



EMPLOYMENT TRIBUNALS

Claimant: Ms S. Samuels

Respondents: University College London

London Central by CVP

Hearing: 16- 20, 23 September 2024
Panel discussion 23, 24 September

Employment Judge Goodman
Mr F. Benson
Mr P. Secher

Representation:

Claimant: in person

Respondent: David Campion, counsel

JUDGMENT

1. The claims of discrimination brought under sections 13 and 15 of the Equality Act do not succeed.
2. The claim of failure to make adjustments for disability does not succeed.
3. The disability harassment claim does not succeed.
4. The victimisation claim does not succeed.
5. The hearing on 1 October is vacated.

REASONS

1. These disability discrimination and harassment claims arise from the claimant's employment by the respondent as an administrator at the Bartlett School of Architecture. The employment ended on 8 February 2023 when she did not pass probation.
2. There are claims under the Equality Act 2010 of direct discrimination because of disability (section 13); discrimination because of something arising from disability (section 15), failing to make reasonable adjustments for disability

(section 20), harassment related to disability (section 26) and victimisation (section 27). The protected acts in the victimisation claim are a grievance she lodged on the 18th October 2022, and her claim to the employment tribunal, presented on 22nd December 2022.

3. A list of issues evolved in discussion with Employment Judge Smart, based on the claim form, as further particularised and amended, over three case management hearings. The final list is appended to these reasons.
4. Disability: Respondent produced a table of the claimants case on disability. working from the claim form, the amendment, further information and the three successive witness statements on the impact of disability.
5. In the claim form, the claimant relied on anxiety and stress and depression as the impairments. In further information in May 2023 she added several atopic conditions (asthma, angioedema, allergic and seasonal rhinitis, urticaria) and in her impact statements, Ehlers Danlos syndrome type 3 and recurring axillary abscess.
6. The respondents admit that the claimant was disabled within the meaning of the Equality Act in respect of Ehlers Danlos syndrome and the atopic conditions. The respondent disputes that the claimant was disabled by anxiety, stress and depression, or by recurrent abscesses.
7. Whether disability is found or not, the respondent does not admit they had actual or constructive knowledge of any disability at the material time.

Conduct of the hearing

Conversion to CVP

8. This 12 day hearing had been listed by Judge Smart in November 2023 Notice of final hearing in person at Victory House went to the parties on 29 December 2023. On the morning of the first day, the claimant attended in person and applied for conversion to a remote hearing for the rest of the days, on the basis that she had impaired mobility because of Ehlers Danlos syndrome (EDS), and it would avoid her having to travel. The tribunal agreed, as a reasonable adjustment for disability, and spent the rest of the first day reading the witness statements and selected documents.
9. The claimant had served witness statements from three others. The respondent did not wish to question two of them. In respect of Richard Pettinger, the claimant's trade union representative, the claimant said that she had learned on the 12th September that he now lived in France. She asked if he could give evidence remotely. It was explained that because France has not consented to evidence being taken from their territory, he must travel to the United Kingdom, even to give evidence remotely.

Application to Postpone

10. On the morning of the second day, the claimant applied for postponement of hearing so that Mr Pettinger could attend in person. Alternatively, she asked for the statement to be read. After hearing both sides the employment tribunal declined to postpone the hearing. The reasons given were these: (1) if the hearing is postponed, it is doubtful that it will come back into the list before 10 or 12 months from now, because of its length. Delay of that length is undesirable because it weakens the strength of the evidence where it is not recorded in a document (2) there is still enough time within this hearing for Mr Pettinger to travel to England to give evidence if he is willing. The claimant indicates that he now lives in France, something she only discovered very recently, witness statements having been exchanged in August. She does not know where he lives in France. She does not believe he is prepared to travel. (3) if the hearing is postponed, it is not clear that Mr Pettinger will be prepared to travel to the United Kingdom to give evidence next year, nor can it be predicted that France will by then have consented to the taking of evidence from its territory (4) Mr Pettinger's participation only began towards the end of September 2022, shortly before the claimant ceased work. He assisted on her grievance, and represented her at a probation meeting, and at the appeal meeting. He claims no first-hand knowledge of events. The grievance document is available in the hearing bundle, as are full transcriptions of recordings of both hearings. Reading the witness statement, the additional value lies in his opinion that the respondent should have run separate procedures, rather than decide probation review and the grievance at the same time, an opinion he expressed at the minuted hearings. We consider this is a matter the tribunal could decide on the basis of the notes of the meetings and examination of the respondent's policies and in the light of the ACAS guidance, and that there is not significant damage to the claimant's case if he cannot be heard. . Having regard to the overriding objective to deal with cases justly, having regard to equality of arms, avoiding delay and saving expense, we concluded that the disadvantage to the claimant of not being able to call him was less than the disadvantage to the respondent – and to justice - of postponing proceedings for the best part of a year, when evidence now more than two years old would be more than three years old, and it would be even more difficult for witnesses to recall conversations accurately.
11. On the morning of day two the claimant emailed the tribunal at 9:47 am asking for the 10 am start to be put back to 11:00 am as she felt unwell, but this did not reach the panel until after 10:00 am. We declined to put the hearing start back to 2:00 pm (as the claimant then asked at 10:10 am), but after hearing the postponement application, we did adjourn to 11:00 am.

Adjustments for the hearing

12. This had been discussed with Judge Smart case management hearings: the claimant asked for breaks every 45 minutes or so to give her time for reflection. At the start of the hearing she indicated that she needed to use breaks to walk around, because of joint pain arising from EDS. We took

breaks of at least 5 minutes every hour, sometimes longer, and sometimes more frequently, at the claimant's request.

13. The claimant appeared without representation. On days 5 and 6 her friend Deborah Simolli questioned witnesses for her.

Evidence

14. The tribunal heard evidence from:

Sabrina Samuels, the claimant

Naz Siddique, the other grade 7 administrator in the department, who initially supervised the claimant.

Jane Paterson, lecturer and part-time admissions tutor

Helen Crane, Deputy Director of Operations, who conducted the grievance and probation review hearing

Felicity Aktepe Director of Professional Practice in Architecture Part 3

Thea Heintz, grade 8 administrator (Education Manager) who took over from Naz Siddique as claimant's line manager in April 2022

Geoff Dunk, Director of Operations, Faculty of Brain Sciences, who heard the claimant's appeal.

We read statements from two former staff describing administrative process in the department: **Susan Ware**, former Director of Professional Studies for Part 3 until February 2022, thereafter teaching part-time, and **Jonathan Kendall**, Associate Professor teaching part-time.

15. There was a hearing bundle of 4,182 pages. The separate index ran to 53 pages. It was not an easy bundle to use. Medical evidence was scattered throughout the bundle, often as attached to emails. The pleadings and case management orders appeared interleaved with other material, rather than consecutively. It included correspondence with the employment tribunal and papers from earlier hearings which was not needed to decide any issue. Some documents had to be rotated to be read. Others had been removed, disordering the electronic numbering. The tribunal recognises that the claimant had asked for a number of documents to be added to the bundle, so that they appear at the end. Nevertheless, it seemed to us that the person preparing the bundle was unaware how the bundle would be used in a hearing, or that it must only contain material which the tribunal needed to read, and was unfamiliar with the Presidential Guidance or CPR on the preparation of bundles. We read those documents to which we were directed.

Findings of Fact

16. The respondent is a large university. It incorporates the renowned Bartlett School of Architecture, where the claimant worked as an administrator in the unit 3 team. This consisted of one full time administrator (the claimant), one part-time administrator (Naz Siddique, who spent three days a week in unit 3,

and two days a week in the Institute of Education). The administrators reported to Thea Heintz, who supervised administrators in other departments too. There were about 7 academics, two full-time, others part time, two commuting from Edinburgh and Devon respectively. The long standing director, Susan Ware, was approaching retirement, and Felicity Aktepe started part-time in January 2022, full-time from April 2022, and has since taken over from Ms Ware.

17. Unit 3 in the Bartlett delivers Part 3, the practical stage of architects' training, after completing a full time degree, when already working in business. They attend evening lectures once a week from January to June, for which an administrator was required to provide technical support. There are study days which they attend, there are exams in June or December which they have to pass. Office hours were from 10:00 am to 6:00 pm, so students could make contact after finishing work. Administrators have to maintain a database of student details, deal with admissions of new students, and maintain an accurate record of examination marks.
18. The claimant started in Unit 3 as an agency temp, working from the 8th November 2021 to 28th February 2022. She had a handover from her predecessor, who was returning to New Zealand. In mid-January 2022 she was interviewed for the substantive post as his replacement and was successful. The job specification required a degree; it was considered sufficient that the claimant had registered for a part time law degree with the Open University. She negotiated a higher salary grade.
19. On 3rd March 2022 she started employment full-time at grade 7. The contract provided for a nine month term of probation. Working hours were 10:00 am to 6:00 pm, and occasionally on Tuesday evening she would have to work longer.
20. When temping for the respondent there had been nearly two years of intermittent lockdowns and a great deal of working from home. This changed at the start of 2022. On the 20th January 2022 the respondent notified all staff that with effect from the 27th January they were required to attend the premises for 40% of their working time (that is, at least two days in the five day week).
21. The claimant had prior experience of academic administration. Her CV shows she had left education in 2012, had worked in a number of clerical posts to the end of 2016, including eight years at Lambeth Council as a business support officer, and then had a number of short term contracts in academic administration: at Lambeth College, at the Association of Commonwealth Universities, at the LSE and at KCL. From January to March 2019 she worked for UCL as project support coordinator, from April to June 2019 as group administrator, from July to August 2019 as research administrator, from February to August 2020 as research administrator, October 2020 to March 2021 as a teaching and learning administrator, April to July 2021 as

postgraduate research administrator, a brief period in September 2021 as programme administrator in SSEES, before starting with the Bartlett as an agency temp in November 2021. In most of these jobs she worked five days a week at an office. At Lambeth Council she had worked one day a week remotely, following an occupational health assessment. From the start of Covid lockdowns, in March 2020, she had largely worked from home. The January 2022 change caught her unawares - she forgot to come in on the first day.

