



EMPLOYMENT TRIBUNALS

Claimant: X
Respondent: University of Huddersfield

Heard at: Leeds Employment Tribunal
Before: Employment Judge Deeley, Mrs C Sanders, Miss G Fleming

On: 21, 22, 23 and 25 June 2021 and 19 July 2021 (in chambers)

Representation
Claimant: In person (with assistance from her husband and mother)
Respondent: Mr D Sillitoe

RESERVED JUDGMENT

1. The claimant's claim of unfair (constructive) dismissal fails and is dismissed.
2. The claimant's claims for disability discrimination consisting of:
 - 2.1 discrimination arising from disability under s15 of the Equality Act 2010 (the "EQA");
 - 2.2 failure to make reasonable adjustments under s20 and s21 of the EQA;
 - 2.3 indirect discrimination under s19 of the EQA; and
 - 2.4 harassment under s26 of the EQA;fail and are dismissed.

REASONS

INTRODUCTION

Tribunal proceedings

1. Neither party objected to holding this hearing as a remote hearing. The form of remote hearing was “V: video - fully (all remote)”. A face to face hearing was not held because it was not practicable and all issues could be determined at a remote hearing.
2. This claim was case managed at a preliminary hearing by Employment Judge Shulman on 15 January 2021.
3. We considered the following evidence during the hearing:
 - 3.1 a joint file of documents and the additional documents referred to below;
 - 3.2 witness statements and oral evidence from:
 - 3.2.1 the claimant; and
 - 3.2.2 the respondent’s witnesses:

Name	Role at the relevant time
1) Dr Robert Allen	School Director of Teaching and Learning for the School of Applied Sciences and claimant’s line manager
2) Mrs Victoria Constantine	School Administration Manager
3) Miss Natalie Plows	HR Manager
4) Ms Ruth Sivori	Head of HR

4. The respondent provided a supplemental statement for Dr Allan on the second day of the hearing, to deal with matters raised by the claimant during the discussions at the start of the hearing regarding the list of issues which had not been specifically include in the list prepared by Employment Judge Shulman. The claimant did not object to Dr Allan’s supplemental statement.
5. The respondent provided additional disclosure documents during the hearing. Neither side objected and we included the additional documents in the hearing file.
6. The claimant stated at the start of the hearing that she was concerned that the respondents’ witnesses would be attending the hearing throughout the proceedings. She said that this was because she believed that there had been ‘collusion’ between the witnesses before her employment ended and that she did “not trust their integrity or honesty’. We noted that during Tribunal proceedings in England and Wales, witnesses are permitted to attend the hearing throughout and that the respondents’ witnesses had provided full statements. The claimant did not

raise any particular issues regarding the respondent's witnesses and we permitted them to remain in the hearing.

7. We also considered the helpful written and oral submissions made by the claimant and by the respondent's representative.

Adjustments

8. We asked both parties if they wished us to consider any adjustments to these proceedings. Both parties stated that they did not need any adjustments, however we noted that the claimant may need more frequent breaks during the evidence. The claimant did not request any particular adjustments to the format of the judgment.
9. We also reminded the respondent that their witnesses could also request additional breaks at any time if needed.

Consideration of anonymity etc. orders

10. We raised the possibility of anonymity and other similar orders with the parties at the conclusion of the hearing of this claim. We noted that these written reasons would refer to information relating to the claimant's medical conditions and the claimant may wish to consider applying to the Tribunal for an order regarding that information, such as an anonymity order under Rule 50 of the Employment Tribunal Rules of Procedure.
11. The claimant requested that her name be anonymised in this judgment. We asked the claimant if she wished for the respondent's identity, any witnesses' identity or any other information to be anonymised because it may be possible to identify the claimant from such information. The claimant confirmed that she did not seek anonymisation of the respondent's identity, any witnesses' identity or any other information in the judgment. The respondent did not object to the claimant's application.
12. We decided that it would be appropriate to make an anonymity order for the anonymisation of the claimant's name in this judgment. In reaching our decision, we took into account the principle of open justice. However, we concluded that it would be appropriate order that the claimant's name be anonymised due to the sensitive nature of the information and events relating to her medical conditions discussed during these proceedings and referred to in this judgment.

CLAIMS AND ISSUES

13. We provided a draft list of issues to the parties in advance of the first day of the hearing because the list of issues prepared during the case management hearing did not appear to identify all of the factual and legal issues arising from the claim. We provided the revised list of issues to the parties on the afternoon of the first hearing (before we heard any evidence) and gave both parties the opportunity to comment on this before it was agreed.
14. The claimant also complained that Ms Sivori was not an independent manager for the purposes of hearing her grievance regarding Dr Allan. She said that she was not aware that Ms Sivori had previously been involved in advising Dr Allan in March

2020 until disclosure had taken place during these proceedings. We discussed this matter with the claimant. She accepted that:

- 14.1 this could not have affected her decision to resign because she was not aware of Ms Sivori's involvement at the time of her written resignation; and
- 14.2 she was not suggesting that Ms Sivori's involvement in the grievance process (in and of itself) was an act of disability discrimination.

We therefore did not include this matter in the Table of Factual Allegations, although we noted that it may arise as an allegation relating to breach of the ACAS Code during any remedies hearing (if the claimant succeeded in any of her complaints).

15. During the claimant's evidence, it became apparent that there was an amendment issue regarding the harassment allegations relating to comments made by Dr Allan during a grievance investigation meeting on 2 July 2020. The claimant stated in response to the Tribunal's questions that she was not present at that meeting and did not receive a copy of the notes of that meeting until disclosure was undertaken during these proceedings, and therefore after her claim form was submitted.
16. We noted that the claimant should have made an amendment application to deal with these allegations but that the respondent had been able to prepare a supplemental statement on behalf of Dr Allan which dealt with these matters. The respondent's representative confirmed on the morning of the third day of this hearing that the respondent did not wish to raise any issue regarding the inclusion of these allegations as part of this claim. We therefore granted leave for the claimant to amend her claim to include those harassment allegations.

LIST OF ISSUES

17. The agreed list of issues is set out below. The claimant withdrew factual Allegation H (which was an allegation of harassment relating to Miss Plows) on the third day of the hearing at the conclusion of Miss Plows' evidence.

1. Unfair (constructive) dismissal

1.1 Was the claimant dismissed?

1.1.1 Did the respondent do the things set out in the Table?

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did that breach a term of the contract?

- 1.1.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.
 - 1.1.5 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.
 - 1.1.6 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 1.2 If the Tribunal finds that the claimant was dismissed what was the reason or principal reason for dismissal? The respondent says the reason was capability, because of sickness absence.
- 1.3 If the reason was capability, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
- 1.3.1 The respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;
 - 1.3.2 Dismissal was within the range of reasonable responses.

2. Remedy for unfair dismissal

- 2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:
- 2.1.1 What financial losses has the dismissal caused the claimant?
 - 2.1.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.1.3 If not, for what period of loss should the claimant be compensated?
 - 2.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 2.1.5 If so, should the claimant's compensation be reduced? By how much?
 - 2.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.1.7 Did the respondent or the claimant unreasonably fail to comply with it?

- 2.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 2.1.9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
 - 2.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - 2.1.11 Does the statutory cap apply?
- 2.2 What basic award is payable to the claimant, if any?
- 2.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

DISABILITY DISCRIMINATION COMPLAINTS

The respondent accepts that each of the claimant's conditions are a disability for the purposes of s6 Equality Act 2010:

- a) Autism with ADHD traits;
- b) Borderline Personality Disorder;
- c) Complex Post Traumatic Stress Disorder;
- d) Depression and Anxiety;
- e) Cardiac and respiratory problems; and
- f) An eating disorder.

3. Time limits (discrimination complaints only)

- 3.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before **8 May 2020** may be outside of the relevant time limits.
- 3.2 Were the discrimination complaints made within the time limit in section 123 of the EA? The Tribunal will decide:
- 3.2.1 Was ACAS early claim conciliation commenced within three months of the acts to which the complaint relates?
 - 3.2.2 If not, was there conduct extending over a period?
 - 3.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 3.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 3.2.4.1 Why were the complaints not made to the Tribunal in time?
 - 3.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

4. Direct discrimination – disability (s13 Equality Act 2010)

4.1 Did the respondent do the following things?

The claimant alleges that her disabilities (Autism with ADHD traits, Borderline Personality Disorder, Complex Post Traumatic Stress Disorder and Depression and Anxiety) were ‘unseen’ and were being ignored by the respondent as set out in the Table?

4.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant’s.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether the claimant was treated worse than someone else would have been treated.

The claimant has not named anyone in particular who she says was treated better than she was.

4.3 If so, was it because of disability?

4.4 Did the respondent’s treatment amount to a detriment?

5. Discrimination arising from disability (s15 Equality Act 2010)

5.1 Did the respondent treat the claimant unfavourably by doing the things set out in the Table?

5.2 Did the following things arise in consequence of the claimant’s disability:

5.2.1 the claimant’s sickness absence from September 2019;

5.2.2 the claimant’s communication difficulties; and

5.2.3 the claimant’s need for additional support (i.e. implementation of occupational health recommendations and preparation of a stress risk assessment)?

5.3 Was the unfavourable treatment because of any of those things?

5.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were the management of the health of the employees of the respondent and their performance in the workplace.

5.5 The Tribunal will decide in particular:

- 5.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 5.5.2 could something less discriminatory have been done instead;
 - 5.5.3 how should the needs of the claimant and the respondent be balanced?
- 5.6 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

6. Indirect discrimination - disability (s19 Equality Act 2010)

6.1 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP:

6.1.1 Failing to make adequate provision for individuals’ health and safety relating to their mental health conditions under their policies relating to:

- 6.1.1.1 management of sickness absence;
- 6.1.1.2 dignity at work; and
- 6.1.1.3 health and safety.

Policy	What the claimant says should have been included in the policy
Management of sickness absence	The claimant maintains that there was no reference to mental health or disability in the policy, such as supporting staff during sickness absence with long term mental health conditions.
Dignity at work	See above
Health & Safety	See above. Also the claimant maintains that stress risk assessments were not regarded with the same importance as other health and safety risk assessments, in that there were no timeframes for the completion of stress risk assessments.

- 6.2 Did the respondent apply the PCP to the claimant?
- 6.3 Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic or would it have done so?
- 6.4 Did the PCP put persons with whom the claimant shares the characteristic, at a particular disadvantage when compared with persons with whom the claimant does not share the characteristic?
- 6.5 Did the PCP put the claimant at that disadvantage?

6.6 Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

6.6.1 the management of the health of the employees of the respondent and their performance in the workplace.

6.7 The Tribunal will decide in particular:

6.7.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

6.7.2 could something less discriminatory have been done instead;

6.7.3 how should the needs of the claimant and the respondent be balanced?

7. Reasonable Adjustments (s20 & 21 Equality Act 2010)

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

7.2 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:

7.2.1 not discussing newly diagnosed conditions with employees in a timely manner;

7.2.2 not referring employees to occupational health in a timely manner;

7.2.3 not seeking specialist support for mental health conditions; and

7.2.4 not implementing occupational health recommendations, including phased returns to work, Wellness Action Plans and stress risk assessment.

7.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that:

7.3.1 the claimant needed additional support for her mental health conditions, including a Wellness Action Plan and stress risk assessment with input from occupational health advice, to enable the claimant to return to the workplace; and

7.3.2 the claimant was unable to return to work full time without a period of phased return to work on reduced hours.

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

- 7.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:
- 7.5.1 discussing her diagnosis of autism with her;
 - 7.5.2 seeking specialist support for her conditions of PTSD and autism;
 - 7.5.3 implementing the recommendations of the occupational health review on 26 September 2019 regarding her condition of PTSD; and
 - 7.5.4 referring her to occupational health following her diagnosis of autism in January 2020;
- 7.6 Was it reasonable for the respondent to have to take those steps and, if so, when?
- 7.7 Did the respondent fail to take those steps?

8. Harassment related to disability (s26 Equality Act 2010)

- 8.1 Did the respondent do the things set out in the table?
- 8.2 If so, was that unwanted conduct?
- 8.3 Did it relate to disability?
- 8.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 8.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
- 8.6 Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

9. Remedy for discrimination

- 9.1 What financial losses has the discrimination caused the claimant?
- 9.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

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- 9.3 If not, for what period of loss should the claimant be compensated?
- 9.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 9.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 9.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 9.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 9.8 Did the respondent or the claimant unreasonably fail to comply with it?
- 9.9 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 9.10 By what proportion, up to 25%?
- 9.11 Should interest be awarded? How much?

