstances, in the context of the correspondence, the warning could not reasonably be said to give rise to the proscribed atmosphere.

Direct Disability Discrimination – s.13 EqA 2010

> *9.1 The alleged less favourable treatment complained of is:*
>
> *9.1.1 Failing to allocate the Claimants to a fixed "line" shift until September 2023, despite:*
>
> *9.1.1.1 agreeing to do so in the COT3 agreement in January 2021*
> *9.1.1.2 Tom Able, Chief Executive Officer of the Respondent agreeing to do so on 4 March 2022*
> *9.1.1.3 Terry Hicks, Head of Operations, Cambridgeshire, agreeing a fixed stand-alone "line" arrangement at Huntingdon on 22 April 2022*
> *9.1.1.4 the Respondent's Occupational Health Report dated 21 June 2022 recommending for a fixed "line" shift pattern.*

307. The reason the Claimants were not given, allocated, a fixed line until September 2023 is that they were not ready to go back to work. That is not a detriment. Nor is it less favourable treatment, person in the same situation but not disabled, would have been treated the same way.

308. For the avoidance of doubt, breach of the COT3 is not relied upon as a detriment. It is in any event arguable that the Respondent not allocating a fixed line until the claimants were ready to go back to work is not a breach of the COT 3. Clause 8 of the COT3 comes into play upon the claimants completing their paramedic qualifications on 1 September 2021. Clause 8 b of the COT3 is based on the premise that they would be working, but they were not. They were neither working as relief workers nor on a fixed line at that time. As soon as they were working, they were offered a fixed line.

> *9.1.2 Offering fixed line work to other colleagues in preference to the Claimants and / or without consideration of offering the Claimants fixed line work. The identities of those offered fixed line work are known to the Respondent as detailed in an email from Claire Thwaites, Area General Manager in an email of 23 March 2022.*

309. As we have explained above, the claimants were not allocated a fixed line until they were ready to return to work. The reason that they were not offered a fixed line before hand is that they were not working, not because they were disabled. A non-disabled comparator would have been treated the same way.

> *9.1.3 Marika Stephenson rejecting the Claimants' complaints about failing to implement the fixed line provision of the COT3 agreement on the basis that the Claimants had suffered no financial loss, even though the Claimant was not able to obtain overtime pay due to being unable to return to duty.*

310. The reason Ms Stephenson rejected the Claimants complaint is that they were not ready to go back to work. What Ms Stepheson actually said is as set out in our findings of fact. She did make a reference to there being no financial loss, but that was not the reason for rejecting the claimants complaint. Ms Stephenson would have said the same to a non-disabled person who was in the same circumstances, for example someone who'd had an accident and was returning after a long term period of absence.

> *9.1.4 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022.*

311. On our findings of fact, Ms Stephenson did not accuse the Claimants of not wanting to return to work.

> *9.1.5 At a meeting held on 31 August 2022 with a view to a return to work plan being established for the Claimants, Laura Kitchener refusing to engage with the Claimants and acting in a dismissive and high handed manner towards them when introduced to them by their union rep including asking them who was "dealing" with them, and saying it was not her place to get them back to work before abruptly turning away.*

312. On our findings of fact, Ms Kitchen did not behave as alleged and her interactions with the claimants could not reasonably be said to have created the proscribed atmosphere.

> *9.1.6 In or around January 2023 the Claimants' colleagues made unacceptable comments on a work related online discussion group regarding fibromyalgia / mental health disabilities including referring to it being categorised in the sections of 'flakey', 'not my fault', 'no apparent problem' and 'chronic issue for the last 20 years (with rolled eyes emoji)'. The Respondent took no effective action to address this.*

313. The comments were not treatment and therefore not less favourable treatment of, Mrs and Mr Parsons.

314. As we have explained above, it is not correct to say that the Respondent did not take effective action.

9.1.7 In January 2023, Tom Abell, CEO, amending Mrs Parsons' proposed draft of a letter to go out to staff to clear the air in respect of the dispute between the Trust and the Claimants in a way that implied that it was the Claimants who had had to make adaptations rather than the trust.