22. The start of the claimant's permanent employment coincided with other personal difficulties. There was an episode of domestic violence at the start of the year, which still troubled her in September 2022 when she first mentioned it to the GP. Her council flat was in disrepair and required disruptive building work, which continued through the spring and into the summer of 2022. In February 2022 an aunt who had been involved in bringing her up fell ill and died. In May 2022 she suffered a theft. These added to existing health matters: principally EDS and various atopic disorders, as well as flu in January and April 2022, and gynaecological investigation in February, March and April. She had registered for an OU degree course in law some years earlier but had not been able to progress very far.
23. The disabilities relied on in this claim are EDS, atopy, recurrent abscess, and depression and anxiety. The respondent admits that the first two were disability within the statutory meaning, and disputes the latter two. The tribunal considers whether these were disabilities before moving on to events during the claimant's probation. There is a separate issue as to whether and at what stage the respondent knew or ought to have known about the claimant's disabilities, which will be considered later in these reasons.

Disability

24. EDS: this is a congenital disorder of connective tissue. It was diagnosed by Dr B. Dimitrov at Guy's and St Thomas's hospital in May 2012, as type 3 (hypermobility). In an application for disabled student allowance made in 2018 in connection with the proposed OU degree course in law, the claimant reported that this affected her joints and caused occasional pain and stiffness. Following an assessment in 2012 by a previous employer she had been provided with a computer and additional software. The occupational health report obtained by the respondent in June 2022 noted that the claimant reported chronic fatigue and joint pain because of EDS, which could affect her mobility and negatively impacted on her sleep and overall mental health. The Respondent does not dispute that she was disabled by this condition, but does dispute that they knew about it at the relevant time.
25. Atopy: the respondent also admits the atopic conditions. The claimant says the seasonal rhinitis meant that she might want to work from home when there was a high pollen count. Her asthma could complicate respiratory infections. According to the June 2022 occupational health report, these were likely to be

lifelong conditions, but could be well managed with support from primary care providers.

The Disputed Disabilities

Disability - Relevant Law

26. A person has a disability within the meaning of section 6 of the 2010 Act if he or she (1) has a physical or mental impairment which (2) has a substantial adverse effect on that person's ability to carry out day to day activities, and (3) is long term.
27. Substantial means "more than trivial" - **Aderemi v London and South Eastern Railway Ltd (2013) ICR 591**.
28. Paragraph 2(1)(b) of Schedule 1 to the 2010 Act defines long term as "likely to last at least 12 months". "Likely" in this context means "could well happen": see **Boyle v SCA Packaging Ltd. (2009) UKHL 37**.
29. Whether, as at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months - **McDougall v Richmond Adult Community College EWCA**. The same analysis applies to the interpretation of the phrase "likely to last at least 12 months". Paragraph C4 of the guidance issued by the Secretary of State under section 6(5) of the 2010 Act states that in assessing the likelihood of an effect lasting for 12 months, "account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood". **All Answers Ltd v W and anor (2021) EWCA Civ 606**.
30. In cases of depression, anxiety or stress, there is additional guidance for tribunals in **J V DLA Piper UK LLP (2010) ICR 1052**. Low mood can be caused by the mental illness of depression, or it can be a reaction to adverse life events. If it is the latter, but the low mood is prolonged, it is probably a disability, because it is long term. If the depression is intermittent, the question for an employment tribunal may be whether there was an underlying illness which manifested itself from time to time and is therefore "likely to recur". In **Herry v Dudley MBC 2017 ICR 610**, the discussion in **DLA Piper** was approved as having stood the test of time, but in the context of stress, "we do not underestimate the extent to which work-related issues can result in real mental impairment for many individuals, especially those who are susceptible to anxiety and depression". It was also observed that unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to

compromise... are not of themselves mental impairments: they may simply reflect a person's character or personality.”

Anxiety and Depression.

Findings of Fact

31. The respondent disputes that the claimant was disabled by reason of anxiety and depression.
32. The claimant's impact statements about the various disabilities say little about depression and anxiety before 2022. She explains how her other health conditions can impact on her mood, when she was in pain, and create a feeling of hopelessness and loss of motivation. She mentions current counselling but says little about the past.
33. Her general practice records show that she frequently attended the doctor with a variety of physical symptoms. There are some mentions of low mood or anxiety.
34. Documents in the bundle show that she had some counselling sessions in June and July 2010, at a time when she was homeless and living with friends. Then there is a note in October 2018 that she was tearful at times because of “some stress at home.. relationship issues”, and she was given details of talking therapies. In January and February 2019 she was offered sessions in a stress and worry workshop, but the claimant did not take up the offer. In May 2019 she reported anxiety, mentioning “stresses in last year” and was advised to make an appointment to see if cognitive behaviour therapy would help; in July 2019 an offer of four sessions was made again, the main problem being assessed as anxiety. The tribunal does not know if the claimant took up the offer.
35. In March 2021 she reported low mood and stress, and talking therapy was suggested. She did not want medication. The tribunal notes that this followed the respondent (in her previous period of employment with them) allowing two weeks parental bereavement leave in January 2021, so may have been related; this episode is not mentioned in the impact statements.
36. In February 2022 the claimant took time off when an aunt to whom she was close died after a short illness. She said to the line manager she was upset and not managing, and she took some more time off in March. In April she said she was feeling better.
37. After March 2021 (the time of the parental bereavement) there is no reference to anxiety in the doctor's notes until 16th September 2022, when she saw her GP, and spoke of domestic violence at the start of the year. The notes record “history of anxiety and depression” and the doctor started her on Citalopram. This coincides with the claimant's realisation that she was likely to fail probation. On 14th October 2022, she asked for a sick note, being off work with stress: “has had a difficult time at the workplace... going through a

grievance process with victimisation and bullying, currently awaiting CBT therapy". She was given a fit note, and did not return to work before being dismissed at the beginning of February 2023.

38. Meanwhile, the respondent had asked for an occupational health (OH) report on a variety of physical conditions. This was based on a list of physical conditions the claimant gave her line manager Naz Siddique on 12 May 2022. After listing the physical conditions the claimant added "stressed because of conditions and other factors". She amplified this on 25th May: "stresses fluctuating due to illness or other factors adding to stress", mentioning the current investigation of an abscess. The OH report, dated 6th June 2022, records that the claimant reported that she was under stress in relation to work. The adviser recommended carrying out a stress risk assessment so the manager could identify the causes and whether changes could be made.
39. Finally, the respondent's occupational health report of the 22nd of December 2023 noted that she had anxiety and depression, which she attributed to work, and a meeting with management to resolve issues was recommended.

Depression - Discussion and Conclusion

40. Given the claimant's condition in September 2022, and as described now in her impact statement of July 2023, she is in our finding depressed from that date. We have to assess whether she was also disabled by depression within the statutory meaning at any date between March and September 2022.
41. As of March 2022, the claimant had had a number of episodes of low mood, leading to referrals for counselling, but all seem to relate to particular adverse life events: homelessness in 2010, relationships in 2018, unspecified stresses in 2019, and bereavement in March 2021. There are no signs of stress or depression between then and the bereavement in February 2022. Even then, the claimant said that she was getting better within a few weeks. In May 2022 she said her stress fluctuated with the physical conditions she had listed. In June she said it was connected with work – the adviser concluded it would be solved with discussion of the work problem. In our finding, the claimant had reacted to a number of adverse life events over the previous 12 years, but there was no evidence of depression between these episodes. It is possible that the claimant was vulnerable to becoming depressed because of underlying health problems, such as joint pain, or rhinitis, lowering her mood, but absent an adverse event, we could not conclude that this condition was "likely to recur". It follows that it could not be said between March and September 2022 that she was disabled, meaning that the condition was long term if it was substantial.
42. Recognising that we could be wrong on this, we will consider the respondent's knowledge of depression as disability, something we must in any case decide for EDS and atopy.