TABLE OF FACTUAL ALLEGATIONS

Allegation	Date(s)	People involved	Conduct alleged by X	Type of claim
a)	2018 onwards	Dr Allan and HR	X's workload was untenable and the respondent failed to do anything about this.	Constructive dismissal
b)	2018 onwards	Dr Allan and HR	No one sought specialist support on how to deal with X's condition of PTSD.	Direct discrimination, Reasonable adjustments
c)	September 2019 onwards	Dr Allan and HR	The respondent failed to implement the recommendations of the occupational health report following the occupational health review with X on 26 September 2019 regarding X's condition of PTSD.	Constructive dismissal, Reasonable adjustments
d)	25 January 2020 onwards	Dr Allan and HR	No one discussed X's autism diagnosis with her.	Direct discrimination, Reasonable adjustments
e)	25 January 2020 to March 2020	Dr Allan and HR	The respondent failed to offer to refer X to occupational health regarding her diagnosis of autism until March 2020.	Direct discrimination, Reasonable adjustments
f)	January 2020	Dr Allan and HR	No one sought specialist support on how to deal with X's condition of autism.	Direct discrimination, Reasonable adjustments
g)	8, 22 and 28 April 2020	Dr Allan	The contents of the emails from Dr Allan to X.	Discrimination arising from disability, Harassment
h) (allegation withdrawn by claimant)	30 April 2020 P285-p288	Ms Plows	The contents of the two emails from Ms Plows to X.	Discrimination arising from disability, Harassment

Allegation	Date(s)	People involved	Conduct alleged by X	Type of claim
i)	6 May 2020 p2929-295/6	Ms Sivori	The contents of the email from Ms Sivori to X.	Discrimination arising from disability, Harassment
j)	21 May 2020	Dr Allan, Ruth Sivori and Natalie Plows	RS argued with C in meeting (eg saying "I don't see your point") – not respect C's communication difficulties	Direct discrimination, Harassment
k)	24 May 2020		X resigned.	Constructive dismissal, Failure to make reasonable adjustments
l)	2 July 2020	Dr Allan	Dr Allan commented to Michael Ginger during a formal grievance investigation meeting that X was difficult to work with because: <ul style="list-style-type: none"> i) She sees things through a 'different lens' (referring to X's condition of autism); and ii) Dr Allan said that when X was stable she was a good worker, but that working with her could be like a 'rollercoaster' (referring to X's conditions of PTSD, depression and anxiety). 	Direct discrimination, Discrimination arising from disability, Harassment

RELEVANT LAW

18. The Tribunal has considered the legislation and caselaw referred to below, together with any additional legal principles referred to in the parties' pleadings and the respondent's written submissions.

Unfair (constructive) dismissal

19. The right not to be unfairly dismissed is set out in s94 of the ERA.

Constructive dismissal

20. In order to bring a claim for unfair dismissal under s111 of the ERA, the claimant must first show that her resignation amounted to a 'dismissal', as defined under s95(1) ERA.

s95 - Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) and section 96, only if)—...

...

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

21. The claimant must show the following key points to demonstrate that her resignation amounted to a dismissal under s95(1) of the ERA:

21.1 that a fundamental term of her contract was breached;

21.2 that she resigned in response to that breach; and

21.3 that she did not waive or affirm that breach.

22. Employees sometimes rely on a particular act or omissions as being the 'last straw' in a series of events. In the case of *Omilaju v Waltham Forest Borough Council* [2005] IRLR 35 it was held the last straw may not always be unreasonable or blameworthy when viewed in isolation. But, the last straw must contribute or add something to the breach of contract.

Mutual trust and confidence

23. The implied term of mutual trust and confidence was held in the cases of *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 642 (as interpreted by the EAT in *Baldwin v Brighton and Hove City Council* [2007] IRLR 232) as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

24. It is not necessary for the employer to intend to breach the term of trust and confidence (*Leeds Dental Team Ltd v Rose* [2014] IRLR 8): “*The test does not require an ET to make a factual finding as to what the actual intention of the employer was; the employer’s subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence then he is taken to have the objective intention...*”.
25. In *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] IRLR 833, Underhill LJ considered previous caselaw and held that the Tribunal must consider the following questions:
- “(1) *What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
- (2) *Has he or she affirmed the contract since that act?*
- (3) *If not, was that act (or omission) by itself a repudiatory breach of contract?*
- (4) *If not, was it nevertheless a part...of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation...)*
- (5) *Did the employee resign in response (or partly in response) to that breach?”*

Respondent’s reason for dismissal

26. If the claimant’s resignation amounted to a dismissal, then we must consider whether the respondent is able to establish a fair reason for that dismissal, together with the fairness of any procedure followed regarding such dismissal.
27. If the reason (or principal reason) for the dismissal is that the claimant made a protected disclosure, then her dismissal would be automatically unfair under s103A of the ERA. If not, the Tribunal will need to consider the respondent’s contention that the claimant was dismissed due to some other substantial reason, i.e. the breakdown in the employment relationship under s98 of the ERA.

98 General

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

...

Direct discrimination (s13 EQA)

28. Direct discrimination and harassment is defined by the EQA as follows:

13 Direct discrimination

(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.

...

29. In addition, s23 of the EQA states in relation to comparators for direct discrimination cases that:

23 Comparison by reference to circumstances

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

30. There are two key questions that the Tribunal must consider when dealing with claims of direct discrimination:

30.1 was the treatment alleged 'less favourable treatment', i.e. did the respondent treat the claimant less favourably than it treated or would have treated others in not materially different circumstances;

30.2 if so, was such less favourable treatment because of the claimant's protected characteristic?

31. However, the Tribunal can, in appropriate cases, consider postponing the question of less favourable treatment until after they have decided the 'reason why' the claimant was treated in a particular way (*Shamoon v Chief Constable of the Royal Ulster Constabulary* 2003 ICR 337 HL).

32. In relation to less favourable treatment, the Tribunal notes that:

32.1 the test for direct discrimination requires a claimant to show more than simply different treatment (*Chief Constable of West Yorkshire Police v Khan* 2001 ECR 1065 HL);

32.2 a claimant does not have to experience actual disadvantage for the treatment to be less favourable. It is sufficient that a claimant can reasonably say that they would have preferred not to be treated differently from the way the respondent treated or would have treated another person (cf paragraph 3.5 of the EHRC Employment Code); and

32.3 unreasonable treatment in itself is not sufficient. For example, in *CC of Kent Constabulary v Bowler* EAT 0214/16, the EAT observed that: "merely because a tribunal concludes that an explanation for certain treatment is inadequate, unreasonable or unjustified does not by itself mean the treatment

is discriminatory, since it is a sad fact that people often treat others unreasonably irrespective of race, sex or other protected characteristic”;

32.4 the motive and/or beliefs of the parties are relevant to the following extent:

32.4.1 the fact that a claimant believes that she has been treated less favourably does not of itself establish that there has been less favourable treatment (see, for example, *Shamoon*);

32.4.2 in cases where the conduct is not inherently discriminatory, the conscious or unconscious ‘mental process’ of the alleged discriminator is relevant (see, for example, *Amnesty International v Ahmed* 2009 ICR 1450 EAT); and

32.4.3 for direct discrimination to be established, the claimant’s protected characteristic must have had a ‘significant influence’ on the conduct of which she complains (*Nagarajan v London Regional Transport* 1999 ICR 877 HL).

33. The Tribunal also notes that if an employer treats all employees equally unreasonably, it is not appropriate to infer discrimination (see, for example, *Laing v Manchester City Council & another* 2006 ICR 1519 EAT and *Madarassy v Nomura International plc* 2007 ICR 867 CA). Lord Justice Mummery in *Madarassy* stated that:

“The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.”

34. Lord Justice Sedley in *Deman v Commission for Equality and Human Rights & ors* 2010 EWCA Civ 1279 CA qualified this by stating that: “...the “more” which is needed to create a claim requiring an answer need not be a great deal...it may be furnished by the context in which the act has allegedly occurred”. For example, in *Veolia Environmental Services UK v Gumbs* EAT 0487/12, the EAT held that a tribunal was entitled to take into account the fact that the employer had given inconsistent explanations for its conduct (whilst excluding consideration of the substance and quality of those explanations at the first stage of the test for direct discrimination).

Discrimination arising from disability (s15 EQA)

35. The right not to suffer discrimination arising from disability is set out at s15 of the EQA:

15 *Discrimination arising from disability*

(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.*

Something arising from disability

36. The EAT in *Sheikholeslami v University of Edinburgh* [2018] IRLR 1090 (paragraph 96) held that s15 requires the Tribunal to consider “two distinct causative issues” when considering whether the ‘something’ alleged arose in consequence of B’s disability. The EAT set out the issues as follows:

“(i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B’s disability?”

The first issue involves an examination of the putative discriminator’s state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the ‘something’ was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence.”

Proportionate means of achieving a legitimate aim

37. The Tribunal must apply an objective test when considering whether there was a proportionate means of achieving a legitimate aim, having regard to the respondent’s workplace practices and organisation needs (see, for example, the EAT’s decision in *City of York Council v Grosset* (UKEAT/0015/16), as approved by the Court of Appeal ([2018] EWCA Civ 1105). We note that the Tribunal must make its own assessment as to whether ‘proportionate means’ have been used to achieve a legitimate aim.

Failure to make reasonable adjustments (s20 and 21 EQA)

38. The legislation relating to a claim for failure to make reasonable adjustments is set out at sections 20 and 21 of the EQA:

20 Duty to make adjustments

(1) *Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*

(2) *The duty comprises the following three requirements.*

(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.*

...

21 Failure to comply with duty

(1) *A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*

(2) *A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

...

39. We also note that 'substantial' in the context of 'substantial disadvantage' is defined at s212(1) of the EQA as: "*more than minor or trivial*".

40. The Tribunal must assess whether the Respondent applied a provision, criterion or practice which placed the Claimant at a substantial disadvantage in comparison to those employees not sharing his disability. If so, the duty to make reasonable adjustments is engaged.

41. The Tribunal must then consider whether a reasonable adjustment might have eliminated or reduced that disadvantage.

42. The burden of proof is on the claimant to establish the existence of the provision, criterion or practice and to show that it placed her at a substantial disadvantage (*Project Management Institute v Latif* [2007] IRLR 579). The claimant must also identify the potential reasonable adjustments sufficiently to enable them to be considered as part of the evidence during the hearing. These are not limited to any adjustments that the claimant brought to the respondent's attention at the relevant time. The respondent must then show, on the balance of probabilities, that the adjustment could not reasonably have been achieved. It is not necessary, at the time, for the Claimant to have brought the proposed adjustment to the Respondent's attention.

43. The reasonableness of the steps to be taken to avoid the disadvantage is to be determined on an objective basis (*Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160). In order for an adjustment to be "reasonable", it does not have to be shown that the success of the proposed step was guaranteed or certain. It is sufficient that there was a chance that it would be effective. Guidance as to the considerations that are relevant in assessing reasonableness is provided in paragraph 6.28 of the Employment Statutory Code of Practice.

44. The public policy behind the reasonable adjustments legislation is to enable employees to remain in employment, or to have access to employment. The

Tribunal has to carry out an objective assessment to consider whether any proposed adjustment would avoid the 'substantial disadvantage' to the employee caused by the PCP (*Royal Bank of Scotland v Ashton* [2011] ICR 632).

45. In *Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0552/10, the EAT held that if there is a real prospect of an adjustment removing a disabled employee's disadvantage, that would be sufficient to make the adjustment a reasonable one.
46. In addition, the Tribunal needs to consider the implications of any proposed adjustments on a respondent's wider operation (*Lincolnshire Police v Weaver* [2008] AER 291, decided under the former Disability Discrimination Act 1995).

Indirect discrimination

47. The provisions relating to indirect discrimination are set out at s19 of the EQA:

19 Indirect discrimination

- (1) A person (A) discriminates 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.
48. In *Dziedziak v Future Electronics Ltd* EAT 0271/11, the EAT held that in a case of indirect discrimination (in that case relating to sex):

"the matters that would have to be established before there could be any reversal of the burden of proof would be, first, that there was a provision, criterion or practice, secondly, that it disadvantaged women generally, and thirdly, that what was a disadvantage to the general created a particular disadvantage to the individual who was claiming. Only then would the employer be required to justify the provision, criterion, or practice, and in that sense the provision as regards the burden of proof makes sense; that is, a burden is on the employer to provide both explanation and justification".

Harassment

49. The provisions relating to harassment are set out at s26 of the EQA:

26 Harassment

- (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;

...

- 50. There are three elements to the definition of harassment:
 - 50.1 unwanted conduct;
 - 50.2 the specified purpose or effect (as set out in s26 EQA); and
 - 50.3 that the conduct is related to a relevant protected characteristic: see *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336.
- 51. A single act can constitute harassment, if it is sufficiently 'serious' (cf paragraph 7.8 of the EHRC Code).
- 52. The burden of proof provisions apply (see below). When a tribunal is considering whether facts have been proved from which it could conclude that harassment was on the grounds of a protected characteristic (such as disability), it is always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on the grounds of that characteristic. The context may, for example, point strongly towards or strongly against a conclusion that harassment was on the grounds of that characteristic. The tribunal should not leave the context out of account at the first stage and consider it only as part of the explanation at the second stage, after the burden of proof has passed: see *Nazir v Asim & Nottinghamshire Black Partnership* [2010] IRLR 336 EAT.
- 53. In considering whether the conduct had the specified effect, the Tribunal must consider both the actual perception of the complainant and the question whether it is reasonable for the conduct to have that effect. That entails consideration of whether, objectively, it was reasonable for the conduct to have that effect on the particular complainant.
- 54. In *Dhaliwal*, the EAT considered the question of whether unwanted conduct violated a claimant's dignity and held that:

“while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct...it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase...if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question.”

55. The EAT in *Dhaliwal* also stated that:

“Not every...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”.

56. The EAT in *Weeks v Newham College of Further Education* (UKEAT/0630/11) considered the question of whether unwanted conduct created an intimidating, hostile, degrading, humiliating or offensive environment. The EAT held that:

“...although we would entirely accept that a single act or single passage of actions may be so significant that its effect was to create a proscribed working environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding...An ‘environment’ is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the workplace.”