315. We do not accept the claimants' interpretation of the proposed changes to the draft letter. We do not understand how the changes could be said to suggest that it is the claimants who had to make adaptions. When asked to explain, Mrs Parsons suggested that the change from, "the trust takes full responsibility" to, "we take full responsibility" implies that it is the claimants who had to make adjustments. We do not accept that at all. It is clear in the re-worded version that it is the Respondent that is taking responsibility. The proposed changes to the letter are not unreasonable. The main message of the proposed letter from the Respondent is to apologise for what has happened and to encourage the workforce to welcome Mr and Mrs Parsons back is still there. Any changes made to the draft by the Respondent was not because the claimants are disabled. If had they had been in the same circumstances but not disabled, the same changes would have been proposed.

Indirect Disability Discrimination – s.19 EqA 2010

10.1 Did the Respondent apply a provision, criterion or practice? The Claimants state this was as follows:

10.1.1 Placing complainants on 'Management Stand down' during investigations rather than removing / moving the alleged perpetrator.

316. There was no such PCP. There was a PCP of placing people who had been on sick leave a long time and due to go down to half pay, on stand down so that they could preserve full pay.

10.1.2 Not providing entry access for individuals on 'Management Stand down'

317. There was no such PCP. There was a single accidental occurrence, in that it just so happened, that the door access system changed whilst the claimants were on stand down.

10.1.3 Requiring annual leave to be taken during 'Management Stand down' and

318. We do not agree with Respondent's submissions on this point; the wording of Mr Abell's letter of 21 October 2022 is clear in expressing an expectation, that he was in fact instructing the claimants that they should use up there annual leave allocation for 2022/2023 during their stand down. It is not a simple, "expectation" in the sense at issue in the case of *Carreras*. This is expressed in such terms that we find that the Respondent would likely impose such a requirement in a similar situation, in other

words, others on stand down would be expected to use up annual leave during a prolonged stand down. We find that there was such a PCP.

319. Does this PCP place people with the same disabilities as the claimants at a disadvantage? There is no evidence and were no submissions before us that it does. The list of issues at 10.2.i and ii refer to their being more likely to suffer deterioration in their mental health, more likely to be seriously affected by long periods of stand down. There is no evidence before us to that effect, but assuming that is so, it is not a disadvantage.

320. Being required to take leave is not a disadvantage, but even if it was, it would be a proportionate means of achieving the legitimate aims of:

    320.1. Preventing the accumulation of large amounts of annual leave that would be taken later when the individual was fit and at work, having a detrimental impact on the efficient operation of the Respondent's workforce. An even distribution of annual leave enables efficient management of service need and resource.

    320.2. During stand-down an individual can be called upon to respond to communications from the Respondent and attend meetings. This was expressed as an issue by the claimants; taking leave during stand-down is an advantage, not a disadvantage, it enabled rest and recuperation.

        10.1.4 (in respect of the Second Claimant only) Requiring employees to take sick leave when restricted by illness instead of being allowed to have home study.

321. In her email to Mr Abell of 26 January 2023, Mrs Parsons spoke of being exhausted. She said they needed time between classroom work and road based work. She said that should not be at the expense of annual leave. She said it would be good if he, "at least" granted home study. In his reply, Mr Abell said the RTP programme is flexible and can be changed to meet their needs, which can include study, but not home study. In a separate paragraph, by reference to her saying they were exhausted, Mr Abell correctly said that if it was a matter of health, they should take sickness absence and an OH referral could be made, or if not a matter of health, they should book leave. He understandably suggested that his simply standing them down was not the correct approach. This was a one off decision on a particular set of facts, it was not a PCP.

322. Even if it was a PCP, we have no evidence or submissions on the group disadvantage. It was also a proportionate means of achieving legitimate aim:

    322.1. Ensuring a consistent application of the Respondent's sickness absence policy, in particular, if there are health concerns, they should be managed as sickness absence, where appropriate.