Recurrent Abscess – Facts Found

43. The GP and hospital notes show that in October 2012 the claimant had an abscess in the left axilla, secondary to a sebaceous cyst, which had burst. On the 4th April 2018 an abscess in the right axilla was treated. On the 13th May 2022, an abscess in the left axilla of two days duration is recorded. Nothing suggests that these episodes lasted very long, although likely to have been painful and unpleasant at the time.

Recurrent Abscess as Disability - discussion and conclusion

44. There were three episodes in 10 years, each relatively short lived, in one armpit or the other. We concluded that they were short lived impairments. It cannot be said that they were "likely to recur", for example in May 2022. They might recur, and they might never recur. This condition does not meet the statutory definition of disability.

Findings of Fact continued

45. After two day a week office working resumed at the end of January 2022, the claimant was frequently not in the office for one reason or another, and either worked from home, or took annual leave.

46. At the beginning of February Naz Siddique sent her a list of tasks and deadlines. The claimant pushed back on some of the deadlines. The claimant was still a temp, until 4th March, when her permanent contract started.

47. On 8th of February she worked from home because of period cramps.

48. On a Monday and Thursday in mid-February, and the following Thursday, she took time off to visit family at the time of her aunt's illness and sudden death, three days in all.

49. At the same time texts show that she worked from home on office days because building workers were in the flat.

Working pattern and performance after start of the permanent contract

50. On 8th March the claimant asked Naz Siddique, by e-mail, for time off from the 9th to 15th of March: "to allow myself some real time to get back to my usual self so that I can be more productive at work.. I have noticed a slip in myself, mainly because my head is all over the place and my concentration isn't great. I'm a lot more slow and upset. This is in all aspects of my life, at work, studies". She thought a break would be better than taking odd days here and there. She suggested she take this : "as special leave if that's even possible now I've moved over to my permanent contract".

51. Naz Siddique replied that they should discuss the situation properly to see what support measures could be put in place. Instead of that, the following day

the claimant emailed to say that she would be taking sick leave.

Naz Siddique was alert to the request for *special* leave, and harboured suspicion that the claimant might be taking advantage of her new permanent status to take time off without impacting her sick leave record.

52. The claimant was then off sick, related to “stress and other things”, from Wednesday to Friday, and the following Monday. On the Thursday she had a hospital appointment and asked to work from home instead of coming to the office. On Monday 21st March she had a hospital appointment. These seem to have been for investigation of a recent gynaecological problem, rather than the disability conditions. She then took three more days off sick from Wednesday 23 to Friday 25 March 2022.
53. Concerned about the claimant’s performance, Naz Siddique ask HR for advice. She was told to keep a log of the claimant’s tasks and outputs, which she did.
54. On 16th March the claimant had a remote discussion with Naz Saddique and their grade 8 manager, Thea Heintz, who asked what challenges he was facing. The claimant replied that it was the death of her aunt, but there were other pressures. The discussion moved on to the backlog that had built up. The claimant was told that she was not operating to the standard of a grade 7 administrator. Many tasks were not being completed to the required standard. Following the meeting Thea Heintz provided details of the employee assistance programme (EAP) that the claimant could contact for support. The claimant has suggested that as she had reported she was under stress, she should have been referred to occupational health for a report, not just advised to use EAP. According to Naz Siddique, the claimant had not indicated she had any health condition requiring a management referral to OH. They understood she had been affected by her aunt’s death.
55. The claimant referred herself to occupational health, but was told that this needed to come from a manager.
56. UCL has a probation policy. It applies to all academic and administrative staff. There has to be a structured induction, to cover introduction to the team, UCL and local policies, mandatory training requirements and how to find and book courses, health and safety information, and so of. In the claimant’s case this was delayed because of her absences or home working, as Naz Siddique wanted to hold it face to face. In the end however it was done online, as Monday 28th March was the only vacant date.
57. Next day the claimant started work at 12 noon on Tuesday because of home renovations, then took annual leave on 30th and 31st of March (her office days) for the same reason.
58. On 30 March unit 3 run a session on zoom at which students made presentations. The claimant had been involved in setting this up with a range

in breakout rooms for the student groups. At 9:20 am that morning the claimant told the team that she was on leave that day and the following day, (although in fact she worked some of the 30th March and claimed half a day back). The zoom session did not go smoothly and the academic staff spent some time moving students across manually. At this point the academic staff in the team expressed dissatisfaction with the claimant's performance in email exchanges. Liz Pickard said "still feels like the course needs to improve the engagement and input of admin team. Somehow always feels a bit fraught", Jonathan Kendall replied that he agreed, had been slightly taken aback that the claimant had not mentioned the previous day that she was going to be on leave, "and the zoom/ group thing at the start of the workshop yesterday even was a bit of a mess - not disaster but should have been easily avoided". Jane Paterson said "confidentially" that she and Naz had been "rather struggling with Sabrina's engagement and are having to spend a great deal of our time checking her work etc". It seems the claimant had not allotted students to the break out study groups so that a member of academic staff had to move them across once this came to light: "it was all a bit hectic.. A bit chaotic at the start". The tribunal notes from this that whatever the rights and wrongs of whether any hitches were the claimant's fault, the claimant had not been seen in the department for much of March, and already the staff were grumbling about her engagement. Her absence on this occasion was nothing to do with her health.

59. The same day, the claimant messaged Naz Siddique about their discussion the previous day. She said of the one and a half hour discussion (of errors and omissions) that things were "a little overdone here". She wanted to be "actually allowed a chance to settle back into the swing of things after a lot of time off before every little detail is monitored". There had been a number of times when she had been reminded of outstanding tasks. She did not want to be penalised for taking time off. She wanted support, rather than micro management.
60. On 1st April, the next working day, the claimant did not work normal hours due to home renovations.
61. The following Wednesday, 6th April, the claimant was absent, saying she had an appointment for blood tests, had gone to a test centre near her home instead of hospital, and proposed to work from home that afternoon. Naz Siddique asked the claimant to come into the office on Thursday 7th and Friday 8th of April "to meet the 40% time that you need to be on campus" (Wednesday having been an office day). The claimant replied that she had contractors coming on Friday afternoon; Naz Siddique suggested she take annual leave then. On Thursday 7th April the claimant emailed to say that she was not coming in because of unexpected building work at home. She added that on Friday 8th April she was not coming in for the morning, and would take annual leave in the afternoon. Meanwhile she emailed Thea Heintz, the grade 8 to whom she and Naz Siddique reported, saying: "I have not being able to adhere to 40% in the office as much as I would like due to this, leave

and illness but I'm expecting for this to change post Easter (my days are Wednesdays and Thursdays)". ("This" being a reference to the building work).

62. Thus, by the beginning of April, both the administrative and the academic staff had concerns about the adequacy of the claimant's performance - merited or not - and the claimant perceived Naz Siddique to be down on her. We observed that the claimant was behind at least in part because she had taken so much time off. She was not completing tasks on time and she was making mistakes. Some of that time off was due to the bereavement in February, and "stress" in March, but other time off was due to building work at home. The respondent was also dissatisfied that she was not meeting the requirement to work two days a week in the office, and that she changed her days, or did not come in to the office, at short or no notice. It is *possible* that the short notice working from home was less because of building work, more because the claimant was depressed and did not want to leave the house, but if the latter was the reason, she did not tell the respondent and has not said in evidence that this was the difficulty at that time.

First Probation Review

63. Under the probation policy there must be three probationary review meetings, the first to be held at the end of the first month of employment, the second at the midpoint of the probationary period – in the claimant's case. four and a half months after starting - and a final meeting at least four weeks before the end of the probationary period.

64. The first meeting should have been held at the beginning of April, but was postponed twice because on the appointed days the claimant was not able to come to the office. On 27th April the claimant was told that her first review meeting would be that day. Naz Siddique says that she did not give her more notice because she believed that if she had, the claimant would say that she was not able to come into the office, and she did not want to hold it over Teams. She also maintains the claimant knew she was overdue for her first probation review.

65. The tone of the meeting was negative. Naz Siddique and Thea Heintz noted their concern that she was not spending 40% of her working time in the office, tasks had not been delivered to meet deadlines, deadlines were amended without consultation, there were unacceptable errors and anomalies, lack of focus and engagement, emails were not being monitored, and she was not yet showing the initiative required of a grade 7. This put pressure on colleagues to compensate. In addition to having been off work seven days, she was sometimes arriving late and taking extended lunch breaks. She was given a list of tasks where improvement was required. This included completing tasks in the time frame given, and joining team meetings in person, not online. She was also to have two one-to-one meetings a week with her manager, and one meeting a week with her second line manager. Both of them would line manage her from now on and must be copied into all correspondence.

66. When these notes were sent to the claimant on the 12th May, she said her office attendance had improved since Easter, but she should be granted flexibility because of the building work. She acknowledged a slip in performance in February because she “had a period of sickness, lost a family member and major home repairs in a small space of time”. She complained of lack of clear guidance and direction, that staff were blaming her when things went wrong and “copying in the world” in emails to highlight small issues (this seems to be a reference to the academic staff). Her performance had been rated good while she was a temp and she attributed any failings to the difficulties in February. She thought she was getting back on track.