Burden of proof

57. The burden of proof is set out at s136 EQA for all provisions of the EQA, as follows:

136 Burden of proof

...

(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.

...

(6) A reference to the court includes a reference to -
(a) an employment tribunal;

...

58. The Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054 stated that it is important not to make too much of the role of the burden of proof provisions. Those provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they are not required where the Tribunal is able to make positive findings on the evidence one way or the other.

FINDINGS OF FACT

Context

59. This case is heavily dependent on evidence based on people's recollection of events that happened some time ago. In assessing the evidence relating to this claim, we have borne in mind the guidance given in the case of *Gestmin SGPS -v- Credit Suisse (UK) Ltd* [2013] EWHC 3560. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all.
60. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to the parties. It was said in the *Gestmin* case:
- "Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*
61. We wish to make it clear that simply because we do not accept one or other witness' version of events in relation to a particular issue does not mean that we consider that witness to be dishonest or that they lack integrity.

Background

62. The respondent is a Higher Education institution located in Huddersfield. The claimant was employed by the respondent from 1 December 2006 to 30 June 2020. Her initial role was that of Learning Support Assistant. Her role changed with effect from 1 September 2010 to Academic Skills Tutor, based in the School of Applied Sciences.
63. The names and job titles of the witnesses and other relevant individuals for this hearing are set out below:

Name	Role at the relevant time
1) Dr Robert Allen	School Director of Teaching and Learning for the School of Applied Sciences and claimant's line manager from 1 November 2012
2) Professor Michael Ginger	Dean of the School of Applied Sciences
3) Mrs Victoria Constantine	School Administration Manager
4) Miss Natalie Plows	HR Manager
5) Ms Ruth Sivori	Head of HR

64. The claimant carried out two key functions as part of her Academic Skills Tutor role:
- 64.1 Maths lecturing and assessments. She also carried out some tutorials; and
- 64.2 supporting students attending any courses within the School.
65. The claimant was originally employed to work 37 hours per week, 42 weeks per year. The claimant made flexible working requests following her two periods of maternity leave. From 2 May 2017, her official working hours were 15 hours per week, 42 weeks per year.
66. The claimant's contract of employment relating to her employment from 1 September 2010 onwards set out provisions relating to the claimant's duties and hours of work at clause 6:
- “6.1 You are employed as [an] Academic Skills Tutor at the University...you are expected to work such hours as are reasonably necessary in order to fulfil your duties and responsibilities. Those duties include teaching and tutorial guidance, research and other forms of scholarly activity, examining, curriculum development, administration and related activities...”*
- 6.2 The make-up of your duties will be determined from time to time by your Dean of School (or by an appropriate manager...Any dispute over duties or hours may, if not resolved in the first instance ...between you and the appropriate manager...be referred to the Grievance Procedure”.*
67. The contract also set out provisions relating to the termination of employment and stated at clause 17.1:
- “Your appointment shall be terminable, except in the case of dismissal for gross misconduct, through the giving of three months written notice by either party to the other party”.*
68. The respondent's staff handbook contains the following provisions on Leaving Employment:

8. Leaving Employment

Resignation Questionnaire/Exit Interview

The University has a policy of investigating and monitoring the reasons for staff resignations in order to better understand why staff leave, thereby assisting us in recruiting and retaining staff. Monitoring information is used anonymously to compile statistical reports which are reported to University Committees to inform future policy by setting targets and defined actions. The purpose of a resignation questionnaire is to investigate the reasons why people leave the University with a view to improving the University's ability to recruit and retain high quality staff. The questionnaire may highlight problems and, if solved help to retain and motivate existing staff.

All employees who resign will be asked to complete a resignation questionnaire and are entitled to an exit interview. There is no obligation for employees to return the questionnaire or to attend an interview.

69. The claimant had a copy of her employment contract and had access to the respondent's staff handbook during her employment.
70. The respondent also had a "Resignations & Leaving Employment" flowchart under the HR section of its intranet, which was accessible to all employees. In summary, the flowchart stated the respondent's process around resignations included:
 - 70.1 the employee notifying their manager in writing of their intention to resign;
 - 70.2 the manager agreeing the employee's last day of employment, taking into account their notice period;
 - 70.3 the manager completing the Leaver Form and sending this to HR with the employee's resignation letter;
 - 70.4 calculation of remaining annual leave;
 - 70.5 the respondent sending a resignation questionnaire to the employee in the final month of their employment, which would give them the option of requesting an exit interview with a HR manager; and
 - 70.6 information regarding pay, pensions, return of property and other matters.
71. In addition, we note that the claimant had previously worked for other organisations and that she had resigned in writing when she wished to move jobs.

Claimant's PhD

72. The claimant started her PhD in March 2015 as a student of the respondent. Her PhD was in Education and was titled "Academic Skills Issues in Applied Sciences". The claimant's PhD did not form part of her employment with the respondent. However, we have referred to the claimant's PhD in our findings of fact because it forms part of the background to this claim.

73. The claimant was due to attend a viva to discuss her thesis in January 2018. However, the day before the claimant's viva, she was informed that her thesis was 'undefendable'. The claimant later raised a formal complaint about the respondent's supervision of her PhD on 22 May 2020. The claimant's complaint was dealt with under the Student Complaints Procedure. Professor Schmidt upheld the complaint in part, as set out in his letter of 6 August 2020. The parts that he upheld were a: *"lack of adequate supervision and failure to arrange examination in a timely fashion"*.

Claimant's ill health

74. The claimant has six conditions which the respondent concedes are disability for the purposes of the Equality Act 2010, set out in the list of issues. Her conditions were diagnosed at different times, including:

74.1 Borderline Personality Disorder – diagnosed in 2010;

74.2 Complex Post Traumatic Stress Disorder ("**PTSD**") – diagnosed in 2010

74.3 Depression and Anxiety – diagnosed in 2010; and

74.4 Autism with ADHD traits – diagnosed in January 2020.

75. The respondent referred the claimant to its occupational health department and obtained the reports set out in the table below.

Date of occupational health report	Medical condition(s) or symptoms	Recommendations
24 February 2010	Depression, borderline personality disorder, PTSD	None – the report stated that: <i>"[The Claimant] is currently at work and she states that she is coping well. She feels that she wants to be at work and is able to carry out her normal duties and hours with no problems at the current time."</i>
24 March 2010	Borderline personality disorder, PTSD	Confirmed diagnosis of these conditions.
5 May 2010	Not stated, but followed up from earlier reports in 2010	The report stated that <i>"her condition has stabilised through treatment from the Psychiatrist...[The claimant] appears to be managing her full range of work duties with no problems"</i> .
4 December 2015	'stress reaction', resulting in sick leave from 30	The report stated that the claimant would probably: <i>"be able to return to her full role with no adjustments in the future"</i> . It also stated that the claimant: <i>"suffers</i>

Date of occupational health report	Medical condition(s) or symptoms	Recommendations
	September to 1 November 2015 (not work-related) Possible heart condition	<i>from a long term mental health condition which is currently well controlled”.</i>
21 March 2016	Cardiac symptoms	No specific recommendations – the claimant was on maternity leave at the time of the appointment with occupational health and was due to undergo further cardiac investigations. Occupational health noted that if she experienced health problems which may impact on her role prior to her return to work, the claimant should be referred back to occupational health.
26 September 2019	Depression and anxiety, resulting in sick leave from 11 September 2019 until 1 March 2020	Please refer to our findings relating to the report set out below.

76. Dr Allan met with the claimant following her return to work in November 2015 and confirmed their discussion in an email on 2 November 2015 that:
- 76.1 the claimant’s GP had not suggested any specific adjustments;
 - 76.2 the claimant thought it sensible to try and ‘avoid stress’;
 - 76.3 they discussed a reduction in some teaching duties and suggested that the claimant provide him with on types of incidents or pressures which could act as a trigger; and
 - 76.4 the claimant said that she did not need a phased return to work.
77. The claimant was on maternity leave from early 2016 and did not return to work until around May 2017. She had one day’s absence due to depression on 24 January 2018 (after the discussions around the viva for her PhD), but did not have any other relevant sickness absences from May 2017 to September 2019.

Allegation A – claimant’s workload from 2018 onwards

78. The claimant returned from maternity leave in May 2017, which was towards the end of the 2016/17 academic year. The respondent had taken steps during 2017 to reduce the maths support provided by the Academic Skills Tutor by requiring the staff teaching degrees to provide additional support to their own students where possible. For example, the Biology department introduced a new statistical analysis package and the Pharmacy department started to change how they delivered the calculations activities on their module to ensure that their staff supported their own students. In addition, an additional full time equivalent Academic Skills Tutor started in July 2017 to support the Science Extended Degree.
79. We considered the claimant’s workload allocation reports. We have discounted the claimant’s workload allocation report for 2016/17 because this was affected by her maternity leave. The claimant’s working hours for 2015/16 and for 2017/18 were the same. The claimant’s teaching hours rose by 58 hours during the course of 2018/19.

	Teaching	Research	Administration	Discretionary time	Total committed time
2015/16 (0.4 FTE)	490	136	47	0	673
2016/17 (claimant on maternity leave until May 2017 during this academic year)	0	340	47	0	387
2017/18 (0.4 FTE)	490	136	47	0	673
2018/19 (0.4 FTE)	548	136	47	0	731

80. We find that the key reasons why the claimant’s teaching hours increased in 2018/19 included:

80.1 student numbers had risen significantly which led to an increase in marking time, although it did not impact on lecturing time;

80.2 Dr Allan had asked the claimant to focus on delivering maths support for the School, rather than providing other support to the student in order to manage her workload. However, the claimant felt that she needed more time with the students to provide them with the level of support that she believed was necessary. She worked a significant amount of overtime to accommodate this.

81. We find that the respondent did not fail to respond to the claimant's increased workload. The claimant had a degree of discretion in how she carried out her role and managed her time. For example, an Academic Skills Tutor was not required to meet all student requests for support but was expected to prioritise their work according to the time available. Dr Allan suggested ways in which the claimant could manage her workload and the claimant did not raise her workload with him again until the meeting at the end of her sickness absence on 27 February 2020.
82. Dr Allan accepted in his oral evidence that the communication around the SED course re-design could have been handled better. However, the claimant was not required to rewrite all of the materials for the SED course before the Summer holiday period during 2019. She was only required to prepare a Module Specification Document.

Allegation B – specialist support re PTSD from 2018 onwards

83. The claimant alleges that the respondent should have provided specialist support in relation to her PTSD. However, the claimant had been diagnosed with PTSD in 2010 and had not required additional support for PTSD since that time. In addition, the claimant did not provide evidence as to what impact any such specialist support could have had on her working arrangements or duties.
84. Please see our findings at paragraph 85 below regarding the claimant's sickness absence from 11 September 2019.

Allegation C – occupational health recommendations and contact during sick leave from 11 September 2019 onwards

85. The claimant returned from annual leave in or around early September 2019. The claimant was absent on sick leave from 11 September 2019 until March 2020. She stated in her email to Dr Allan on 11 September 2019: "*unfortunately my mental health and respiratory functions are declining*". The GP's initial fit note in September 2019 stated that the claimant's absence was due to depression, although her later fit notes stated that the reason for her absence was depression and anxiety. The claimant said in her oral evidence that her depression was linked to her PTSD, although this was not recorded in her GP notes or in occupational health's report of 26 September 2019.

86. The claimant said that she would still attend the Graduate Teaching Assistant (“GTA”) interviews on 18 September 2019 and that her doctor had agreed that she could do so. Dr Allan responded on the same day and said:

“...The important thing is that you look after your health and well-being. Do NOT think about work!

Is there anything you need from me/us?”

87. The claimant attempted to refer herself to occupational health, in accordance with the respondent’s written management of sickness absence policy at that time. She was not permitted to proceed and was informed that her line manager needed to make the referral. Ms Sivori later explained to the claimant that this was because the respondent had taken the decision that line managers should make the referrals because otherwise they did not receive the reports and could not implement any recommendations.

88. Dr Allan sent the claimant a copy of his occupational health referral form on 12 September 2019. The referral stated:

“[The claimant] generally manages her health quite well but there are times when her conditions really impact on her physical as well as mental wellbeing. She has benefitted from counselling in the past and believes that it would help her in her current situation...”

[The claimant] is currently signed off work which obviously means that her workload has to be shared out between the remaining team members. In a personal context [the claimant] wants to work and continue to make an invaluable contribution to the School. She is a valued team member and I don’t like to see someone struggle. She has a teaching role as well as a support role to fulfil which requires her to be fit both physically and mentally”.

89. The occupational health report dated 26 September 2019 recorded that:

89.1 the claimant stated that she was: *“currently receiving treatment for Depression which she perceives to have been triggered by a combination of personal and work related factors. She also reports that she has a history of Borderline Personality Disorder and Post Traumatic Stress Disorder. [The claimant] reports that Depression has caused her current absence from work”*; and

89.2 the claimant was unable to undertake any duties at present.

90. The report also stated that:

“[The claimant] reported work load volumes, demands, lack of clarity of role and other operational issues as a contributing factors to the current episode of Depression. Perhaps these would need to be reviewed as part of a Stress Risk

assessment and managed from an operational perspective. Clearly documented action plans to address any highlighted issues would also be recommended.