322.2. Ensuring Mr Parsons was sufficiently rested.

Failure to make reasonable adjustments - §.20/21 EqA 2010

11.1 Did the Respondent apply a provision, criterion or practice? The Claimants state this was as follows:

i. Requiring paramedics to work an irregular / unpredictable shift pattern and / or to work with a large number of different colleagues.

323. Not all paramedics were required to work on such bases, but some were, including the claimants before their prolonged period of absence following Covid. The Workplace Needs Assessment Reports of June 2022 for both claimants recommended fixed lines and that recommendation was implemented on their return to work. Reasonable adjustments were made in a reasonable time frame, there was no failure to make a reasonable adjustment.

ii. Not allowing employees to move to work at a different station.

324. There was no such PCP. The claimants were offered work at a different station, either Kempston, St Neots or Huntingdon, The claimants wanted to remain where they were, not to move. Apart from 5 weeks training at Peterborough, which they agreed to, they returned to work at Huntingdon, there chosen station. They did not ask to move station.

iii. Not providing entry access for individuals on 'Management Stand down'

325. There was no such PCP. The claimants' loss of access during their absence was a one off coincidence of the security system having been changed during their absence.

iv. (in respect of the First Claimant) Rearranging job interviews at short notice.

326. There was no such PCP. We did not hear evidence to suggest that the short notice change to the timing of the job interview in question was anything other than one off incidents in the particular circumstances. Mrs Parsons had 5 days' notice of the first change, which is not short notice. She had 1 days' notice of the second change, which is unfortunate, but a one off, not a PCP. We did not hear evidence that such would in any event place Mrs Parsons' at a disadvantage.

v. Requiring annual leave to be taken during 'Management Stand down'.

327. As noted above, under indirect discrimination, we find that there is such a PCP. For the same reasons set out there, we find that this PCP did not place the claimants at a disadvantage, taking leave is not a disadvantage.

The claimants are not disadvantaged compared to people on management stand-down but not disabled or with their disability. If we had decided otherwise, we would have found that it would not be a reasonable adjustment to not require annual leave to be taken during stand-down; it would not be reasonable to expect the Respondent to allow the claimants on stand-down to accumulate long periods of leave.

> *vi. (in respect of the Second Claimant) Requiring employees to take sick leave when fatigue set in instead of being allowed to have home study.*

328. As we have explained above under indirect discrimination, this was a one off decision and not a PCP. Even if it were, it did not represent a disadvantage to Mr Parsons; Mr Abell's approach was flexible – if Mr Parson was unwell, sick leave was appropriate and perhaps, a referral to OH, there is no disadvantage in that. If he was being asked to do too much too soon, the Return to Practice programme could be changed to meet his needs.

Discrimination arising from disability – s.15 EqA 2010

329. As a general point, we make the observation that, despite all the controversy and time spent during the hearing, trying to establish what the claimants' counsel, Ms Scarborough had agreed at the preliminary hearing in terms of what disability gave rise to what in relation to each allegation under this head of claim and Mr Downey being so very keen to keep his options open, he did not in his submissions seek to identify any particular, "something" arising from any particular disability in relation to any particular allegation of unfavourable treatment.

> *12.1 Did the Respondent treat the Claimants unfavourably by:*
>
> *12.1.1 Placing the Claimants on management stand-down from September 2021 and not allowing them to return to work until December 2022.*

330. This is factually inaccurate, in that the claimants were placed on stand down, with their agreement, on 25 January 2022. Their having been placed on stand down was not unfavourable; they were not ready to return to work and it suited the claimants to be on stand down on full pay whilst their issues were resolved and their Return to Practice arrangements worked out, which was not, at their request, to be rushed. It was not a hurdle, it did not create a difficulty or a disadvantage. It was to their advantage.