Recruitment of a temp

67. On the day following the probation review, 28th of April, Thea Heintz noted the claimant had made a mistake with major consequences. She had been asked to update a shared excel spreadsheet with student consents to publication of work. Unfortunately the claimant had erased earlier work done on this by other administrators, who then had to revisit two days of work to check details were correct. On top of that, the claimant was 43 hours late completing the task, the deadline having been fixed by the publications team, who needed the consents before they could go ahead and publish student work. Thea Heintz contacted her manager about the claimants performance. He wrote to HR on 3rd May 2022 asking them to advise Thea Heintz and Naz Siddique about managing poor performance. In addition, he said, they needed help: “due to the significant impact this is having on Naz's own workload I'm making an exceptional financial approval request for temporary agency support until this issue is resolved”.

68. This request for agency support was met by taking on Jamie Day as a temporary administrator in unit 3. He started at the beginning of July. The claimant missed this, so was slow to appreciate that he had joined and was sharing tasks.

69. From the beginning of May the claimant was sent a to do list each Monday for completion during the week.

Occupational Health Advice

70. During the probation review meeting on 27 April they had discussed a referral to OH. It was explained that the managers needed to know the health conditions for which a referral was being made.

71. On 12 May, the claimant sent Thea Heintz her Open University assessment on application for a grant for practical aids, which listed her health conditions. The managers learned for the first time that she had EDS, the various atopic illnesses, and “stress because of conditions and other factors”. At their one to one meeting later that day, the claimant said that she had all the equipment

that had been recommended. She was told she could take regular breaks from the screen and was encouraged to take her full lunch break, so that she could move about and ease her joints. (There was later an issue with other staff using her desk, but it was quickly resolved).

72. On 27 May the claimant emailed an amplified list, with more detail of her conditions, adding that she was now being investigated for recurrent abscess under left armpit. Some of the conditions required medical appointments for monitoring or further investigation (it was not clear which). The managers used to this make a referral to OH for a report on whether adjustments were needed.
73. After reviewing current work at the one to one meeting, the claimant mentioned "emails amongst staff are fiery and I tried to stay out of this".
74. On 13th May the claimant had reported a wound on her arm, needing a day off sick, and also a change of office days.
75. The one to one meeting on 20th May was put off because the claimant emailed mid-morning to say she was working from home because of house renovations, and on the following day she had a hospital appointment. Later that month she changed her office days at short notice on 24th May because of a theft, saying she would come in the 25th and 26th, but on 25th May she did not come in and instead went to a clinic for blood tests.
76. At the next meeting, on the 27th May the claimant was advised not to respond to combative emails from other staff. On attendance, the claimant said that she had not spent her usual days in the office because of the builders. She was told "builders must work around her schedule not the other way around".
77. Earlier that day, the claimant had emailed Thea Hines about unit 3 staff accusing the claimant of not entering up the marks properly. Everyone was copied in, and it came across as ganging up on her. At the same time she emailed Felicity Aktepe, the new Director of Professional Studies, mentioning concern about her working environment "starting to cause a bit of stress. I am finding a lot of emails very combative without people checking things or being mindful of others and I think it might be time and I kept you informed of what has been happening". Felicity Aktepe's response was to e-mail the rest of the team that same day, telling them that any tasks they wanted Sabrina to do should be sent to her, and she would relay them to the claimant and her line manager Thea. Nothing should be sent to her directly. If the claimant asked for information, they should reply only if it was straightforward, but copying her. This instruction was "important and is with immediate effect".
78. In the tribunal's view this was a good response to the claimant being sent instructions and advice from all quarters, so that the head of department could filter work to her, or divert it to others, and stop any criticism directed at the claimant, and given the reference to stress, it was properly done very

promptly. It does not appear however that the claimant was told that this instruction had been given, though she noted that she was being given less to do, Commenting on team relations at a meeting on 1st June she that "everyone feels chilled". (The claimant had set up a one to one meeting with Thea Heintz on 27th May. Felicity Aktepe was not able to attend although she he had wanted to).

79. As another way of managing the claimant's workload and performance, Felicity Aktepe maintained a work list for the claimant on Teams, visible to Thea Heintz and Naz Siddique as well. However it seems the claimant was deleting and altering some of the work, so it was still not easy for managers to keep track.
80. On 8 and 9 June, her office days, the claimant work from home because of pollen levels affecting her breathing and urticaria.
81. On 13th and 16th June there were further one to one meetings. At the latter the claimant asked if she could come to work early and finish early, except for the evening events. No reason is given. She had made a similar request in November 2021 when she was a new temp. Neither was granted.
82. On 29 June the occupational health report came through, based on discussion with the claimant. The physical conditions were well managed with support from primary care providers and were lifelong. The claimant would benefit from a stress risk assessment to guide her manager on potential workplace adjustments for her reported workplace stress. This stress would probably respond to talk therapy and CBT, and links were provided to the respondent's EAP and to an online programme of CBT. She was fit for full duties.
83. At the next one to one meeting with her manager, they completed the stress risk management form and sent it to HR (14 July). They discussed how stress had been brought about by external rather than work factors, but affected her ability to concentrate and how this increased the workload of other staff members. It was also noted that the claimant had taken a day's leave the previous day without waiting for approval.
84. Meanwhile on the 30th of June the claimant had asked to work from home due to major works to the floor of her property, due to last a week, On 5th July the claimant asked to work from home because of building renovation.

Second Probation Review

85. The next probation meeting took place on 26th July. Thea Heintz commented that the claimant had not connected as well as she would have expected with the team, due to not being in the office on a regular basis, and not engaging, nor speaking up in team meetings. On attendance, it was noted that building works, hospital appointments and personal issues meant she was not always in the office two days a week. She had taken leave days before approval had been given, and some days were taken off during important events such as

the exam board. Punctuality was difficult to monitor because of hospital appointments and irregular office days. On performance, she was now meeting deadlines and no longer changing them, but she was making mistakes of detail, and these were listed, for example she had sent one candidate's mark to another candidate, uploaded a new incorrect file of candidates' marks, had not created cover pages for each lecture, made mistakes with the minutes for the autumn of 2021, and had overridden others' work on the master list spreadsheet. "These mistakes have caused the programme team to lose confidence in assigning tasks to Sabrina and this in turn has created a lot more work for other staff who have taken on more tasks and spent more time checking work. This is not a sustainable situation due to staff pressures". Finally, allowances had been made for a personal event (the bereavement), by giving her time off, and creating a task list with deadlines. She should improve attention to detail, take the initiative rather than waiting for instruction, speak out in team meetings and build on relationships with colleagues. The claimant commented on this: "due to the concerns raised in this probation and the former probation being unsatisfactory I do not feel I am able to provide an overall assessment. Therefore, I will be escalating this to my line manager or head of school". She provided detailed comment on 23rd August. She complained about critical emails where everyone was copied in. She could not take initiatives because she did not know what the overall objectives were, and "additionally since May, I have colleagues ignoring my emails, remove me from the core team correspondence". She complained that she had not had cover at the time of her personal issues, so people started complaining about her work. Complaints about her lack of attention to detail were "nip picking". She was being treated differently to her predecessor, who had also had to ask questions to clarify tasks.

Probation Outcome

86. There were no one to one meetings in September, as one or the other was on annual leave and the start of term was busy. The next meeting therefore was on 3rd October 2022. Thea Heintz explained that she was not going to recommend that the claimant passed probation. Although she should not be receiving work for the programme team, she had still not completed her online training by the time of the second probation meeting. (She did complete it by the 28th August). In person training had not been completed because she was not often at the office. Her mistakes had lost her the confidence of the programme team. She had been asked to help on short courses, but had not completed the work. She was "just not delivering on any of the work in any team". In answer to the claimant's query, it was explained that Jamie Day had been brought in to help manage the workload, not take her over the claimant's job.
87. On 6th October the claimant went sick with work related stress. Thea Heintz called her on 13th of October to discuss how she was. The claimant said she was unable to return to work, and asked for no further contact. She notified a return on 24 October, but went sick again on 27 October and did not return.

Grievance

88. On 18th of October 2022 she submitted a grievance against Felicity Aktepe, Jane Paterson and Naz Siddique. The claimant said they had victimised her. She said during her probation she had told responded about her disability, although the tribunal notes that neither in this hearing nor in any other place is it shown that she had done this. She said they should be more understanding of her compliance with two day office working, time keeping and need for breaks because of her health. Her onboarding had been poor. There had been poor decisions about her leave on the family bereavement. She alluded to communication style within the team. She had conveyed concerned to the course director and deputy course director but to concerns were not “enforced or challenged”. The three individuals were asked for written responses.
89. On 9 November the claimant approached ACAS for early conciliation. On 22 December she presented this claim to the employment tribunal for victimisation and harassment related to disability, attaching the timeline of events from her grievance statement. It was posted to the respondent by the tribunal on 13 January. The claimant mentioned at the hearing on 23 January that she had presented a claim but not what it was about. Helen Crane says she was not aware of it until then.