It may be advisable to have regular 1:1 time with [the claimant] to check on her wellbeing and how she is coping with her workload, this will also enable an opportunity to check whether any other support is required.

It would be anticipated that with a combination of her medical treatment, talking therapy and workplace support interventions, [the claimant]'s mental wellbeing should improve significantly enough to enable her to return to undertaking all the tasks and responsibilities of her role. Unfortunately I am unable to predict a timescale as this will depend on [the claimant]'s response to all the above interventions...".

91. In answer to a question about whether there was any additional help or support recommended by occupational health, the report stated:

"From my assessment with [the claimant] I believe she may benefit from up to 6 sessions of Cognitive Behavioural Therapy (CBT) as the treatment aims to explore any psychological symptoms she may be presenting with and support her in developing positive coping strategies that she may implement to her benefit in the future. I will therefore be referring the claimant for CBT which is available via the Occupational Health Department.

[The claimant] may also benefit from completing a Wellness Action Plan in conjunction with her line manager as this aims to provide a structured plan to proactively manage her wellbeing in the workplace.

[link to Mind charity website]

While [the claimant] is off work, it would be advisable to maintain regular contact to check on her welfare and progress. This may also help with regards to making some return to work plans once she is feeling better enough to return to work. Once she is well enough to return to work, the claimant may benefit from a period of phased back to work which may include working reduced hours initially then gradually increasing over a period of 3-4 weeks if operationally feasible."

92. The report said that no further occupational health review was required at that stage.

Claimant's contact with Dr Allan during sickness absence

93. Dr Allan and the claimant kept in contact during her sickness absence. On 8 October 2019 he said that: *"I will contact you from time to time just in case there is anything you need from us."* He reiterated this in his email of 4 November 2019.
94. Dr Allan and the claimant met on 14 November 2019 and he emailed her the next day saying:

“...I appreciated the candour you showed during the course of our discussion. I can’t change what has happened but I can listen.

I obviously have to work within the limitations of the University’s policies and procedures but if there is anything you need then please get in touch...”.

95. Dr Allan and the claimant attempted to meet before Christmas but they were unable to find a convenient time. Dr Allan was then on leave until 13 January 2020.
96. On 14 January 2020, the claimant emailed Dr Allan with a GP’s note stating that she was not fit to work until 1 March 2020. He responded and said that he would be happy to arrange to see her for a catch up and again asked if she needed anything. The claimant did not respond to that email.

27 February 2020 meeting

97. The claimant told Dr Allan that she was due to have a formal assessment on 25 January 2020 in her email of 6 January 2020. Dr Allan emailed the claimant on 28 January 2020 to ask her how she was getting on and about the outcome of the assessment. The claimant did not respond until 24 February 2020 when she emailed, stating:

“Hi Rob, do you have any free time this week for a catch up ready for my phased return to work next week?”
98. Dr Allan and the claimant met on 27 February 2020 on the respondent’s campus. Mrs Constantine attended the meeting to take notes. The claimant provided a copy of Dr Hull’s letter to Dr Allan at their meeting on 27 February 2020 referred to in our findings of fact set out below. She did not provide a copy of Dr Hull’s full report to the respondent at any time during her employment.
99. Dr Allan asked the claimant whether she was fit to return to work the next week. The claimant said that she was not, but that she had to return due to her financial circumstances.
100. The claimant then said that she did not trust the University to treat her fairly in light of her autism diagnosis. She clarified that this comment was not aimed Dr Allan or at the School team but the University as a whole because of:
 - 100.1 the way in which her PhD was handled; and
 - 100.2 her belief that a student’s complaint of bullying had not been handled properly because the student had an autism diagnosis.
101. The claimant also brought a pre-prepared statement to the meeting, which she gave to Dr Allan. The claimant said during her oral evidence that she had prepared this statement to discuss with her union representative, but that she wanted to give Dr Allan the ‘heads up’ about her statement first.

102. The claimant's statement set out her concerns regarding her PhD in detail. The claimant recorded in her statement that after her PhD thesis was rejected:

"From this point onwards, my mental health began to decline. I was already fragile following the loss of a child, a heart condition and a difficult childbirth experience. Then, having waited over 2 years for the viva and having sacrificed precious family time on my child's first Christmas, to be abruptly informed by email that it was all for nothing, was a little difficult to absorb. On 24th January it became too much and I took a mental health day."

103. The claimant also recorded in her statement that she was concerned about the course re-design and student numbers. The claimant said in her statement:

"I feel that my PhD was taken away from me unjustly and I was being punished for someone's incompetence. This was my childhood dream. I was afraid to complain and informed the Head of Registry of this fact. She agreed that was not ideal.

My workload and responsibility continually increases without formal recognition or support to an unreasonable level. Line Management agreed this was not ideal.

Additional support staff were recruited and used on other courses or they had no day to day management thereby adding more responsibility to the role. Line Management agreed this was not ideal.

I have been forced to postpone the higher education textbook that I had been headhunted to write due to my decline in mental health. This was another of my goals. I felt this too has been taken away from me.

Having witnessed the mismanagement of a serious bullying incident of an autistic student by senior management within my school and the lack of support and understanding for the victim, I am now very concerned about returning to work.

...

I am no longer proud to work for the University of Huddersfield and I do not trust the University to support me when I return to work. I am frightened and I do not know what to do, especially now that I have spoken up about what has happened."

104. Dr Allan asked the claimant what outcome she was seeking and she said she did not know. Dr Allan then said that the role "would not change" and noted that the predicted numbers on the Science Extended Degree for the next academic year were predicted to be around 160. The claimant said that she had looked on the respondent's website and that she felt that the respondent could dismiss her on medical grounds because, even with reasonable adaptations, she could not return to work.

105. We accept Dr Allan's evidence that when he said the role 'would not change', he was referring to the role of the Academic Skills Tutor and/or maths delivery, rather than the claimant's workload. Dr Allan stated that a stress risk assessment would

have been carried out when the claimant returned to work and that would have included consideration of the claimant's workload.

106. Dr Allan asked the claimant whether she was able to make a decision regarding her employment, given her circumstances. The claimant said that she did, she had discussed the matter with her family and that she was going to contact her union representative and discuss the matter with them.
107. Dr Allan said that he would speak to HR for advice regarding the procedure to be followed. The claimant stated that: *"she had loved working at the University and wished it to be noted that Dr Allan had been very supportive of her over her time in the School"*.
108. Dr Allan completed the respondent's online return to work form for the claimant in early March 2020, including a summary of their discussions during the meeting on 27 February 2020. Mrs Constantine sent the claimant a copy of the notes of that meeting. The claimant did not make any comments on the notes at that time and has not specified any parts of the notes that she believes to be inaccurate, although we note that she disputes their accuracy.
109. Dr Allan emailed the claimant the next day and said:

"...In terms of moving forward we are in on-going discussion with HR about your situation and how best to proceed. As you are about to return to work on Tuesday I would suggest that you attend for the morning 10.00am until 12.00 o'clock. During that time you could undertake administrative catch-up. I think such attendance would meet the requirements of a phased return..."

3 March 2020 – claimant attending the respondent's campus

110. The claimant attended work on the morning of 3 March 2020. The claimant was due to meet with Dr Allan on 3 March 2020. This meeting was re-scheduled to 10 March 2020 due to Dr Allan's availability.
111. The claimant bumped into a colleague on her way into the building and the colleague said: *"you're going to disappear if you lose any more weight"*. This led to the claimant having a panic attack. However, the claimant did not tell Dr Allan about the comment or her panic attack on 3 March 2020 because she did not see him on that day.
112. Dr Allan emailed the claimant that day, stating:

"I have not heard anything from HR so until I hear differently I intend to proceed as if you were in a normal return to work situation. I regret that I cannot see you today to undertake a return to work interview.

...Given our discussion last week, I am prepared to implement a phased return which starts essentially today. We will need to formalise this next week but I think

it prudent that you only attend on a Tuesday morning at present. We can discuss the specific details next week.

I am grateful that you have submitted your Med Cert/Fit Note. I would suggest that you close your sickness record on MyHr.”

113. In the meantime, Dr Allan contacted Ms Sivori and Miss Plows regarding the claimant’s situation. Miss Plows emailed a template wellness action plan and stress risk assessment, together with guidance on the completion of a stress risk assessment to Dr Allan on 10 March 2020.

10 March 2020 meeting

114. Dr Allan and the claimant met on 10 March 2020. Mrs Constantine took notes of the meeting. They discussed the following points during the meeting:

- 114.1 Dr Allan relayed his conversation with HR and said that they had suggested either:

114.1.1 a phased return to work, incorporating a stress risk assessment and occupational health review; or

114.1.2 if the claimant felt unable to return to work, that she was instead signed off sick by her GP and the School could invoke the sickness absence procedures;

- 114.2 redundancy was not an option due to the fact that it would restrict the School’s ability to recruit a replacement – the claimant stated that she thought this was good for the School, because this meant that they could recruit someone to replace her;

- 114.3 the claimant was upset last week because the respondent’s Registry had destroyed the annotated copies of her PhD with the extern examiners’ comments;

- 114.4 the claimant said she had been physically sick twice on the way to work due to her anxiety returning and did not feel she could return to work;

- 114.5 the claimant said that she realised that she was not fit to return to work and that she would return to her GP tomorrow to discuss being signed off sick again;

- 114.6 Mrs Constantine explained that the sickness management process can take a number of weeks and involved formal meetings;

- 114.7 the claimant became upset and said that she would discuss the options with her husband, visit her GP tomorrow and then contact Dr Allan with her decision as to how she wishes to proceed. She also said that she was awaiting contact from her University and College Union representative.

Claimant's request to work from home – 16 March 2020 onwards

115. The claimant emailed Dr Allan to ask if she could work from home for a week by email on 16 March 2020:

"Hi Rob, I am seeing my rep on Thursday, and I will update you when I can. In light of the recent government announcement may I work from home this week?"

116. We note that the claimant did not refer to any difficulties related to her disabilities that she faced in attending the respondent's campus. Dr Allan responded by email on the same day:

"I am obviously at home at present and don't have access to procedures etc but in essence I have no objection to you working from home tomorrow.

However, I know that HR will want me to ascertain exactly what you intend to do eg phased return or the sickness route.

1. If you are on a phased return then i will need to know if it's through annual leave or through sick pay.

2. If you are unfit to work then you can go down the sickness route.

We have no idea how coronavirus will play out but it will impact on how we go forward. In the meantime please take care and stay safe."

117. The claimant and her union representative had arranged to meet at the student union at the respondent's campus on 17 March 2020. The union representative postponed the meeting at short notice, due to issues related to the Covid-19 pandemic. The claimant responded to her union representative, stating:

"It would have been helpful for my fragile mental health if you could inform me in advance of any cancellations as I almost came to the university to meet you but I had a panic attack and chose to stay home..."

118. The claimant later discussed matters with her union representative. She also emailed the Open University to state that she wished to suspend her degree modules and copied in Dr Allan (although he was not involved in her Open University studies).

119. On 24 March 2020, Dr Allan sent the claimant an email and told her that the vast majority of the respondent's staff would be working remotely for the foreseeable future. He stated:

"...I know that this is an exceptionally difficult time for you. I have seen your two emails and surmise that things are not great. That isn't surprising given the situation we are in! I don't know if there is anything I can do to help but if you want to chat on the phone I will be happy to oblige...."

120. The claimant responded the next day stating:

“UCU are on with my case now and we are looking at setting up a formal meeting with HR to talk everything out. I will keep you updated when I can.”

Allegations D, E and F – autism diagnosis and meetings with Dr Allan

121. The claimant met with Dr Hull on 25 January 2020. Dr Hull interviewed her in order to prepare a Diagnostic Interview for Social and Communication report (“**DISCO report**”).
122. Dr Hull prepared a short letter for the claimant dated 10 February 2020. This letter stated:
- “I will write to you write you a more detailed report but please accept this brief letter as confirmation of your diagnosis of Autism Spectrum Disorder should you need to share this with any professionals...The evidence for your diagnosis can be summarised along different dimensions. You experience persistent difficulties in your social communication and social interaction across multiple contexts, and you demonstrate restricted and repetitive patterns of behaviour, interests and activities...I would encourage you to share this diagnosis with your GP and to explore therapeutic options for trauma...”*
123. The claimant did not provide the DISCO report to the respondent at any time during her employment. However, for the purposes of the claimant’s allegations we note that the DISCO report does not make any specific recommendations relating to the claimant’s work. The report suggested that:
- 123.1 the claimant and her family should seek further information regarding her autism diagnosis and consider ways of understanding her behaviours and supporting her;
- 123.2 the claimant should discuss her diagnosis with her counsellor, so that the counsellor could make adjustments to their sessions; and
- 123.3 the claimant should consider developing sensory processing strategies.
124. The claimant discussed her autism diagnosis with close colleagues. However, she did not discuss this with Dr Allan until the meeting on 27 February 2020 because she did not contact him in response to his email asking how her assessment went on 28 January 2020. Even if the claimant’s colleagues had mentioned the claimant’s diagnosis to Dr Allan, we find that it would not have been appropriate for him to raise this with her until she chose to discuss it at the meeting on 27 February 2020.
125. The claimant has alleged that:
- 125.1 no one discussed her autism diagnosis with her;
- 125.2 the respondent failed to offer to refer her to occupational health regarding her autism diagnosis until March 2020; and

- 125.3 no one sought specialist support on how to deal with her condition of autism.
126. In relation to these allegations, we find that:
- 126.1 Dr Allan and the respondent's HR managers were not aware of the claimant's autism diagnosis until she informed Dr Allan of this at their meeting on 27 February 2020;
- 126.2 the claimant gave a copy of Dr Hull's letter confirming her diagnosis, but that letter only contained brief information regarding her condition. She did not provide the DISCO report to the respondent at any time;
- 126.3 the respondent's Management of Work-related Stress policy states that it is part of the role of occupational health to review employees' health and seek specialist support if appropriate;
- 126.4 the claimant's evidence was that she did not take up the offer of an occupational health referral in March 2020 regarding her autism diagnosis because she believed it was pointless. Her view was that the respondent was not going to implement the recommendations of the occupational health report dated 26 September 2019 and that there was therefore no point in attending a further occupational health review;
- 126.5 the claimant had stated that she wished to resign during meeting 27 February 2020 and Dr Allan was still waiting at the end of March 2020 for a response to his email of 16 March 2020. In that email (and in the meeting on 10 March 2020), the claimant was going to speak to her family, her GP and her union to confirm whether she intended to continue working or go on sick leave.