> *12.1.2 Failing to place the Claimants on a fixed "line" shift, despite*
>
> *12.1.2.1 agreeing to do so in the COT3 agreement in January 2021;*
> *12.1.2.2 Tom Abell, Chief Executive Officer of the Respondent agreeing to do so on 4 March 2022;*

12.1.2.3 Failing to implement the fixed stand-alone "line" arrangement at Huntingdon agreed by Terry Hicks, Head of Operations, Cambridgeshire, 22 April 2022;

12.1.2.4 Failing to implement the recommendation for a fixed "line" shift patter in the Respondent's Occupational Health Reports dated 21 June 2022 until September 2023.

331. It was not unfavourable treatment to not allocate the claimants a fixed line until they returned to work; they were not fit to work, they were assured a number of times that when they returned to work, they would have a fixed line. It was not a hurdle, it did not create a difficulty or a disadvantage.

12.1.3 Not providing the Claimants with alternative project work despite repeated requests from the Claimants when such work was specifically offered to the following colleagues who did not share the Claimants' protected characteristics (a) Lindsay Ward in or about May 2022 (b) Adam Bright in or about November 2022.

332. On our findings of fact, there was no project work available for the claimants that would have been suitable for them. Not allocating them project work was not therefore, unfavourable treatment. It was not a hurdle, it did not create a difficulty or a disadvantage.

12.1.4 Offering fixed line work to other colleagues in preference to the Claimants and/or without consideration of offering the Claimants fixed line work. The identities of those offered fixed line work are known to the Respondent as detailed in an email from Claire Thwaites, Area General Manager in an email of 23 March 2023.

333. This was not unfavourable treatment because the claimants were not ready to return to work and they were reassured that when they were, they would be offered fixed line work. It was not a hurdle, it did not create a difficulty or a disadvantage.

12.1.5 Marika Stephenson rejecting the Claimants' complaints about failing to implement the fixed line provision of the COT3 agreement on the basis that the Claimants had suffered no financial loss, even though the Claimant was not able to obtain overtime pay due to being unable to return to active duty.

334. As we explain above, this allegation is not made out on the facts. We have already explained, not offering a fixed line before they were ready to return to work, was not unfavourable treatment.

12.1.6 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022.

335. As we explain above, this allegation is not made out on the facts.

12.1.7 Failing to properly consider or implement the return to work plan proposed by Mrs Parsons in April 2022.

336. Mrs Parsons' proposal was properly considered. Mr Hicks and Mr Hargreaves worked with Mr and Mrs Parsons to come up with a return to work plan that they agreed with and that worked. There was no unfavourable treatment. It was not a hurdle, it did not create a difficulty or a disadvantage.

> *12.1.8 Failing/delaying to compensate the Claimants for lost overtime in 2019/20 and 2020/21 in breach of agreement to do so by Terry Hicks, Head of Operations, Cambridgeshire on 22 April 2022*.

337. Mr Hicks does not in his letter of 22 April 2022 agree to compensate the claimants, he agrees to investigate. It was a time consuming and complicated process. Some figures were put to the claimants by Mr Abell on 28 July 2022, but they did not agree with them. Ms Carter met with Mr Hicks and the claimants in August and agreed to investigate further. She put forward some proposed figures in September, which the claimants accepted. That does not amount to unfavourable treatment. It was not a hurdle, it did not create a difficulty or a disadvantage.

> *12.1.9 Not renewing the Claimants' access pass to the station and failing to put in place any mechanism for the Claimants to retain contact with the workplace and their co-workers*.

338. The situation with the claimants' access pass ceasing to work because of the change of the secure access system was an oversight. The claimants never sought to gain access. It was not therefore an issue for them. Once the time came for them to return to the work place and the fact that their passes would no longer work was discovered, arrangements put in place to provide them with new passes. This does not amount to unfavourable treatment. It was not a hurdle, it did not create a difficulty or a disadvantage.

339. We did not hear any evidence about the claimants having any difficulty with maintaining contact with their colleagues or what arrangements they think the Respondent should have made for their doing so. There is no unfavourable treatment on that account either. It was not a hurdle, it did not create a difficulty or a disadvantage.