Final Probation Review

90. The claimant was notified there would be a review meeting on 17 November which was extended to four hours so that there was time to hear the grievance at the same meeting. She was sent a documents bundle. Her time to send additional documents was extended.
91. On 15 November she reported sick, so the hearing was cancelled. HR asked for an OH assessment on her fitness for a hearing. The report was received on 22 December 2022. The hearing was set for 23 January 2023.
92. The claimant had protested in October that the grievance should not be heard the same time as her probation hearing. Her union representative Richard Pettinger, Professor of Management Education, took this up on her behalf. Saima Allee of the HR department explained that UCL process held that to investigate the same set of issues separately was not efficient or effective. The grievance followed the claimant being informed about the likely decision on probation, and raised issues fundamentally related to decisions about probation. They would allocate time in the hearing for her to go through the grievance elements, apart from the probation review.

93. UCL’s Probation policy states:

2.4 During the probationary period any concerns, unsatisfactory performance, misconduct, sickness or other absence, will be dealt with under this policy. Following successful completion of a probationary period the relevant UCL policy will apply,

e.g. Grievance, Capability, Disciplinary or Managing Sickness Absence.

94. The ACAS Code of Practice on Discipline and Grievance says:

“where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently”.

95. The hearing on the 23rd January 2023 was conducted by Helen Crane, who had drafted questions with Saima Allee’s help. The claimant was represented. Thea Heintz was there as her line manager. Both were questioned about the probation, and there was a separate discussion of the grievance issues. The transcript of the meeting extends to 25 pages. After the meeting Saima Allee sent redacted copies to the three subjects of the grievance so that they could respond. Helen Crane checked her HR records to deal with a dispute about whether the claimant had been granted compassionate leave at the time of the bereavement in February 2022. She noted that the claimant had taken bereavement leave in January 2021, and seems to have thought this was the relevant entry. She also noted that the first probation meeting had been delayed a month for support measures to take effect. She also noted that in both the 3rd of October and 23 January meetings the claimant had said that she did not think anything could be done to repair relationships with other team members.

96. On 8th February 2023 Helen Crane sent a 10 page letter confirming the claimant had not passed probation, and that the grievance was not upheld. In giving reasons she detailed many of the failings already identified in the probation review meetings. The claimants employment ended on 8 February 2023.

97. The claimant appealed. She mentioned the disability but did not state what it was. She maintained there should have been separate hearings for probation and grievance. OH assessment should have been carried out earlier so that adjustments could be made. She had been excluded from team meetings and team tasks. The sanction was inappropriate. She should have been redeployed.

98. Geoff Dunk was appointed to hear it. An initial hearing was postponed because the claimant had flu, another because her representative was not available. The hearing took place on 26th April 2023, attended by the claimant and her representative, and Helen Crane. The claimant then supplied some additional emails, and Geoff Dunk investigated whether the claimant had been excluded from any meetings. He was told she had been invited to both team meetings in the summer term, there had then been none from June until October. She had also been invited to the twice weekly education team meetings on the Thursday of each week. Hr also checked whether Helen Crane had seen the June occupational health report.

99. On 13th June 2023 he wrote to tell her that the appeal had not succeeded. Over 12 pages he explained that on the first ground, it was right to hear the grievance as part of the probation process and she had had a full hearing on the grievance matters. On the second ground, the messages she had supplied on her health concerns in February and March 2022 were “vague” and conveyed no information about specific health conditions. Between then and June her managers had considered whatever she told them about her health, and her ability to concentrate at work. They had been flexible about her working time. Adjustments were made following OH advice as well. He also reviewed whether she had been excluded from the team, or adequately supported, and did not uphold her complaints. Finally on sanction, redeployment was not appropriate, and she had been adequately supported during probation. Nor had the decision to terminate the contract been influenced by her employment tribunal claim.

Relevant Law

100. The Equality Act 2010 prohibits direct discrimination in section 13: “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”. When making comparisons between A&B, section 23 provides that “on a comparison of cases... there must be no material difference between the circumstances relating to each case”. This can include each person's abilities, in a disability case.

101. Disability is a protected characteristic (section 6).

102. Section 15 provides that in the case of disability, it is also prohibited to discriminate against a disabled person if “A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.” However, that 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”.

103. Also special to disability is section 20, which seeks to level the playing field for disabled people by imposing on employers a duty to make adjustments where a “provision criterion or practice” (PCP) puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled”. The duty is “to take such steps as it is reasonable to have to take to avoid the disadvantage”.

104. The Equality Act also prohibits harassment related to a protected characteristic. Section 26 defines harassment: “A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating these dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B”. When a tribunal decides whether conduct has that effect, it must take into account each of the following: the perception of B, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect. As for being related to the protected characteristic, “section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be. **Tees Esk v Islam UKEAT/0039/19/JOJ** .

105. Victimisation is prohibited by section 27. It occurs where a person is subjected to detriment because they have done a protected act, and a protected act includes bringing proceedings under the equality act, and making an allegation that someone has contravened the act. Detriment means that a reasonable worker would take the view that he had thereby been a disadvantaged in the circumstances in which he had thereafter to work - **de Sousa v AA 1986 ICR 514**, but “an unjustified sense of grievance cannot amount to detriment” -**Barclays Bank V Kapur number 2 (1995) IRLR 87**.

106. Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

108. How this is to operate is discussed in **Igen v Wong (2005) ICR 931**. The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts. If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is “in no sense whatsoever” because of the protected characteristic. Tribunals are to bear in mind that many of the facts require to prove any explanation are in the hands of the respondent.

109. **Anya v University of Oxford (2001) ICR 847** directs tribunals to find primary facts from which they can draw inferences and then look at: “the totality of those facts (including the respondent’s explanations) in order to see whether it is legitimate to infer that the actual decision complained of in the originating applications were” because of a protected characteristic. There must be facts to

support the conclusion that there was discrimination, not “a mere intuitive hunch”. **Laing v Manchester City Council (2006) ICR 1519**, explains how once the employee has shown less favourable treatment and all material facts, the tribunal can then move to consider the respondent’s explanation. There is no need to prove positively the protected characteristic was the reason for treatment, as tribunals can draw inferences in the absence of explanation – **Network Rail Infrastructure Ltd v Griffiths-Henry (2006) IRLR 88** - but Tribunals are reminded in **Madarrassy v Nomura International Ltd 2007 ICR 867**, that the bare facts of the difference in protected characteristic and less favourable treatment is not “without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent” committed an act of unlawful discrimination”. There must be “something more”.

Discussion and Conclusion

Discrimination arising from disability.

110. The claimant's case is that because of her disabilities she was unable to leave the house on occasion, was more likely to be absent from work because she was physically unwell, and more likely to be absent from work because she was mentally unwell. As a result, she was treated unfavourably by enforcement of the rule that she had to attend the office two days a week, and by changing have permission to work from home.

111. In our findings she was not required to work two days a week because she could not leave the house, was absent from work, or mentally unwell. She was required to work two days a week because all UCL employees were required to work two days a week from the 27th of January 2022, on the lifting of lockdown restrictions. This had nothing to do with any consequences of disability.

112. Nor is it right to say that respondent changed her work from home permission in place prior to March 2022. As far as we know, all staff were working from home until the 27th of January, when the respondent decided to get him back to work. This had nothing to do with any consequence of the claimant’s disability such as sickness absence or inability to leave the home. In any case, respondent did not know about any physical disability until 12th May at the earliest. If we are wrong, and she was disabled by depression from March 2022, we find that the respondent knew that. The claimant had referred to being stressed and anxious immediately after the bereavement in February, extending into March, but as far as they knew, this was a one off episode which, as related by the claimant, was improving. Nor was there any reason why they should have known that. As related by the claimant, it was related to a bereavement. The section 15 claim fails.

Direct discrimination because of disability

113. This claim is about the respondent failing to provide any cover when the climate was away from work from 11th to 14th and 22nd to 24th of March 2022, to deal with incoming work or clear the backlog. She compares her treatment firstly to Jane Paterson, who was off sick with Covid in July 22, and Naz Siddique, when she was stressed and overloaded in May and June 2022.

114. The respondent's case is that when a staff member is absent, others would undertake essential tasks, the rest would have to wait. When the claimant was off work, this is what happened, but the other administrator was only working three days and her capacity was limited; academic staff dealt with some queries, sharing the Unit 3 in box. (This was before Felicity Aktepe took over and changed the system so as to funnel administrative tasks).

115. Taking Naz Siddique's case first, it is a relevant difference that she was only working three days in unit 3, and was over a prolonged period in March and April having to pick up and cover for the claimant's intermittent and unpredictable absences, as well as check her work as supervisor. Cover was not needed because Ms Siddique was absent (she was not), but because the workload had shot up. Thea Heintz helped where she could, principally in taking over regular supervision of the claimant's work. It is a relevant difference that part of Naz Siddique's stress was conflict with the claimant, leading to a change in supervisor in any event. The burden on her was much higher, not because the claimant was off sick, but because she was making a lot of mistakes: the precipitating event for the recruitment of the temp, Jamie Day, was the discovery at the end of April that the claimant had lost two days' worth of other people's works from the spreadsheet, the busy exam season was about to start, for which accurate work was essential, and additional demands on administrator time were made by having to check the claimant's work. She was not improving as hoped. The temp was not recruited because Naz Siddique had lost time from work and needed to catch up. This was a material difference in circumstances between the two cases.