Allegation G – emails between Dr Allan and the claimant (8, 22 and 28 April 2020)

127. Dr Allan and Miss Plows discussed the claimant's situation in late March and early April 2020. Dr Allan confirmed that the claimant had not been asked to carry out any teaching work in March 2020 because she had been absent for most of the academic year, her colleagues had covered her courses and it would be disruptive to students if the claimant were to start teaching at that point in the academic year.
128. Dr Allan's email to the claimant on 8 April 2020 stated:
- "It is some time since we spoke and I felt it would be useful to touch base especially in the current circumstances. How are you keeping?*
- Please forgive my paraphrasing but in terms of your situation when we last spoke at your return to work meeting you indicated on that you did not feel fit to return to work but you had to for financial reasons then on the 10th March you also stated that you found it exceedingly difficult to come to work.*
- During the meeting on the 10th March we discussed:*

1. a phased return incorporating a stress risk assessment and consultation with Occupational Health, in order to receive full pay during the phased return this needs to be supported by a GP fit note to be paid sick pay or by annual leave or

2. if you feel unable to return to work that you be signed off sick by your GP. The School would then be required to invoke sickness management procedures.

We are now some four weeks on from that meeting and although circumstances nationally have changed due to Covid-19, we remain in a situation where we need to ascertain your capacity to return to work.

1. If you are currently unfit to work then could you please get signed off by your GP and provide us with a copy of your fit note. Due to the current closure electronic copies of these are being accepted.

2. If however you deem yourself fit to work I would like you to engage in work supporting the SED [Science Extended Degree]. This would involve helping to develop a range of questions for an on-line entrance test for applicants to the course. We would like new maths, problem solving and logic questions to help the course team identify those applicants with the capability of benefiting from the course.

Currently you are on full pay and as such it would be expected that you undertake duties commensurate with that.

I look forward to hearing from you”

129. The claimant described these emails as a ‘change in tone’ in Dr Allan’s emails, compared to her earlier emails. This was in part due to the amendments that Miss Plows made to some of Dr Allan’s wording before he sent the emails to the claimant.

130. The claimant said Dr Allan’s email of 8 April 2020 caused her “great anxiety and confusion”. However, the email was worded clearly and reflected:

130.1 the contents of their meeting on 10 March 2020 and Dr Allan’s email of 16 March 2020 (neither of which the claimant has complained about); and

130.2 the fact that the claimant said that she was going to speak to her family and GP and update him. She also told Dr Allan that her union representative was arranging a meeting with HR.

131. The claimant did not respond to Dr Allan’s email of 8 April 2020. The claimant said that this was because one member of her family was seriously ill with Covid-19, that another family member’s health was deteriorating and that she was concerned for the health of a third family member. However, Dr Allan was not aware of these circumstances at the time.

132. Dr Allan emailed the claimant again on 22 April 2020, stating:

“How are you?”

I am just following up on my email of the 8th April regarding your situation. I have not heard anything from you and wonder how are you keeping?

In the email I asked about your capacity to return to work or if you were signed off, what exactly is your situation?

I look forward to hearing from you.”

133. The claimant responded to Dr Allan’s email of 22 April 2020 later that day, stating:

“Hi Rob. As we agreed when we last met, I have been catching up on 6 months worth of emails and minutes to meetings I have missed during my absence.

I am STILL waiting for HR to arrange the meeting with myself and the UCU to discuss my employment situation.

Once I have finished catching up with the University required Online training I have missed I will be in a better position to discuss any future work projects.”

134. The claimant said in her evidence that she did not understand why Dr Allan was asking those questions. She stated that she thought working her notice period whilst waiting to finalise details with HR. However, the claimant accepted during cross-examination that she knew that her verbal resignation was not sufficient to terminate her employment with the respondent.

135. Dr Allan responded on 28 April 2020, stating:

“Thank you for your response to my e-mail. The reason for my e-mail of 8th April was to clarify your position. Under University procedures it is important to ascertain whether you were fit to work or not as this can determine how we proceed. From your response I take it that you are not signed as unfit and are therefore fit to work. Under these circumstances you are expected to fulfil the requirements of your role.

As I outlined in my correspondence of 8th April after further discussions with HR the University is not in a position to offer an exit settlement I have been advised that HR do not intend to arrange any meetings to discuss this further with you or your rep as the position on this is final. ’

We need to meet informally ASAP to discuss your assigned workload / responsibilities, this will be supported by an action plan to outline the expectations and any support available or requested. Should you be unable to adequately fulfil the requirements of your role then we will arrange further formal discussions in line with the Capability procedure.”

136. The claimant received this email whilst hosting son’s online birthday party. We accept that the claimant’s mental health was fragile at that time and she was facing numerous difficulties, including significant concerns regarding family illnesses at that time. The claimant states that: *“I had multiple severe anxiety attacks and*

eventually required medical and psychiatric assistance to prevent the situation from becoming fatal” as a result of Dr Allan’s email of 28 April 2020.

137. However, we have concluded that:

137.1 Dr Allan was not aware of the claimant’s family difficulties, that she was hosting her son’s birthday party on 28 April 2020 or of the claimant’s particularly fragile mental health at that time because she had not told him of these circumstances;

137.2 Dr Allan did not have the benefit of any occupational health or other advice regarding any communication difficulties that the claimant was facing, because the claimant had not provided him with this information and had not agreed to an occupational health review in March 2020;

137.3 the tone and content of Dr Allan’s three emails on 8, 22 and 28 April 2020 was appropriate, given:

137.3.1 the discussions and emails that had taken place during March 2020; and

137.3.2 the continuing lack of clarity regarding the claimant’s employment status.

Emails between Miss Plows and the claimant (late April and early May 2020)

138. The claimant withdrew Allegation H regarding these emails. However, we have made findings of fact regarding these emails because they are relevant to the background of the claimant’s other allegations.

139. Miss Plows confirmed to Dr Allan by email on 24 April 2020 that they would not schedule any meeting with the claimant’s union representative because they were not in a ‘process’. Miss Plows stated that they needed to start the capability process, but initially there should be an action plan setting out what work the claimant needed to perform.

140. The claimant’s union representative then contacted Miss Plows to request a meeting with HR on 29 April 2020. This was the first contact that the claimant’s union representative had made with HR on the claimant’s behalf. The representative’s email stated:

“Following discussions with [the claimant] I am concerned that university procedures do not appear to have been followed in respect to a number of issues related to [the claimant’s] employment over the past few years. I have been made aware, by [the claimant], that she has never had any meetings, in relation to her ongoing issues, with HR or other representation present.

The claimant has requested by email to her line manager that a meeting be arranged with HR and myself but has been told this is not possible. I am, therefore, writing to you directly on [the claimant]’s behalf to request that a meeting be

arranged with HR, [the claimant] and a trade union representative or friend. This will provide [the claimant] with an official opportunity to present her grievance.”

141. The claimant and Miss Plows also exchanged emails, including Miss Plows' email on 4 May 2020 in which Miss Plows stated:

“Reading through your email I am very concerned about your current state of health and fitness.

Our first priority is to try and support you to remain in work. As you are currently not signed off by your GP I would also suggest that we need to finalise the occupational health referral and get some advice from them with regard to any reasonable adjustments we may be able to make in the short term to provide you with as much support as possible to assist with this. In the meantime, it would be helpful if you felt you could have a conversation with Rob to determine what work you can focus on currently.

I note that you have included a quote from the University Management of Sickness Absence Policy Section 14.4, if a satisfactory return to work cannot be agreed then you must have a meeting with HR to discuss this. This process is in place to provide a structured process to manage staff who are absent from work due to long term sickness. I note you have sent a further email today (4th May) to once again request this meeting. As you returned to work on 1st March this process would not currently be applicable to you.

...

In your email you also state that you want to leave your job with a suitable reference so you can concentrate on getting well again, and I am unclear what you mean by this. If you wish to leave the University and resign then you are entitled to do so and it would be possible to discuss with you a suitable reference.

Should you wish to explore the option of ill health retirement then further discussions about this can take place in conjunction with your referral to Occupational Health which I am happy to facilitate.

You have referred to the Dignity at Work procedure however the issues you have raised appear to relate your recent sickness absence and current state of health therefore I am uncertain if you intend to raise a complaint. If you do wish to do this then your complaint should be articulated clearly in writing and I can arrange for these to be investigated independently...”

Allegation 1 – emails between Ms Sivori and the claimant (6 May 2020)

142. The claimant and Ms Sivori exchanged several emails during the course of 4, 5 and 6 May 2020. The claimant also sent a letter to Ms Sivori dated 6 May 2020 raising a grievance against Dr Allan which stated:

“Hello Ruth, I want to file a formal grievance against Dr Robert Allan for bullying, harassment and denying me my statutory right to a HR Exit interview following our meeting on 27th February 2020 when I attempted to resign.”

143. Ms Sivori reviewed the claimant’s email and occupational health report and stated that she recommended that the claimant and Dr Allan complete a stress risk assessment or wellness action plan. She stated that Miss Plows could advise on these matters.

144. The claimant responded, stating:

“...the meeting took place with my line manager on 27th February 2020 whilst I was still on sick leave (we had been having regular catchups throughout my absence) and he said there would be no review or changes made on my return other than working 2 hours on Tuesdays 3rd and 19th March as phased return, then back to work to my regular 3 x 5hr days.

“I told him that if no workplace recommendations were going to be actioned then I wanted to resign and I wanted to speak to HR about it. That is when all this nonsense about me working again and employment status started. The email trails and documents were included originally.

I trusted Dr Allan to tell Natalie accurately what I had said. I thought I had made it clear that I wanted to meet with HR to officially resign and tell them my reasons why.”

145. Ms Sivori then responded stating (with our underlining):

“It would seem that I have misunderstood the-purpose of our communication and I am sorry for that.

My priority and my understanding of your manager’s priority has been to settle and support you back in to work following your period of absence. I have reviewed the notes of the meetings that you have with your manager and am also aware that he has been trying to contact you to discuss the work that you should be undertaking during this period since the campus has been closed to ease you gradually in to fulltime working again. I cannot see evidence of your comments relating to him referencing that there is no option for adjustments to be made to the role (although I accept I wasn’t at the meetings) but equally other that the stress risk assessment, wellness action plan and one to one meetings I cannot see specific recommendation that have been made by Occupational Health about adjustments that should be considered.

I also note that your manager has contacted you regularly during your period of sickness absence and that a phased return was put in place.

However if you wish to voluntarily resign from your post, then this is your choice. All members of staff that resign have the opportunity to have an Exit Interview with

a HR Manager. If you wish to raise a specific complaint or concern then the University does have Policies and Procedures in place to address these too and if you made the decision to resign this would not prohibit you from submitting a formal complaint.

146. Having reviewed these emails (and the earlier emails exchanged between the parties), we have concluded that:
- 146.1 Ms Sivori, Miss Plows and Dr Allan remained confused as to the claimant's preferred course of action. The claimant had been offered and had discussed various options, but had not confirmed how she wished to proceed;
 - 146.2 we note that the claimant had closed down her sickness absence record on the respondent's MyHR system on or around 10 March 2020 which meant that she was no longer on sick leave. The claimant had received full pay during March and April 2020 as if she were working (rather than the half pay which she would have received if she were absent on sick leave);
 - 146.3 Ms Sivori did not have the benefit of any occupational health or other advice regarding communications with the claimant because the claimant did not want to attend an occupational health review. However, the final paragraph of her email set out in clear terms the claimant's options regarding her potential resignation, exit interviews and grievances;
 - 146.4 the tone and content of Ms Sivori's emails were appropriate, given the context in which these took place; and
 - 146.5 the claimant could have sought further assistance or clarification from her union representative if required.