> *12.1.10 Refusing, until this was pointed out by Mrs Parsons, to offer the Claimant a guaranteed interview for the post of General Manager North Cambridgeshire in violation of the Respondent's own Disability Confident Employer scheme*

340. As we recited in the opening paragraphs of our findings of fact, the Respondent encourages applications from disabled people by offering them an interview provided that they meet the criteria. This amounts to a guaranteed interview on that basis. But Mrs Parsons was offered an interview and there was no evidence of Mrs Parsons having to point out that she was entitled to a guaranteed interview in circumstances where it appeared she would not otherwise have been given an interview. There

was no unfavourable treatment. It was not a hurdle, it does not create a difficulty or a disadvantage.

> *12.1.11 Moving Mrs Parsons interview for the above post at short notice three times despite being aware of her difficulties coping with change*.

341. The interview was re-arranged twice, for good reasons, not three times. Re-arranging the interviews in the circumstances was not unfavourable treatment. It was not a hurdle, it did not create a difficulty or a disadvantage. Even if it was unfavourable treatment, the changes were for good reasons, to comply with the Respondent's own recruitment policy and to make allowance for people being unwell; a proportionate means of achieving legitimate aims.

> *12.1.12 Arranging for Mrs Parsons to be interviewed by a panel containing her own HR manager, and own her line manager both of whom had significant involvement with the issues she was experiencing within the workplace in relation to disability*.

342. As we have explained above, in cross examination, Mrs Parsons accepted that she had no issue with Mr Hicks being on the interview panel, the other manager on the panel was not an HR Manager and she did not have a problem with that other manager.

> *12.1.13 At a meeting held on 31st August 2022 with a view to a return to work plan being established for the Claimants, Laura Kitchener refusing to engage with the Claimants and acting in a dismissive and high handed manner towards them when introduced to them by their union rep including asking them who was "dealing" with them, and saying it was not her place to get them back to work before abruptly turning away*.

343. Mr and Mrs Parsons did not have a meeting with Ms Kitchen, they encountered her by chance. As we have explained above, on the facts, this allegation is not upheld; there was no unfavourable treatment. It was not a hurdle, it does not create a difficulty or a disadvantage.

> *12.1.14 Advising the Claimants on 2nd September 2022 that their unsocial hours payments were being moved to "section 2" in line with new recruits from 2019*.

344. This is unfavourable treatment. However, it is not linked in anyway to the claimants' disabilities. The steps taken by the Respondent were believed to be in accordance with Agenda for Change and applied to all other employees in the same or similar circumstances, not just Mrs and Mr Parsons. There was nothing arising from their disabilities that caused the proposed movement to section 2.

12.1.15 Mr Tom Abell advising the Claimants that they must use their annual leave entitlement during a period of 'Management stand down' whilst awaiting the investigation of their grievance of discrimination and implementation of reasonable adjustments.

345. We agree Mr Abell did in his letter of 24 October 2022, tell the Claimants that he expected them to use their annual leave entitlement during a long period of stand down. It was not expressed in quite the direct way it is put in the list of issues, but nonetheless, there is a clear and firm expectation that they will do so. That in our view is a reasonable expectation. It is not unfavourable treatment. It was not a hurdle, it did not create a difficulty or a disadvantage. Whilst on stand down the claimants are expected to be contactable and to respond to communications from the Respondent. If the claimants were to be permitted to save their leave and carry forward their leave after more than a year's stand down, then after a prolonged period of not working, they would be entitled to further long periods of paid absence, taken as accumulated leave, which would be very favourable treatment. It is not unfavourable to expect them to take leave. Had we decided otherwise, we would have found that the expectation had the legitimate aim of preventing those on long term stand down from accumulating an entitlement long term periods of annual leave, which would adversely impact on the running of an effective, efficient and productive workforce.