116. In Jane Paterson's case, she had continued working for a few days with Covid, but then took sick leave for a week. A colleague, Katie Wood, volunteered to help with queries, it being the exam season, but Jane Paterson still had to pick up tasks on her return. When questioned about this in the hearing, the claimant said in evidence that she didn't mean the comparison was with the provision of cover, "it was about her getting more sympathy". We concluded that if it was about others helping out with tasks when someone was off sick, the claimant had similar treatment to Jane Paterson. Some of her work was covered. If it was about sympathy, the respondent had allowed time off at the time of the bereavement in February, but in March, the claimant's request to take special leave rather than sick leave had made her supervisor anxious whether she was not sick, but taking advantage for other reasons. For these reasons she was not less favourably treated because of disability (were depression to be a disability, which in our finding it was not at that date).

117. We do not therefore uphold the direct discrimination claim.

Reasonable adjustments for disability

118. The first PCP is the requirement to be in the office two days a week. On the claimant's case, this put her at a disadvantage firstly because low mood made it difficult for her to engage with colleagues face to face, secondly, because the atopy meant that there were some days when she could not leave the house because of pollen, thirdly, because her joint pain from EDS made travelling difficult.

119. The claimant did not give evidence to the effect that because of low mood she could not face her colleagues. Thea Heintz gave evidence that when she got involved in the claimant supervision, she wondered if the short notice absences from the office were down to social anxiety, but the claimant had denied it. There is no note of that discussion, and the claimant said she did not remember this, but it remains the case that there is no evidence that the claimant could not face her colleagues until the summer months. The claimant's timeline, attached to the grievance, states that academic staff emails came across as "ganging up", so she "decided to avoid team catch ups and the office overall". Unlike other parts of this narrative, there is no specific date, but following the sequence it appears to start at the end of May or June, when the claimant raised the point with Felicity Aktepe. It does not therefore account for absence from the office in the earlier period, when she was repeatedly absent or changing her days. On detailed examination, the stated reasons for not coming into the office or changing her day for office work were usually because of building work. There were two occasions when blood tests made her decide to work from home. There were two occasions (June) when she did not come to the office because of a high pollen count. There was no evidence that she did not come to the office because of joint pain. The tribunal notes that although EDS causing joint pain is a lifelong condition, until lockdown she had usually worked in an office, and so had to travel to work on four or five days of the week, apparently without adjustment. The tribunal does not accept that disability put the claimant at a substantial disadvantage in complying with the two day week in the office requirement.

120. The second PCP is the policy of having the team attend meetings in person, not online. For the same reasons we do not accept that this put the claimant at a substantial disadvantage.

121. The third PCP is "a policy of enforcing adherence to a one hour lunch break". We know that in the first probation period it was noted that the claimant had taken a one hour 20 minute lunch break. It is the claimant's case that because of joint pain she needed to keep mobile and move around as often as possible, and a one our lunch break made it difficult for her to do that. The tribunal does not have any evidence that one hour was not enough for her to keep mobile. She never complained to that effect, as she could have done in commenting on the probation review notes. Without information from the claimant, a manager could reasonably assume that a long lunch break was nothing more than poor timekeeping. When her managers got the full list of health conditions in late May, she was promptly told that she was able to take as many breaks as she wanted to move around. Until then, they had no means of knowing that the claimant had this requirement, because she had never told them, nor had they had cause to enquire. The tribunal does not accept that the respondent was under any duty to make adjustment for disability until May at the very earliest, and when they knew about it, she was encouraged to take breaks, a reasonable adjustment.

122. The 4th PCP is that the respondent operated their policy on sickness and absence, leading to sickness absence warnings. In our finding, they did not use this policy. They used the probation policy, which covered time keeping and absence.

123. Operating the probation policy is the 5th PCP. It is the claimant's case that because of impairment by depression, making her reluctant to face colleagues, atopy, so she would not leave the house when there was a high pollen count, and joint pain, she was more likely to be absent from work on sick leave, and so more likely to fail her induction and probation period. The respondent's concern was not about the amount of sick leave she took, which was mostly in March, but about working from home when she was supposed to be in the office, and making changes at the last minute so her line manager could neither approve nor disagree, rendering her unreliable. Nor does the tribunal accept that pollen count was responsible for more than two days working from home or sickness absence, which over nine months made little difference to the perception of high performance. As stated before, there is no evidence that she worked from home because of joint pain. The given reason was usually building work. As for reluctance to face colleagues, this began at the end of May. It is plain from the notes of the meeting on the 27th of April that there were already serious concerns about the claimant's performance, such that by the 3rd May HR were being asked for advice on how to manage it, and for a budgetary exception to employ a temp to cover her. In any case, the respondent had no idea that if the claimant was disabled by depression or anxiety, that was the reason for avoiding working in the office. Thea Heintz explored whether this social anxiety was a reason, but the claimant did not say so, so she concluded that was not the reason for the claimant's reluctance. When informed of combative emails being a problem, both she and Felicity Aktepe took procedural steps to avoid staff contacting her directly with tasks or criticism. That was not because of any disability that they knew about – or ought to have known about. Anyone would be upset by thoughtless public sniping. If the claimant was disabled by depression (so less able to shrug this off) and so at a substantial disadvantage, it was not reasonable for the employer to make an adjustment to their perception of reluctance to engage with the team, as they did not know she was worse affected than others would be, or that their measures had not had the required effect. The claimant's comments that staff were more "chilled" suggest it did have a beneficial effect.

124. The 6th PCP is the respondent having rigid start and finish times, 10:00am to 6:00 pm, said to put the claimant at a substantial disadvantage because "atopy caused her to be sluggish and slow to get up in the morning", making her more likely to be late for work, and disciplined as a result. There was no evidence that atopy caused her to be sluggish in the mornings. The claimant never mentioned sluggishness as a reason for being late for work. On two occasions she had asked to start *earlier*, and in this hearing the claimant said this was because she wanted to avoid rush hour. The tribunal does not find that the claimant was at a substantial disadvantage because of this disability and even if she was, there was no reason for the respondent to understand that an adjustment to her working hours was required.

125. The 7th and last PCP is that they managed poor performance. The claimant's case is that stress or depression or anxiety meant that she was less likely to apply herself to the job properly and perform well, and so more likely to be managed for poor performance. In our finding, if the claimant was disabled by depression or anxiety in the relevant period, there is no evidence that the respondents either knew that she had that disability, or that they ought reasonably to have known about it. They did not know because the claimant did

not mention it until late in May, and then said that stress was related to the other health conditions. As for whether they ought to have known about it, there is a text message from the claimant in February, cut off so we do not know the exact date or who she was sending it to, saying "I just can't bear to deal with people at this present time with what's going on. Normally I would have more energy for it. They are too much and everything is unnecessary difficult. Last night was another example. They know these things are everything week and still can't get it together". This was at the time of the bereavement. There's another text neither the date nor the recipient is shown, where the claimant says "intention of going into the office, it gave me anxiety and made me realise I'm not ready. I think I rushed myself and it's too soon and when I really thought about it. Only gave myself two days off last week I'm not sure if it will make sense to you but it's just the thought of having to sit in the office and socialise pretending everything is OK. I am happy to commit to the 28th but I think I need to give myself more time. Happy to catch up and talk about it". If this was sent to Naz Siddique, there is nothing in it to suggest that the claimant was impaired by depression, rather than feeling low because a recent bereavement. On 23rd March the claimant reported symptoms suggestive of Covid – chills and a fever - and Naz Siddique suggested a lateral flow test and taking the day off sick. The claimant replied that she had referred herself to occupational health "to manage my health because I am aware that certain health conditions do make me more vulnerable and I will keep you updated". There is nothing here to suggest that depression was the difficulty; the reference to vulnerability in the context of Covid suggests a physical condition. The message she sent to occupational health next day just said: "I have a number of disabilities and health concerns that I believe impact me at work", nothing more. The claimant provided the tribunal with a long list of page references in the bundle relevant to knowledge of disability, and we have been through them. Other than these two messages, they referred to covid/ flu, cramps, needing blood tests and gynaecological pain in February, and the high pollen count in June. We concluded there was no reason why the respondent ought to make enquires to find out whether the claimant was suffering depression which might require adjustment to any work policy.

126. We also concluded that complicated systems like Moodle (managed by Jane Paterson when the previous administrator was in post), and disorganised team communication, probably arising from lockdown habits, which Felicity Aktepe saw it as her duty when new in post to organise, played a part in the claimant's poor performance, and that the frequency of building work will have impaired her performance when working from home, irrespective of any low mood.

127. In summary, the respondent managed the claimant's performance in the light of information she gave them about shortcomings. No duty to make adjustments arose.