Allegation J – Zoom meeting between the claimant, Ms Sivori and others (21 May 2020)

147. Ms Sivori, Dr Allan and Miss Plows attended this meeting with the claimant. The claimant was accompanied by her union representative. The meeting took place by Zoom and was recorded, with typed notes of the meeting being produced afterwards. Ms Sivori noted that the claimant had requested the meeting and asked her to outline what she wanted to discuss. The claimant discussed the history of her employment with the respondent in detail during the first 40 minutes of the meeting.
148. Ms Sivori reminded the claimant of the meeting timings. The claimant then discussed her conversations with Dr Allan in March 2020. The notes record that the claimant said:
- “if her role could not be changed then she had no choice but to leave and that she wanted to get out as quickly as possible”.*

149. The notes then record that:

“RS explained that it is not possible for the University to just change someone’s role, however the demands of the role could be looked at in conjunction with the recommendations received from Occupational Health. A stress risk assessment can be carried out to consider what the specific triggers are and look if there is any support which can be provided. RS explained that we also use the wellness action plan, which is a great tool to support individual’s mental health in the workplace and both of these would be supported by more regular 1:1 meetings but in terms of the duties and responsibilities of a post we cannot change the role.

[The claimant] confirmed she understood what RS meant and that all those things were supposed to have been done to look at the role and the triggers and this was never offered, she was simply told this was the role. [The claimant] confirmed she was not offered any of this until she started the “email war” with HR.”

150. The claimant and Ms Sivori then discussed the claimant’s occupational health referrals. The claimant queried why occupational health told her that she could not self-refer for a report. Ms Sivori stated that she did *“not understand why this was an issue”*. Ms Sivori explained that the referrals should be made via an individual’s line manager because otherwise the report would not be shared with the respondent and the respondent would not be aware of any occupational health recommendations.

151. The claimant became upset during her discussions with Ms Sivori. The claimant questioned why a stress risk assessment had not been completed. Ms Sivori explained that the stress risk assessment process would normally be completed by the employee and their line manager.

152. The notes then record that the claimant stated that:

“...to her the SRA and reviewing her role were the same thing, it was just using a different word but by doing the SRA you are looking at my role so they are the same thing and RS explained that maybe RA needed to be clearer with you at that meeting because reviewing the role and carrying out a SRA are different things.

[The claimant] stated she did not know this and that this whole situation had come about because he had got a word wrong...[The claimant] stated she did not understand and this had not been explained properly to her. RS explained that there was never any intention that RA would not have followed the Occupational Health recommendations.”

153. The claimant then went on to discuss the emails between herself, Dr Allan and HR. The claimant said that she: *“had decided to leave and needed to know how to get out.”* The claimant also said that she: *“did not understand why she was being asked to do work when she was waiting for a meeting with HR so that she could leave”*.

154. Ms Sivori explained that she had made it clear in subsequent emails that the claimant needed to put her formal resignation if she wished to resign. She said that: *“the intention of the University first and foremost was to try and support [the claimant] to return to work”*.
155. Ms Plows said that there was some confusion over the status of the meetings in March 2020, but that there had not been a discussion around:
- 155.1 what a phased return to work might include;
 - 155.2 what work the claimant felt able to do; and
 - 155.3 completing the stress risk assessment.
156. Ms Sivori said that a stress risk assessment did not need to be completed before the claimant returned to work. The notes record that:
- “RS explained the SRA was not the same as H&S risk assessment in the sense that it has to be done before hand, it has a different status and can be done as part of a phased return.”*
157. The claimant was angry at this comment and said:
- “a SRA is about Health & Safety of her mind and this is as important as a physical risk assessment and can’t be overlooked or dismissed in the way RS had just dismissed it. [The claimant] explained that this was her mental health that was being talked about that has been damage by all of this and this was her life so RS cannot say that is not as important as physical.”*
158. Ms Sivori said that she accepted the claimant’s comments about the importance of the stress risk assessment and apologised. She then continued to provide an example of a staff member returning to work after working remotely for eight months due to sickness absence. Ms Sivori said that discussions regarding the stress risk assessment would be done during the first week back at work.
159. Ms Sivori then asked the claimant what her current employment status was, noting that the claimant had been paid her full salary since March 2020 but had not been working. The claimant said that the respondent had been paying her for 3 months to wait for the meeting with HR that they were currently participating in.
160. The meeting ended after an hour because Ms Sivori had another meeting to attend.
161. Ms Sivori sent the claimant a follow up email on 22 May 2020 in which she stated:
- “I do understand that the meeting was difficult for you and at times you were visibly distressed. I did however find the background and history that you provided very useful and I thank you for being so open and honest about your personal circumstances...”*
- You talked openly yesterday about your recent diagnosis of autism. With this in mind I would like to ask you how you would prefer the University to communicate*

with you with regards to the formal complaints and in terms of any communications between ourselves. Your diagnosis came after your referral to Occupational Health and therefore we do not have any guidance from them. I have reviewed the letter that you provided confirming your diagnosis and there is limited information in there too. If you feel that a referral to Occupational Health would be beneficial in this respect then please let me know or equally if you have your own strategies or methods then please let me know too.

I also want to take this opportunity to apologise again to you for my misconstrued comment yesterday about the stress risk assessment and the status of this. I was trying to explain to Claire that this did not have to be completed before you physically returned to work in the same way that in most circumstances a physical risk assessment would need to be. I did not intend in any way to suggest that mental health was not as important as physical health.

Just prior to the meeting ending, you and Claire agreed that you would meet up and come back to me to let me know what you wanted to do moving forwards. If you would like to have a further meeting with me (with Claire present) I can arrange that.”

162. We find that:

- 162.1 the claimant was able to speak freely for the first half of the meeting without interruption. The claimant discussed history of her employment with the respondent and her PhD in detail during this time;
- 162.2 Ms Sivori reminded the claimant of remaining time left in meeting, in order to ensure that the claimant had the opportunity to discuss the key points that she wanted to raise. This reminder was not intended to upset the claimant;
- 162.3 throughout the second part of the meeting there was some confusion during the discussions on both sides;
- 162.4 Ms Sivori did not say ‘I don’t see your point’, but she did state that she did not understand the claimant’s position on matters such as self-referral for occupational health reviews and the claimant’s employment status;
- 162.5 the claimant found the second half of the meeting difficult and became emotional during the discussions;
- 162.6 the claimant was unable to clarify what particular strategies Ms Sivori should have deployed during the meeting to minimise any communication difficulties;
- 162.7 the claimant was represented at the meeting by her union representative and had the benefit of her assistance.

Claimant's grievances

163. The claimant raised two grievances on 22 May 2020 relating to Dr Allan and Miss Plows.
164. The claimant also sent a complaint to Ms Sivori headed "Formal Complaint of mismanagement of my PhD" which she stated she was raising against her supervisor and the respondent's Director of Postgraduate Education.

Allegation K – claimant's written resignation

165. The claimant responded to Ms Sivori's email of 22 May 2020 by email on 24 May 2020 stating:

"Thank you Ruth for your confirmations, clarifications and comments. I prefer formal communications to be in document form, attached to emails.

I have attached my resignation."

166. The claimant addressed her resignation letter to Dr Allan, Ms Sivori and Miss Plows. The letter stated:

"Following our meeting on Zoom on 21st May 2020, this letter is to inform you that I want to resign my position as Academic Skills Tutor at the University of Huddersfield. I hereby give you the required 3 months notice from today, 24th May 2020.

3 separate formal complaints against Dr Robert Allan, Natalie Flows and Dr Deborah Pufal/Dr Dougie Clarke were filed last week, however there was a serious issue that still concerns me and that is the lack of support for my disability.

I have difficulties with social communications due to being autistic. These difficulties have not been supported adequately and as a consequence I have been exposed and vulnerable at work, which has caused life changing damage to my mental health. When I highlighted that a Stress Risk Assessment is as important as a Health and Safety Assessment for staff with mental health conditions during the meeting on the 21st May 2020, it was discovered that nothing had been formally written into policy at the University of Huddersfield to support this fact. This makes all employees with mental health conditions, working at the University of Huddersfield, vulnerable and exposed.

I am greatly saddened to inform you that my position at the University of Huddersfield has become untenable and I have no choice but to resign..."

167. Miss Plows acknowledged the claimant's resignation in Ms Sivori's absence on leave. She also wrote to the claimant on 24 May 2020, stating:

"I would just like to clarify the point you have raised regarding stress risk assessments and apologise if there has been any misunderstanding. During the Zoom meeting on 21 May 2020, your trade union representative raised a point

about a stress risk assessment taking place prior to your return to work and the discussion was centred around specific guidance as to when these take place. Ruth explained that there is no specific guidance written down which states these should take place prior to an employee returning to work, as the timing varies dependent on the individual circumstances and preferences and the opportunity to share and complete the information.

The University does have a Policy on the Management of Work-Related Stress which includes information regarding the stress risk assessment process and Occupational Health provides a dedicated microsite which includes support tools for stress in the workplace and support with mental health. The University takes the mental health of its employees very seriously...

168. Ms Sivori later agreed to the claimant's request to terminate her employment earlier than her 3 months' notice period. They agreed that the claimant's employment would end on 30 June 2020.

Allegation L - grievance investigations

169. The claimant has not brought any allegations regarding the grievance investigations as part of this claim. However, she has complained about two comments that Dr Allan made to Professor Ginger (grievance manager) on 2 July 2020 which are highlighted in bold and underlining below.

170. Professor Ginger asked Dr Allan during an investigation meeting to describe his working relationship with the claimant. The notes record that Dr Allan said to Professor Ginger that (with our highlighting):

*"RA stated that he got on well with CC. **RA noted that CO could be difficult at times to deal with because she saw things through a particular lens** but generally had a good relationship with her. RA stated that CC was a good worker and stepped up when things were difficult. RA provided an example and stated that he was off ill for a period of time and CC stepped in. RA added that CC stepped in when her colleague Roxanna was off on maternity leave. RA stated that he never had any issue with how CC carried out her duties or anything else like that. RA stated that he thought he had a pretty good relationship with her. RA added that when you look at the notes of the 27th, him and CC discussed their interest in motorbikes, as they both like motorbikes along with a wider range of things they discussed."*

171. The notes record that Dr Allan also said during the meeting (with our highlighting):

"RA stated that the email went to HR and that [the claimant] made a whole series of allegations. RA stated that he found the allegation of bullying quite distasteful and that he was very sorry that an allegation has been made and that he does not see himself as a bully in any way. RA stated that the claimant made certain

statement[s] regarding her PhD supervision, and made comments regarding various people.

*RA stated that he thought it was an email that was written with emotion and that it possibly could have been framed in slightly better language. RA stated that this is one of the things that you could see throughout with [the claimant]. RA stated that when [the claimant] is stable [the claimant] is a very capable individual but she does obviously have a mental health issue and that it has been relatively recently diagnosed, and that [the claimant] has gone through a hell of a lot. **RA stated that it can almost be like a roller coaster in many respects.***

172. The claimant was not aware that Dr Allan had made the highlighted comments until disclosure had taken place as part of these proceedings. That was the first time that the claimant had received a copy of the notes of the grievance investigation.

173. Professor Ginger dismissed the claimant's grievance against Dr Allan and provided a written outcome letter to the claimant dated 16 July 2020. The claimant did not appeal the outcome of her grievance relating to Dr Allan.

174. We found that:

174.1 the context of both of these comments were that the claimant had raised a grievance against Dr Allan, Professor Ginger was investigating that grievance and Professor Ginger needed to ask Dr Allan about his working relationship with the claimant as part of this grievance;

"Particular lens"

174.2 the comment regarding seeing things through a 'particular lens' comment was not related to the claimant's disabilities. We accept Dr Allan's evidence that this term is frequently used when teaching geographical sciences to students (for example referring to a different lens, viewpoint or perspective);

174.3 the remainder of Dr Allan's response to Professor Ginger's question was balanced, stating that they generally had a 'good relationship', that the claimant was a 'good worker' as well as stating that she 'could be at difficult at times to deal with';

"Rollercoaster"

174.4 this comment related to the claimant's life experience. The claimant had divulged to Dr Allen that her life had been full of events and that there had been "ups and downs" along the way. We accepted Dr Allen's explanation that the analogy to the rollercoaster is that you have ups and downs but you get to the end, you keep going. Dr Allan said that his experience of working with the claimant was that there were limited occasions when she could be 'withdrawn' and on other occasions she could be quite energised.

Respondent’s policies and procedures – indirect discrimination complaint

175. The claimant has alleged that there are the following deficiencies in the respondent’s policies and procedures as part of her indirect sex discrimination complaint:

Policy	What the claimant says should have been included in the policy
Management of sickness absence	The claimant maintains that there was no reference to mental health or disability in the policy, such as supporting staff during sickness absence with long term mental health conditions.
Dignity at work	See above
Health & Safety	See above. Also the claimant maintains that stress risk assessments were not regarded with the same importance as other health and safety risk assessments, in that there were no timeframes for the completion of stress risk assessments.

176. We have reviewed the policies and procedures and our findings on each are set out below.

Management of sickness absence policy

177. There is nothing in this policy which suggests that it is restricted to physical health concerns. The policy refers to disability under the Equality Act and does not restrict this definition to physical disabilities or impairments. It includes provisions relating to the management of both short term and long term sickness absences and return to work arrangements.

178. We note that the list of possible adjustments in the policy includes potential adjustments which could apply to long- term non-physical disabilities, such as:

- 178.1 changing duties, roles or working hours;
- 178.2 paid or unpaid time off for rehabilitation, assessment, or treatment such as psychoanalysis;
- 178.3 medical reviews; and
- 178.4 providing supervision where someone’s disability leads to uncertainty or a lack of confidence.