12.1.16 In or around January 2023 the Claimants' colleagues made unacceptable comments on a work related online discussion group regarding fibromyalgia/mental health disabilities including referring to it being categorised in the sections of 'flakey', 'not my fault' 'no apparent problem' and 'chronic issue for the last 20 years (with rolled eyes emoji)'. The Respondent took no effective action to address this.

346. This was not unfavourable treatment of the claimants, it was not a hurdle, it did not create a difficulty or a disadvantage. As we have explained, it is not correct to say that no effective action was taken.

12.1.17 Requiring the Claimants to return work under the supervision and control of Luke Squibb and Terry Hicks despite these people having been involved in prior complaints from the Claimants in relation to poor treatment arising from their disability.

347. As we explained above, the claimants did not return to work under the supervision of Luke Squibb and they did not complain about Mr Hicks managing their return to work. There was nothing unfavourable in the way Mr Hicks managed their return to work. This was not unfavourable treatment, it was not a hurdle, it did not create a difficulty or a disadvantage.

12.1.18 When the Claimants became aware, on their return to work in December 2022/January 2023 that Luke Squibb was still

present in the workplace and became anxious as a result of their disabilities, Terry Hicks admonished the Claimants to manage this appropriately and professionally rather than offering support.

348. As we have explained above, this allegation is not upheld on the facts.

12.1.19 Mr Tom Abell, on 31 January 2023, suggesting to the First Claimant that she needed to "consider the tone of your emails and whether this is in line with Trust values".

349. We have explained above that Mr Abell's warning was not unreasonable in the circumstances. It was not unfavourable treatment. It was a polite warning intended to be helpful, to encourage the claimants to tone down their rhetoric. It was not a hurdle, it did not create a difficulty or a disadvantage. Even if was regarded as such, (a) there was no evidence before us that the claimants disabilities caused them to word their correspondence as they did and (b) Mr Abell's wording was a proportionate means of achieving a legitimate aim of ensuring that correspondence airing complaints and grievances is measured and polite, so as to encourage meaningful and effective dialogue.

12.2 [There is misnumbering in list of issues, this should be 12.1.20] Mr Parsons being told to take sick leave when they asked for amendments to the phased return due to fatigue.

350. We set out our view of this exchange of correspondence above, in relation to allegation 10.1.4, alleged indirect discrimination, paragraph 321.

351. The position taken by Mr Abell seems to us to be the correct one, certainly we consider it a reasonable one and not one that amounts to unfavourable treatment. It was not a hurdle, it did not create a difficulty or a disadvantage. If Mr Parsons is fatigued so that he cannot work, he is unfit to work and should not be at work. One would expect such fatigue to impact on one's ability to study also. The Respondent was clear that the phased return to work was flexible; if they were being asked to do too much, it could and would have been, adapted.

Victimisation – Protected Acts – s.27 EqA 2010

13.1 The Claimants rely on the following protected acts:

13.1.1 The Claimants' employment Tribunal claims under references 3334238/2018, 3334312/2018, 3302675/2020, 3302677/2020, 3302676/2020.

352. These were, of course, protected acts.

13.1.2 Ms Parsons raising a grievance in respect of Joanne Bromley's treatment of her in relation to her disability in November 2020.

353. The email of 6 November 2020 accuses Ms Bromley of disability discrimination; it is a protected act.

> *13.1.3 The Claimants' complaints of discrimination in relation to their disability made on 4th April 2022 by the Claimants raising a further grievance in respect of Joanne Bromley's treatment of the Claimants which highlighted that they were making reports to the police of Hate Crime*.

354. In the email of 4 April 2022 the claimants are clearly complaining about the actions of Ms Bromley in the context of disability related harassment and victimisation for the earlier proceedings and grievance; it is a protected act.

> *13.1.4 The Claimant writing to the Respondent's CEO Tom Abelll on 22 July 2022 raising complaints about their treatment in relation to disability*.

355. The 22 July 2022 letter to Mr Abell is clearly a complaint about the way they are being treated and the context is their disability; it is a protected act.