Harassment

127. The claimant's case is that from March to April 2022, the backlog of work meant that when she returned to work her colleagues' attitude became negative and competitive, amounting to harassment.

128. The first example is 16th May 2022. The claimant was off sick on 13th May. One of the lecturers asked by e-mail which students in his tutorial group were sitting exams that summer. Jane Paterson responded on the Monday morning at 9:41: "Sabrina ought to have been in touch with you last week to advise on who has registered for the unit 6 summer orals. S -can you advise? Your auto reply is still on. Are you working from 10:00 am today?". About an hour before, the claimant had emailed Thea Heintz and Naz Siddique that she was told on Friday to go to A&E after the weekend to have the abscess drained, and she was now at A&E. She asked to push back the catch-up that day to the afternoon, and to change her office days to Thursday and Friday. There is no reason why Jane Paterson should have seen this message. The claimant started work at 1:35 pm that day. Of course the claimant experienced Jane Paterson's "Sabrina ought to have been in touch with you last week", and the question whether she was working that day as unfriendly, even hostile. The question for the tribunal is whether that was its purpose, if not, whether it is reasonable to have that effect, and lastly whether it was related to disability. Jane Paterson's tone was unfriendly, especially as when she sent the e-mail the claimant was not due to start until 10:00 am. The immediate cause of absence was the abscess, which Jane Paterson cannot have known, and which is not a disability. Nor is it clear to us that Jane Paterson's unsympathetic tone related to EDS, atopy, or even depression. Taking a step back in the causation of her unsympathetic tone, it was the claimant's unreliable attendance record that made her brisk. In this, building work played the principal part, as did bereavement, and other health reasons unconnected to any disability.

129. The next example given is the probation meeting on 27th April 2022. She says she was unprepared, for lack of notice. Naz Siddique was combative and dismissive of health condition 1 (atopy), reported negatively on the claimant's poor performance, and told her she was not operating at grade 7 level. She dismissed the claimant's request to be referred to occupational health. The tribunal's finding is that we are all sensitive to negative criticism, but at a probation meeting assessing performance so far, criticism is required and expected. Further, as the claimant would not say what health conditions might require a referral, and as a manager has to justify a referral, and supply information to the occupational health adviser in the instruction letter, it was not unreasonable to say that there was no reason to do this. We appreciate that the manager's tone may have been brisk: she was covering the claimant's work as well as her own in 3 days, and was finding the claimant hard to manage as she was frequently changing her days in the office, or not coming in at all, at little or no notice. Undoubtedly the claimant experienced this as hostile. It was however unrelated to disability, as the claimant has not established that depression, even if a disability, was related to this treatment. Lack of sympathy is more likely to be related to the frequent building work, and the request for special leave, rather than sick leave, as soon as her permanent contract began.

130. The next example of harassment is the respondent failed to address the claimant's concerns about bullying and harassment related by the three claimed impairments, so creating a hostile working environment. Six complaints are relied on. The first is her report on 25th May about combative colleagues causing stress. However, within two days a meeting was arranged with her manager to discuss this, and in addition the respondent took immediate steps to shield the claimant from colleagues' emails about her work. Next, on 26th

July, the second probation review, the claimant explained to Thea Heintz that she believed she was being ousted from her role, and people were not responding to her emails about work. The ousting was the claimant's apprehension that Jamie Day had been hired to replace her. The reasons for this were discussed at the meeting, and there have been regular one to one meetings up to that time when the claimant could have raised this and been reassured. It cannot be said that there was a failure to deal with this concern when the claimant raised it. In July the claimant had asked about some new certificates to lecture only candidates and whether she should send a paper copy or digital one, and on what date. Not getting an answer she followed it up on 2nd August and had a reply from Felicity Atekpe that these were now in hand. The claimant asked for more information about this, so that she was in the loop and could advise candidates. She explains that she was concerned that she was being excluded, which she experienced as harassment. Of course this was because tasks were being routed through Felicity Atekpe, not direct to the claimant. An explanation of why this was happening would have helped, but as the claimant was not coming to team meetings, normal communication between staff members was impaired. There was a similar example on 16th August when the claimant emailed Felicity Atekpe and Jane Paterson about pathway 1 in September, when they would be back from leave, and whether she would be included and could prepare for it. There was no reply. It does not seem to have been followed up and we know that the claimant and the managers were on leave at various times until early September. It is presented as an example of exclusion. Jane Paterson's evidence is that she left it to Thea Heintz to deal with. Neither saw it as a complaint of bullying. There was another example with the claimant asking about progress and being told that the work had been dealt with on the 15th September. It was in fact a response by Felicity Atekpe, telling the claimant the administrative work for unit 4/6 was in hand, asking her to share enquiries as they should be going to the Part 3 inbox, rather her personal e-mail, and asking for an update on unit 3. The claimant said that she was not getting a reply about pathway one, and if enquiries came to her personal e-mail she was forwarding them to the inbox as instructed. She was uploading the marks as instructed, and was waiting for further information from Jane Paterson about other tasks. This reflects the anxiety of the claimant that she was being excluded, but we cannot see that it is reasonable to perceive this as creating an intimidating or hostile atmosphere, when it was the respondent's way of dealing with the claimant's concern about her treatment by the academic staff, and reducing the burden on the claimant so she could perform tasks accurately and in time, sharing out administrative work. If the lack of clear communication with the claimant about why colleagues were not contacting her direct about work, as they had done, was reasonably interpreted as hostile, it was not in our finding related to disability. It related to the perception that the claimant was unreliable, made too many mistakes, and relied on others telling her what to do rather than taking the initiative.

131. The last of the episodes presented as harassment, by failing to address concerns, is about the 3rd October 2022 meeting, when there was a discussion about Jamie Day's role, about work not coming in, and about the team having lost confidence in her. The claimant presented her concerns. Her manager discussed them. The claimant experienced the reasons as hostile and humiliating, but we doubt very much that Ms Heintz who hitherto had been firm and sympathetic, delivered the news that way. It was fair to tell the claimant

where she stood on passing probation. It was not related to disability. The work risk assessment had pointed to non-work factors causing stress, not the way the claimant was managed at work.

132. The next allegation of bullying is that she was micro managed between April and July 2022, and that this related to all or any of her impairments. By way of example, in April 2022 the managers produced a task list in Teams for the claimant's work. The claimant objects that messages between Naz Siddique and Jane Paterson were visible which should have been discussed privately with her. However, when there is remote working, and Jane Paterson commuted from Edinburgh, this is inevitable. The tone was accurate. At the time the claimant was objecting to being managed in detail at all (the message of 30th of March objecting that being reminded of outstanding tasks was penalising her for taking time off). The next objection is to the creation of the weekly e-mail list of the claimant's tasks for the week, in May 2022. The complaint is that she felt isolated. However, as noted, academic staff were critical of her administrative competence at that time irrespective of disability, of which they were unaware. Nor do we consider that managing someone who was till then not completing tasks on time or at all was reasonably perceived as hostile or intimidating.

133. The next episode alleged as harassment was on the 25th May, that when claimant produced an amended spreadsheet of marks for the all examinations, she was rebuked by Naz Siddique for not including a particular candidate's marks from November 2021 which she should have done then. The claimant explained what had happened. Jane Paterson weighed in that she did not need to access an earlier Moodle page to check it. The claimant explained again. It concluded with Jane Paterson conceding later in the day that she had been in error, adding "apologies". The tone of these exchanges could have been more collegial, but error was conceded promptly. However, we could not find that this related to disability. There is evidence that correspondence within the team, unrelated to the claimant, was from time to time spiky. If by this stage the team assumed that anything that went wrong was the claimant's fault it was because she did make mistakes.

134. The claimant also says that not being told that Jamie Day was being recruited shows that she was being ousted, without being told. She found out on the 11th July from a misdirected e-mail on a task the claimant regarded as hers. The tribunal accepts the respondent's contention that they are not obliged to tell staff they are recruiting. We know that there were no team meetings after June. There were weekly meetings with the manager. There seem to have been none between the end of June and 14th July. We know that on the 5th July, when Jamie Day started, the claimant had emailed that she was working from home because of building work again. We did not consider it unreasonable not to explain in detail before he started, or while he was there, and if the claimant was worried, she could have asked at a one to one. We did not consider this amounted to hostility.

135. The final episode alleged as harassment was at the beginning of July, when candidates had been asked to make submissions of work using an ID number, which had not been provided to them. The claimant reported that she had looked into it and was trying to find a solution. Felicity Atakpe replied: "it

would have been more sensible to have asked Naz or Jane before sending out this email?”. We assume that this means that she thought the claimant had sent out the e-mail asking candidates to use a non-existent ID number. The claimant replied saying that the emails to candidates were sent by the academic team. In other words, once again she was being blamed for mistakes she had not made. We can quite understand why she resented the assumption that it was her fault. Even so, and even when taken in conjunction with the 25th May episode, we cannot find that it was related to disability, for the same reason.

136. To conclude, many of these episodes were not reasonably perceived as hostile or intimidating conduct. But if they were, they were not related to disability.