179. We have therefore concluded that the policy was sufficiently broad to cover mental health and any mental health disability, including support during sickness absences.

Dignity at work policy

180. The respondent's dignity at work policy covers all matters relating to bullying and harassment. Part of the policy states that: *"Equality legislation can be applicable in particular case where the bullying and harassment are on grounds of a protected characteristic as defined in Equality Act 2010"*.
181. The policy does not refer specifically to disabilities, whether related to an employee's physical or mental health. However, both of these matters could be a protected characteristic under the Equality Act. We have therefore concluded that the policy was sufficiently broad to cover bullying and harassment issues related to mental health and disability.

Health and safety policy

182. The purpose of this policy is stated to be: *"Ensuring health, safety and wellbeing is integral to all areas of the university's activities and facilities, such standards at least equivalent to those required by legislation"*
183. The policy refers to specific regulatory requirements for risk assessment, including fire safety, display screen equipment, manual handling, work at height, hazardous substances, young people and expectant mothers.
184. Part of the policy refers specifically to work-related stress and refers to the respondent's separate policy on the management of work-related stress.
185. The respondent's management of work-related stress policy states that it covers: *"working with individual employees who are exhibiting signs of pressure or stress to undertake and record personal SRA and action plans"*. That policy states that occupational health's duties include:
- 185.1 liaising with external services;
 - 185.2 providing support to employees and managers of employees presenting with acute symptoms suggestive of psychological disturbance; and
 - 185.3 onwards referral to relevant agencies.
186. The respondent also has a stress risk assessment form together with guidelines for completing the form. We were also referred to a 'wellbeing plan' that the charity MIND has produced and was referred to in the 26 September 2019 occupational health report and in Miss Plows' emails.
187. We have concluded that the stress risk assessments were not subject to the same regulatory frameworks as the specific matters referred to in the respondent's health and safety policy (e.g. fire safety). However, it is clear from the wording of the policies and the discussions and emails between the claimant and Ms Sivori that the stress risk assessment was not regarded as 'less important' than the matters governed by the health and safety policy.

APPLICATION OF THE LAW TO THE FACTS

188. We will now apply the law to our findings of fact.

CONSTRUCTIVE DISMISSAL

189. The claimant alleged that the respondent breached her contract in two respects as part of this complaint:

189.1 that from 2018 onwards, her workload was untenable and the respondent failed to do anything about this; and

189.2 that the respondent failed to implement the recommendations of her occupational health report of 26 September 2019.

Workload increase

190. We found that the claimant's workload increased during the academic year starting in September 2018. However, we found that Dr Allan did take steps to assist the claimant with the workload. We found that Dr Allan advised the claimant to focus more on her maths teaching, rather than the additional student support services. However, the claimant failed to do so because she chose not to reduce the amount of time that she spent on additional student support.

191. We also found that the course re-design did not have a material impact on the claimant's workload towards the end of the 2018/19 academic year. Dr Allen had asked the claimant to prepare the module document, but she was not required to prepare all of the materials required for September 2019.

192. In addition, the respondent had recruited an additional Academic Skills Tutor in mid-2017. The claimant was also involved in interviewing two Graduate Teaching Assistants to support students in September 2019. These two GTAs were in post before the end of the claimant's sickness absence in 2020.

193. The claimant was not in fact required at any time to return to teaching students after her sickness absence ended on 1 March 2020. Instead, she was asked to carry out administrative catch up. Dr Allen later asked her to assist with devising online maths entrance examination questions in his email of 8 April 2020.

194. In any event, the claimant had decided to resign either before or during the meeting on 27 February 2020. She brought to the meeting a pre-prepared statement which stated that: "*I am no longer proud to work for the University of Huddersfield and I do not trust the University to support me when I return to work.*" This related to the claimant's concerns regarding her PhD and the respondent's handling of a complaint by a student with autism. She stated at the meeting with Dr Allan that she wished to resign after he told her that her role would not change.

195. We have concluded that there was no breach of contract on the basis that the respondent did try to assist the claimant to manage her workload and had recruited additional resources to assist the Additional Skills Tutor team.

Occupational health report recommendations

196. We found that the respondent did not fail to implement the recommendations of the September occupational health report. Dr Allan, Miss Plows and Ms Sivori stated during meetings and emails that the respondent wished to make arrangements to discuss plans for the claimant's phased return to work, stress risk assessment and wellbeing plan with the claimant. However, confusion arose because the claimant said that she intended to resign and did not clarify how she wished to proceed.

197. We note, for example, that:

197.1 Dr Allan kept in contact with the claimant during her sickness absence on a regular basis;

197.2 Dr Allan and the claimant discussed her duties during March 2020;

197.3 Dr Allan had obtained the templates for the stress risk assessment and wellbeing plan from Miss Plows;

197.4 during the meeting on 10 March 2020, Dr Allan told the claimant that HR had suggested a phased return to work (incorporating a stress risk assessment and occupational health review) as one option, but the claimant said that she could not return to work and would speak to her family, her GP and her union representative;

197.5 in Dr Allen's email of 8 April 2020, Dr Allan summarised the discussions on 10 March 2020 including the option set out above;

197.6 Ms Sivori stated in one of her emails on 6 May 2020 that she recommended that the claimant and Dr Allan complete a stress risk assessment or wellness action plan and that Miss Plows could advise on these;

197.7 Ms Sivori and the claimant also discussed these matters during their meeting on 21 May 2020.

Further examples are set out in our findings of fact regarding the meetings and emails from 27 February to 24 May 2020.

198. We have concluded that there was no breach of contract because the respondent did not fail to implement the recommendations of the occupational health report of 26 September 2019. The respondent sought to make arrangements to discuss the recommendations with the claimant and discussed these matters with her from 27 February 2020 onwards, however there was confusion over the status of the claimant's ongoing employment.

DISCRIMINATION COMPLAINTS

Allegation B – failure to seek specialist support (PTSD) – direct discrimination

199. The claimant has alleged that the respondent failed to seek support on how to deal with her condition of PTSD and that this amounted to both direct discrimination and a failure to make reasonable adjustments.

200. We found that:

200.1 the respondent had no reason to seek specialist support for the claimant's condition of PTSD in 2018. This was because occupational health had previously advised that the claimant was coping with her duties and the respondent was not aware of any change to the claimant's health related to PTSD;

200.2 the claimant's one day absence in late January 2018 was stated to be due to depression and appeared to be a reaction to the handling of her PhD, rather than her work duties;

200.3 the claimant's absence from 11 September 2019 to 1 May 2020 was stated by the claimant's GP and the occupational health report of 26 September 2019 to be due to either depression or anxiety and depression, not PTSD; and

200.4 the respondent would have considered specialist support if the claimant had raised this matter with occupational health and they considered such support to be appropriate. However, the claimant did not wish to attend a further occupational health review, despite the respondent's offer of such a review in March and May 2020.

201. The claimant stated during her oral evidence that her depression was linked to her PTSD. However, there is no evidence to suggest that the respondent was aware of any such link at the time of the events relating to this claim.

202. We have therefore concluded that the respondent did not fail to seek specialist support regarding the claimant's PTSD for the reasons set out above. The direct discrimination element of this claim therefore fails.

203. Our conclusions on the failure to make reasonable adjustments element of this claim are set out under the heading 'Allegations B, D, F and K – Reasonable Adjustments' below.

Allegations D, E and F – failure to discuss the claimant's diagnosis, to refer the claimant to occupational health until March 2020 and to seek specialist support (all relating to autism) – direct discrimination

204. The claimant has alleged in relation to her diagnosis of autism that:

204.1 the respondent failed to discuss her diagnosis of autism with her from 25 January 2020 onwards;

204.2 the respondent failed to refer her to occupational health from 25 January until March 2020; and

204.3 the respondent failed to seek specialist support on how to deal with the claimant's condition of autism.

205. We found that:

205.1 Dr Allan asked the claimant on several occasions prior to March 2020 if she needed any support;

205.2 the claimant did not inform Dr Allan or the respondent's HR managers of her autism diagnosis until the meeting on 27 February 2020;

205.3 the claimant provided Dr Hull's brief letter of 10 February 2020 to Dr Allan during the 27 February 2020 meeting, but she did not provide a copy of the DISCO report to the respondent at any time;

205.4 the claimant did not wish to attend an occupational health review, as offered by the respondent in March 2020. Such a review would have enabled occupational health to advise on whether specialist support for the claimant would have been appropriate;

205.5 there was confusion during March, April and May 2020 regarding the claimant's employment status for the reasons set out in our findings of fact;

205.6 Ms Sivori emailed the claimant on 22 May 2020 and asked her how best to communicate with her, given the difficulties that the claimant had outlined.

206. We have therefore concluded that:

206.1 the respondent did not fail to discuss the claimant's diagnosis of autism in a timely manner. The claimant did not in fact inform Dr Allan of her diagnosis until 27 February 2020 and only provided the information set out in Dr Hull's letter of 10 February 2020. The respondent offered to arrange an occupational health review, but the claimant did not wish to attend a further review;

206.2 the earliest that the respondent could have referred the claimant for an occupational health review regarding her autism diagnosis was March 2020. There was no failure to refer her before then for the reasons set out above;

206.3 the respondent did not fail to seek specialist support regarding the claimant's condition of autism. If the claimant had attended an occupational health review, they would have advised the respondent on seeking specialist support if appropriate.

The direct discrimination element of this claim therefore fails.

207. Our conclusions on the failure to make reasonable adjustments element of this claim are set out below.

Allegations B, D, F and K - Reasonable adjustments

208. From a legal perspective, a provision, criterion or practice (“**PCP**”) could be described as a policy that an employer applies to all staff. The claimant has relied on the PCPs set out at paragraph 7.2 of the list of issues. We have considered each in turn and concluded that the claimant has not established that the respondent applied any of the alleged PCPs to her for the reasons set out below.

PCP 1 – not discussing newly diagnosed conditions with employees in a timely manner and PCP 2 – not referring employees to occupational health in a timely manner

209. The claimant did not provide any evidence that the respondent had a policy of not discussing newly diagnosed conditions with employees and/or not referring employees to occupational health in a timely manner. We note that the claimant was referred to occupational health for advice following diagnosis of her conditions of depression, borderline personality disorder and PTSD in 2010. We also note that Dr Allen discussed the claimant’s 2015 absence with her and sought advice from occupational health relating to her stress reaction and cardiac symptoms. We also found that the claimant did not inform Dr Allen or the respondent’s HR managers of her autism diagnosis until 27 February 2020 and did not accept their offer to refer her to occupational health in March 2020.

PCP 3 – not seeking specialist support for mental health conditions

210. There is no evidence that the respondent had a PCP of not seeking specialist support for mental health conditions. We found that the respondent would access specialist support for any conditions (whether related to mental or physical health) via its occupational health providers. This is specifically stated in the respondent’s policy on Managing Work-related Stress.

PCP 4 – not implementing occupational health recommendations, including phased returns to work, wellness action plans and stress risk assessments

211. We found that there was no PCP operated by the respondent not to implement occupational health recommendations. For example, following the claimant’s meeting on 27 February 2020, Dr Allan, Miss Plows and Ms Sivori stated during meetings and emails that the respondent wished to make arrangements to discuss plans for the claimant’s phased return to work, stress risk assessment and wellbeing plan with the claimant. However, confusion arose because the claimant said that she intended to resign and did not clarify how she wished to proceed.

212. The claimant’s complaint of failure to make reasonable adjustment therefore fails.

Allegation G – Dr Allen’s emails of 8, 22 and 28 April 2020 – Discrimination arising from disability and Harassment

Discrimination arising from disability

213. We concluded that these emails did not constitute unfavourable treatment. The claimant complained of a ‘change of tone’ in the emails compared to those which Dr Allen previously sent. This was in part because Miss Plows had amended the emails of 8 and 28 April 2020 before Dr Allen sent them to the claimant. However, there was nothing in the tone or the wording of the emails that constituted unfavourable treatment given the context in which they were sent.
214. We found that:
- 214.1 Dr Allen was not aware of the claimant’s family difficulties, that she was hosting a birthday party on 28 April 2020 or of the claimant’s fragile mental health at that time because she had not told him of these circumstances;
 - 214.2 Dr Allen did not have the benefit of any occupational health or other advice regarding any communication difficulties that the claimant was facing, because the claimant had not provided him with this information and had not agreed to an occupational health review in March 2020;
 - 214.3 the tone and content of Dr Allen’s three emails on 8, 22 and 28 April 2020 was appropriate, given:
 - 214.3.1 the discussions and emails that had taken place during March 2020 (including on 10 and 16 March 2020); and
 - 214.3.2 the continuing lack of clarity regarding the claimant’s employment status and the work that she was currently undertaking.

Harassment

215. We considered whether these emails amounted to unwanted conduct. We concluded that they did not – they were a continuation of the previous discussions and emails that Dr Allen and the claimant had exchanged from 27 February 2020 onwards.
216. However, even if these emails amounted to unwanted conduct, we have concluded that they did not have the purpose or effect of either:
- 216.1 violating the claimant’s dignity; or
 - 216.2 creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant (the “**proscribed environment**”).
217. We found that Dr Allen’s purpose in sending the emails was to clarify how the claimant wanted to proceed and to discuss her work duties. We note that Dr Allen sent the emails shortly after the start of the Covid-19 pandemic and that neither the claimant nor Dr Allen were attending the respondent’s campus at that point in

time. In addition, Dr Allen was not aware of the difficulties that the claimant was experiencing, including in relation to her family's health. The claimant had not been signed off by her GP as unfit to work and was receiving full pay during this period. In addition, the claimant's union representative had not contacted the respondent's HR team to request a meeting at this point in time – the first contact that the union representative made on the claimant's behalf was not until 29 April 2020.