> *13.1.5 Mrs Parsons' email to Tom Abell of 30 January 2023.*

356. In the letter to Mr Abell of 30 January 2023, Mrs Parsons accuses him of condoning further discrimination and victimisation; it is a protected act.

Victimisation - Detriments

13.2 The detriments relied upon by the Claimants are the following in respect of the Respondents:

> *13.2.1 In September 2021 the Respondent placed the Claimant on 'Management Stand Down' rather than removing the alleged perpetrator whilst the Claimant's grievance was investigated*.

357. The claimants were put on stand down to avoid their going down to half pay in January 2022, because they were not fit to work, not because of the protected acts that pre-date this event.

358. Mrs Bromely was removed from line management of the claimants from November 2020.

> *13.2.2 In March 2022 failing to notify the Claimant of available "lines" (shift patterns).*

359. As already explained, this was because the claimants were not fit to work, not because of the protected acts that pre-date this event.

> *13.2.3 Marika Stephenson accusing the Claimants of not wanting to return to work on 4 April 2022.*

360. As explained above, this allegation was not upheld on the facts

13.2.4 Failing to allocate a band six uplift to the Claimants at the same time as their contemporary colleagues.

361. The history of the Band 6 uplift is unfortunate, absent any explanation from the Respondent the tribunal could conclude that the reason there was such a long delay in the claimants receiving their Band 6 uplift was because of their complaints about discrimination. But the issues relating to the Band 6 uplift applied to others as well, (about 350 others) not just the claimants. They were put in the first group to be reviewed by the appointed panel in November 2022, being treated as a priority. They were 2 of a total of 7 people for whom an error as to timing had been made on 30 March 2023. Mr Abell intervened on their behalf. We accept that the Respondents' explanation is genuine and that the claimants' protected acts played no part whatsoever in the claimants Band 6 uplift being delayed.

13.2.5 On 31 August 2022 Ms Kitchener making unacceptable comments to the Claimant and turning away.

362. As explained above, this allegation is not upheld on the facts

13.2.6 Advising the Claimant on the 2nd September 2022 that her unsocial hours payments were being moved to 'section 2' in line with new recruits from 2019.

363. On its own, absent any explanation from the Respondent, we might conclude that this was because of the claimants pre-dating protected acts. However, there is an explanation set out in the email to the many effected on 1 September 2022, summarised by us in our findings of fact. It flowed out of Agenda for Change and was agreed with the unions. It is clear that is why the claimants were informed that their unsocial hours payments would in future be calculated by reference to section 2, it had nothing whatsoever to do with their pre-dating protected acts.

13.2.7 "Failing to manage a return to work in the period September 2021 to December 2022 (including failure to progress the grievances to enable the Claimant to return to work)".

364. There were long delays in resolving the claimants grievances and in their returning to work. Absent explanation, these delays could properly lead to the conclusion that they were because of the grievances, (protected acts). An analysis of the time scales and an explanation is called for:

364.1. The claimants began a prolonged period of absence from work in September 2020.

364.2. The first grievance was raised in November 2020.

364.3. Previous claims came before the employment tribunal on 19 January 2021. Terms of settlement were agreed, which included at clause 10, provision that some, and potentially all, grievances would

be withdrawn. In those circumstances, we can understand the Respondent being reluctant to progress investigation into those grievances on the grounds that some, (it is not clear which) had been withdrawn and the remainder, might be withdrawn.

364.4. We accept Ms Carter's evidence that there was confusion over whether the original grievance was settled by the COT3.

364.5. An Occupational Health report of 1 March 2021 stated that Mrs Parsons would not be fit to return to work until the grievance process had been resolved, (advice repeated in July 2021).

364.6. The Respondents' HR resources were unable to cope with the amount of case work it had. Mr Mason and Real World HR were brought in to help. In March 2021, Mr Bailey referred the claimants case to Mr Mason. They both communicated with the claimants at that time.

364.7. However, also in March 2021, Mr Bailey and Ms Carter established that they could not progress the grievance until Counter Fraud had decided whether or not a criminal prosecution should be pursued against the claimants. A proper decision for them to have made. Something of which the claimants were not aware.

364.8. In May 2021, a decision was made by Counter Fraud to take no further action. Mr and Mrs Parsons were informed of that in May 2021. That triggered the obligation under clause 10 of the COT3 to withdraw any grievances relating to the remaining claims. It would be understandable and appropriate if the Respondent was to not take any action on the November 2020 grievance at this stage.

364.9. In February 2022, Mrs Parsons and the Claimants' solicitors, each wrote to withdraw their ongoing complaints about Ms Bromley.

364.10. Real World HR handed the case back to the Respondent in March 2022.

364.11. On 4 March 2022, Mr Abell met with the claimants with a view to exploring ways to resolve issues and secure their return to work.

364.12. The claimants raised their second complaint about Ms Bromley on 4 April 2022.

364.13. Also on 4 April 2022, Ms Stephenson met with the claimants to discuss their return to work

364.14. Mr Hicks and Mr Hargreaves began working with the claimants to achieve their return to work in April 2022.

364.15. On 8 June 2022, Ms Carter wrote to the claimants to apologise for the lack of progress on the grievance, to propose that it be closed and that it be dealt with instead under the Dignity at Work policy. The Claimants agreed.

364.16. On 1 September 2022, Ms Carter told the claimants that a Case Manager and a Case Investigator had been appointed in relation to their Dignity at Work complaints.

364.17. The Return to Practice Plan was agreed by the claimants on 21 December 2022. They began their return to work on 29 December 2022, which was successfully completed on 5 September 2023.

364.18. The Dignity at Work outcome was provided in November 2023, the conclusion of which was that no wrong doing had taken place.

365. Ms Carter explained that there had been a number changes to the Commissioning Manager and Case Investigator during the Dignity at Work process and sickness absences which caused delays, as did the complex nature of the investigation. We accept her explanation. We accept her evidence that these delays had nothing to do with the protected acts. We also accept that given the time table of events as set out above, delays in the grievance investigation before Ms Carter's involvement had nothing to do with the protected acts.

366. As for the return to work, because of the occupational health advice received, this could not be contemplated until February 2022 when the original November 2020 grievance was withdrawn. Mr Abell set the ball rolling in March 2022. It took until December 2023 to finally get the claimants back to work because of the complex nature of and the time required, to put together a Return to Practice Plan, especially so given the particular needs of Mr and Mrs Parsons. This was the reason for time scale, not the protected acts.

13.2.8 Mr Tom Abel, on 31 January 2023, suggesting to the First Claimant that she needed to "consider the tone of your emails and whether this is in line with Trust values".

367. We accept the evidence of Mr Abell. The reason for the remark was the tone of the claimants' correspondence, not the protected acts.

13.2.9 Advising Mr Parsons that he must use his annual leave entitlement during a period of 'Management stand down' whilst awaiting the investigation of his grievance of discrimination and implementation of reasonable adjustments.

368. We accept the evidence of Mr Abell that the reason for taking this position is as set out in his letter of 26 January 2023, discussed above, it was not in any way whatsoever, because of the protected acts.

Concluding overview

369. We have stood back and taken an overview of the facts. We considered whether, when looked at overall, taking a holistic view, one could say that there has been discrimination. Do the delays, as Mr Downey submits, raise the inference that discrimination in one form or another, lies behind what has happened? Mr Downey refers to a culture of discrimination. We were referred to an earlier case where there was a finding that there was such a culture. We found that there is no such culture. There may have been before the events in question. On the Respondent's own case, as recited in our findings of fact, it acknowledged that historically it had a problem. Real World were retained to help. Mr Abell came in determined to change things. The people that we heard evidence from were trying to do things properly and to do the right thing by Mrs and Mr Parsons. Sometimes things did not go smoothly, but we are satisfied that discrimination was not involved.

Employment Judge M Warren

Date: 28 October 2024

Sent to the parties on: 31/10/2024

For the Tribunal Office.