218. We note that the claimant considered Dr Allen's emails, particularly his email of 28 April 2020, to have the effect of violating her dignity or creating the proscribed environment. However, we have concluded that it was not reasonable for those emails to have this impact on the claimant in the context of the ongoing discussions and emails between her and Dr Allen regarding her employment status and work duties. For example, Dr Allen emailed on 22 April 2020 because the claimant had not responded to his email of 8 April 2020 and had not otherwise been in contact with him during this period. The claimant's response to his email on 22 April 2020 did not answer the questions that he had raised regarding whether the claimant was fit to work and so he emailed again on 28 April 2020.
219. The claimant's complaints of discrimination arising from disability and harassment under this allegation therefore fail.

Allegation 1 – contents of emails from Ms Sivori (6 May 2020) – Discrimination arising from disability and Harassment

220. Our findings of fact relating to Ms Sivori's emails on 6 May 2020 were that:
- 220.1 Ms Sivori, Miss Plows and Dr Allen remained confused as to the claimant's preferred course of action. The claimant had been offered various options, but had not confirmed what she was seeking;
 - 220.2 we note that the claimant had closed down her sickness absence record on the respondent's MyHR system on or around 10 March 2020 which meant that she was no longer on sick leave. The claimant had received full pay during March and April 2020 as if she were working (rather than the half pay which she would have received if she were still on sick leave);
 - 220.3 Ms Sivori did not have the benefit of any occupational health or other advice regarding communications with the claimant because the claimant did not want to attend an occupational health review. However, the final paragraph of her email set out in clear terms the claimant's options regarding her potential resignation, exit interviews and grievances;
 - 220.4 the tone and content of Ms Sivori's emails were appropriate, given the context in which these took place; and
 - 220.5 the claimant could have sought further assistance or clarification from her union representative if required.

Discrimination arising from disability

221. We find that Ms Sivori's emails did not amount to unfavourable treatment. The claimant and her representative initiated contact with HR in their emails to Miss Plows and Ms Sivori in late April and early May 2020. Ms Sivori was simply responding to the points raised by and on behalf of the claimant.

Harassment

222. We have also concluded that Ms Sivori's emails did not amount to unwanted conduct for the same reasons that we have concluded that they did not amount to unfavourable treatment for the purposes of the claimant's discrimination arising from disability complaint. Ms Sivori set out options for the claimant to consider in her emails, in response to the questions raised by and on behalf of the claimant. In addition, the background to these emails consisted of the discussions and emails between the claimant, Dr Allen and others since 27 February 2020 regarding the claimant's employment status and duties.

223. The claimant's complaints of discrimination arising from disability and harassment under this allegation therefore fail.

Allegation J –meeting with Ms Sivori on 21 May 2020 – Direct discrimination and Harassment

224. The claimant has alleged that Ms Sivori argued with her during the meeting (for example, saying "I don't see your point") and did not respect the claimant's communication difficulties.

225. We found that:

225.1 the claimant was able to speak freely for the first half of the meeting without interruption. The claimant discussed history of her employment with Uni and her PhD in detail during this time;

225.2 Ms Sivori reminded the claimant of remaining time left in meeting, in order to ensure that the claimant had the opportunity to discuss the key points that she wanted to raise. This was not intended to upset the claimant;

225.3 throughout the second part of the meeting there was some confusion during the discussions on both sides;

225.4 Ms Sivori did not say 'I don't see your point', but she did state that she did not understand the claimant's position on matters such as self-referral for occupational health reviews and the claimant's employment status;

225.5 the claimant found the second half of the meeting difficult and became very emotional during the discussions;

- 225.6 the claimant was unable to clarify what particular strategies Ms Sivori should have deployed during the meeting to minimise any communication difficulties;
- 225.7 the claimant was represented at the meeting by her union representative and had the benefit of her assistance.
226. We also note that the claimant had provided Ms Sivori or the respondent with Dr Hull's letter of 10 February 2020 which contained limited information regarding the communication difficulties that the claimant experienced. That letter referred to the claimant experiencing "*persistent difficulties in your social communication and social interaction*" but did not provide any information on the specific difficulties suffered or any advice on how these should be addressed by her employer. The claimant had not accepted the respondent's previous offers of an occupational health review following her autism diagnosis, which could have provided assistance to the respondent in how to manage any communication difficulties.

Direct discrimination

227. We have concluded that Ms Sivori did not treat the claimant less favourably than a hypothetical non-disabled comparator in the same material circumstances as the claimant. The meeting was arranged at the claimant's request. Ms Sivori was trying to clarify her understanding of the claimant's position and would have asked similar questions of a non-disabled comparator. We also note that when Ms Sivori saw that the claimant was upset by some of their discussions regarding the stress risk assessment, she apologised both in the meeting and by email on 20 May 2020.

Harassment

228. We have also concluded that the discussions during the meeting did not amount to unwanted conduct for the same reasons that we have concluded that they did not amount to unfavourable treatment for the purposes of the claimant's discrimination arising from disability complaint.
229. Even if the discussions did amount to unwanted conduct, we have concluded that:
- 229.1 Ms Sivori did not intend to violate the claimant's dignity or create the proscribed environment for the reasons set out above.
- 229.2 the claimant believed that her dignity had been violated and/or that the proscribed environment had been created. However, it was not reasonable for the meeting to have that effect.
230. The reason why we have reached these conclusions are that Ms Sivori gave the claimant ample opportunity to set out her concerns during the first 40 minutes of the meeting and they went on to have a genuine two-way discussion regarding the claimant's concerns. The fact that the claimant and the respondent took different positions on the matters raised does not amount to unwanted conduct.

231. Ms Sivori conducted the meeting without the benefit of advice on how to manage any communication difficulties. The claimant had only provided the respondent with Dr Hull's letter of 10 May 2020 which highlighted the fact that she experienced difficulties, but did not advise on how an employer should deal with them. In addition, the claimant had not accepted the respondent's previous offers of occupational health reviews following her autism diagnosis which could have provided assistance to the respondent in how to manage any communication difficulties.

232. The claimant's complaints of direct discrimination and harassment under this allegation therefore fail.

Allegation L – Dr Allan's comments during Professor Ginger's investigation into the claimant's grievance on 2 July 2020 - Direct discrimination, Discrimination arising from disability and Harassment

233. We found that:

233.1 the context of both of these comments were that the claimant had raised a grievance against Dr Allan, Professor Ginger was investigating that grievance and Professor Ginger needed to ask Dr Allan about his working relationship with the claimant as part of this grievance;

"Particular lens"

233.2 the comment regarding seeing things through a 'particular lens' comment was not related to the claimant's disabilities. We accepted Dr Allan's evidence that this term is frequently used when teaching geographical sciences to students (for example referring to a different lens, viewpoint or perspective);

233.3 the remainder of Dr Allen's response to Professor Ginger's question was balanced, stating that they generally had a 'good relationship', that the claimant was a 'good worker' as well as stating that she 'could be at difficult at times to deal with';

"Rollercoaster"

233.4 this comment related to the claimant's life experience. The claimant had divulged to Dr Allen that her life had been full of events and that there had been "ups and downs" along the way. We accepted Dr Allen's explanation that the analogy to the rollercoaster is that you have ups and downs but you get to the end, you keep going. Dr Allan said that his experience of working with the claimant was that there were limited occasions when she could be 'withdrawn' and on other occasions she could be quite energised.

Direct discrimination

234. We have concluded that Dr Allen did not treat the claimant less favourably than a hypothetical non-disabled comparator in the same material circumstances as the

claimant. The comparator that we have to consider here is a non-disabled person who did not have PTSD, depression or anxiety but who:

- 234.1 experiences 'ups and downs' in their life (e.g. divorce, family illness or bereavement); and
- 234.2 raised a grievance against their line manager.

235. We found that the 'particular lens' comment was not related to the claimant's autism diagnosis for the reasons set out above. We found that the 'rollercoaster' comment was related to the claimant's PTSD, depression and anxiety.

236. However, we have concluded that Dr Allan would have made the same comments during an investigation into a grievance raised against him by a non-disabled person in the same material circumstances as the claimant. Professor Ginger had asked Dr Allan about his working relationship with the claimant and Dr Allan provided his views. The comments made by Dr Allan in the grievance interview would not have differed if he were discussed a non-disabled comparator.

Discrimination arising from disability

237. We also have to consider whether Dr Allan's comments were 'unfavourable treatment' for the purposes of her discrimination arising from disability complaint. We have concluded that they were not. Dr Allan gave a balanced account of his view of his working relationship with the claimant in the context of an investigation into a grievance raised by the claimant. We note that the claimant herself regarded Dr Allan as very supportive, for example the notes of their meeting on 27 February 2020 state that the claimant: "*wished it to be noted that Dr Allan had been very supportive of her over her time in the School*". This is consistent with the contents of the emails that Dr Allen sent to the claimant during her sickness absence.

238. Even if Dr Allan's comments did amount to unfavourable treatment, we would need to consider whether they were made because of the 'something arising' from the claimant's disability, i.e.:

- 238.1 the claimant's sickness absence from September 2019;
- 238.2 the claimant's communication difficulties; and
- 238.3 the claimant's need for additional support (i.e. implementation of occupational health recommendations and preparation of a stress risk assessment).

239. We have concluded that Dr Allan's comments were not made because of any of those 'something arising' matters pleaded by the claimant. Dr Allan's comments reflected his view of his working relationship as a whole with the claimant since he became her line manager in 2012. Dr Allan made those comments because Professor Ginger was investigating the claimant's grievance against him. Dr Allan's comments were balanced with other comments, for example he noted that he had

a 'good relationship' with the claimant, they discussed non-work matters such as their shared interest in motorbikes and that the claimant was 'very capable'.

Harassment

240. We also concluded that the 'rollercoaster' comment was the only comment out of the two that the claimant complained of that related to the claimant's disabilities. However, for the sake of completeness we have considered both comments in reaching the findings set out below.
241. We have concluded that Dr Allan's comments were not unwanted conduct. The claimant raised a grievance against Dr Allan and the comments were made during Professor Ginger's grievance investigation with Dr Allan. We also refer to our findings under the Direct discrimination and Discrimination arising from disability heads of claim relating to this Allegation.
242. Even if these comments did amount to unwanted conduct, it is clear that Dr Allan did not have the purpose of violating the claimant's dignity or creating the proscribed environment. The claimant was not even aware that these comments had been made until after these proceedings had started because she did not receive a copy of the notes of the grievance interview until disclosure took place.
243. In addition, although the claimant was upset by these comments, we have concluded that it was not reasonable for the comments to have that effect on the claimant, given the context in which they were made. The claimant had raised serious allegations against Dr Allan as part of her grievance and Professor Ginger had to investigate those allegations. We found that Dr Allan gave a balanced account of his view of his working relationship with the claimant.
244. The claimant's complaints of direct discrimination, discrimination arising from disability and harassment under this allegation therefore fail.

Indirect discrimination

245. We have concluded that the respondent did not have a provision, criterion or practice of failing to make adequate provision for employees' health and safety relating to their mental health under the policies referred to by the claimant.
246. We found that the respondent's management of sickness absence, dignity work and health and safety policies made adequate provision for health and safety relating to employees' mental health for the reasons set out in full in our findings of fact. The key reasons for our findings included:
 - 246.1 the management of sickness absence policy included provisions relating to managing long term sickness absence. The policy was not limited to physical disabilities and included consideration of adjustments which could apply to mental health conditions, such as time off for psychoanalysis;

- 246.2 the dignity at work policy related to bullying and harassment and included all protected characteristics under the Equality Act 2010 (which includes mental health conditions if they amount to disabilities under s6 of the Act);
- 246.3 the respondent's health and safety policy is focussed on regulatory health and safety matters (such as fire safety). However, it also refers to work-related stress and refers staff to the respondent's policy on the management of work-related stress. The latter policy includes specific actions aimed at assisting employees' mental health. These actions include stress risk assessments and wellbeing plans, occupational health referrals and liaising with other services and agencies. The respondent also has detailed guidance on completing stress risk assessments.
247. In particular, we concluded that the stress risk assessments were not subject to the same regulatory frameworks as the specific matters referred to in the respondent's health and safety policy (e.g. fire safety). However, it is clear from the wording of the policies and the discussions and emails between the claimant and Ms Sivori that the stress risk assessment was not regarded as 'less important' than the matters governed by the health and safety policy.
248. The claimant's claim for indirect discrimination therefore fails.

CONCLUSIONS

249. The claimant's claim of unfair (constructive) dismissal fails and is dismissed.
250. The claimant's claims for disability discrimination consisting of:
- 250.1 discrimination arising from disability under s15 of the Equality Act 2010 (the "EQA");
- 250.2 failure to make reasonable adjustments under s20 and s21 of the EQA;
- 250.3 indirect discrimination under s19 of the EQA; and
- 250.4 harassment under s26 of the EQA;
- fail and are dismissed.

**Employment Judge Deeley
21 July 2021**

22 July 2021