Victimisation

137. The protected acts are the grievance of 18th of October, and presenting the employment tribunal claim at the end of December 2022. The respondent did not know about until the hearing on the 23rd of January 2023.

138. The treatment alleged as detriment is that she was denied a grievance investigation, a grievance meeting or process, with particular reference to Saima Alee's e-mail of 27th October. In our finding, investigating the claimant's grievance and having a hearing about it was reasonably conducted in the course of the probation review. The grievance related to the same matters as were being considered in the review. The probation policy provides that anything to do with probationers is to be handled under that policy, not a separate policy. The ACAS Code on discipline and grievance allows it. The hearing notes and the outcome letter show that the grievance was discussed thoroughly at the hearing, and responded to in detail, quite apart from the probation matters. Helen Crane was in error when she found that the claimant had been given two weeks bereavement leave in February 2022 (when in fact she took sick leave, and was allowed some days off) but that does not show that the grievance was not investigated. Taken overall this was not a detriment.

139. Finally, it is claimant's case that she was victimised for her grievance and her tribunal claim by the dismissal, and the unsuccessful appeal. It was clear to the tribunal that on 3rd October 2022, even before the claimant lodged her grievance, the claimant was told that she was likely to fail probation, and the inevitable result of that was dismissal. We agree with the respondent that there is no reason why they should redeploy someone who fails probation to another job. As for the appeal, it was conscientiously considered, Geoff Dunk checked some new points, and had some documents supplied by the claimant that were not available to Helen Crane. He prepared a very full grievance outcome which took account of the evidence he had and answered the appeal points. As he put it himself, knowing that there was a tribunal claim would make him more careful to deal with it properly, not less.

140. The victimisation claim also fails.

Conclusion

141. In conclusion the tribunal wish to say that the claimant did not present in the contemporary documentation as incompetent. The administration systems were not straightforward, and relied quite heavily on input from Jane Paterson on Moodle, for example. The claimant had performed well as a temp. It seemed to us she was unfortunate that at a stage when she had to step up as a permanent employee, she had to suffer extensive building work which must have been disruptive even when working from home. This, rather than any stress from bereavement in February 2022 seemed to us the factor likely to have affected her performance adversely.

Employment Judge Goodman
Dated 25 September 2024

JUDGMENT AND REASONS SENT to the PARTIES ON
27 September 2024

.....
.....
FOR THE TRIBUNAL OFFICE

APPENDIX

LIST OF ISSUES

Subject only to the outcome of the application to amend the claim

NOTE: The Claimant expressly confirms that no discrimination is alleged prior to 1 March 2022. This is because the Claimant was not an employee with the respondent until 1 March 2022. Any information about before 1 March 2022 is background information only.

1) Time limits

- a) Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - i) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - ii) If not, was there conduct extending over a period?

- iii) If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- iv) If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - (1) Why were the complaints not made to the Tribunal in time?
 - (2) In any event, is it just and equitable in all the circumstances to extend time?

2) Disability

- a) Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - i) Did they have the following physical or mental impairments:
 - (1) **Linked stress, anxiety and depression and recurrent abscesses (physical and mental impairment);**
 - (2) **Atopy (physical impairment)** including the linked conditions of asthma, angioedema, chronic urticaria and year-round allergic rhinitis.
 - (3) **Ehlers Danlos syndrome type 3 (“EDS”) (physical impairment).**
 - ii) Did it have a substantial adverse effect on her ability to carry out normal day-to-day activities?
 - iii) If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - iv) Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - v) Were the effects of the impairment long-term? The Tribunal will decide:
 - (1) did they last at least 12 months, or were they likely to last at least 12 months?
 - (2) if not, were they likely to recur?
 - vi) If the effects lasted less than 12 months, why does the claimant say they were long-term?
 - vii) Has the claimant had medical treatment, including medication? If so, what and when?

- viii) Has the claimant taken other measures to treat or correct the impairment(s)? If so, what and when?
- ix) What would the effects of [the impairment] have been without any treatment or other measures? The claimant should give clear day-to-day examples, if possible.

Relevant Dates

- b) What were the relevant dates for when each impairment was said to have fitted Section 6? The Claimant relies upon the following dates:

Discrimination arising from disability.

- i) **1 March 2022** para 4b particulars of claim ("POC") p240 PH bundle;
ii) **6 April 2022** para 4c POC p241 PH bundle;
iii) **26 April 2022** para 4d POC p241 PH bundle.

Reasonable adjustments

- iv) **1 March 2022** para 3b POC page 236 PH bundle;
v) **On or about 27 April 2022** para 3aa page 239/240 PH bundle;

Direct discrimination

- vi) **9 – 14 March 2022** para 4h POC page 242 PH bundle;
vii) **22 – 24 March 2022** para 4h POC as above.

Harassment

- viii) **30 March 2022**
ix) **27 April 2022** – para 5i POC page 245 PH bundle
x) **16 May 2022** – para 6L POC page 248
xi) **25 May 2022** – para 6y POC page 250
xii) **5 July 2022** – para 6dd, ee and ff POC pages 251/252
xiii) **26 July 2022**- para 5i POC page 245
xiv) **5 August 2022** – para 6ff POC page 251
xv) **16 August 2022** – para 6ff POC page 251
xvi) **15 September 2022**
xvii) **3 October 2022** – Date the Claimant alleges it was clear to her that issues would not be responded to.
xviii) **13 June 2023** – date of dismissal and when the Claimant says it was clear to her that issues raised in the meeting on 3 October 2022 would not be addressed.

Alleged constructive or actual knowledge

- c) When was the disability said to have affected the Claimant?
 - i) The Claimant alleges **impairment 1** first started in July 2010 and is ongoing. The Claimant says she first told the Respondent about this issue in February 2022 via text messages and in documents sent to Naz Siddique **Para 3 POC**.
 - ii) The Claimant alleges **impairment 2** first started from birth, but the effects of this impairment did not start until in or around February 1999. The Claimant alleges she first informed the respondent about the condition in or around November 2021 via text messages to Naz Siddique. **Para 3 POC**.
 - iii) The Claimant alleges **impairment 3** is a hereditary condition that started from birth. However, she first became symptomatic in or around February 1999. The Claimant alleges she first informed the respondent of this impairment in or around November 2021 via Teams messages and calls. These were sent to or took place with Naz Siddique and Thea Heintz. **Para 3 POC**.

3) Discrimination arising from disability (Equality Act 2010 section 15)

- a) Did the respondent treat the claimant unfavourably by:
 - i) From March 2022 onwards and on 6 and 26 April 2022, the respondent enforcing a rule that meant the Claimant had to attend the office 40% of her working time;
 - ii) From March 2022 onwards, the Respondent changing the work from home permission that was in place prior to March 2022.
- b) Did the following things arise in consequence of the claimant's disability:
 - i) Because of her disabilities, the Claimant alleges she:
 - (1) unable to leave the house on occasion;
 - (2) was more likely to be absent from work because she was physically unwell; and
 - (3) was more likely to be absent from work because she was mentally unwell.
- c) Was the unfavourable treatment because of any of those things?

Justification defence

- d) Was the treatment a proportionate means of achieving a legitimate aim?
The respondent says that its aims were:
- i) the need to ensure a competent level of performance in role; and / or
 - ii) the need for individuals to work in a hybrid way and attend the office to undertake tasks effectively, efficiently and build and maintain working arrangements.
- e) The Tribunal will decide in particular:
- i) was the treatment an appropriate and reasonably necessary way to achieve those aims – the Respondent's case is that it acted proportionately, providing support and flexibility in implementing its aims;
 - ii) could something less discriminatory have been done instead;
 - iii) how should the needs of the claimant and the respondent be balanced?
 - iv) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability?
 - v) If so, from what date?

4) Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

- a) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability?
- b) If so, from what date?

First requirement claims (PCP)

- c) A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
- i) A policy of employees in the Claimant's team needing to be in the office 40% of the time **PCP1**;
 - ii) A policy of employees in the Claimant's team having to attend meetings in person **PCP2**;
 - iii) A policy of enforcing adherence to a one hour lunch break **PCP 3**;
 - iv) Operating the Respondent's policies about sickness and absence **PCP 4**;

- v) Operating the Respondent's Induction and probation policy **PCP 5**;
- vi) The Respondent's practice of having rigid start and or finish times of 10am to 6pm **PCP 6**;
- vii) The Respondent managing poor performance **PCP 7**.

Disadvantages

- d) Did the PCPs put the claimant at a substantial disadvantage compared to someone who is not disabled, in that:
 - i) The Claimant alleges that **PCP 1** put the Claimant at the following disadvantages:
 - (1) Because of her stress/anxiety/depression causing low mood, having to engage with colleagues face to face could be a challenge meaning that the Claimant was less likely to comply with the 40% attendance rule leading to poor performance/discipline.
 - (2) Because of her Atopy, there were days where the Claimant was not able to leave the house because of pollen, meaning she was less likely to comply with the 40% attendance rule leading to poor performance/discipline.
 - (3) Because of her EDS joint pain and knee pain making it challenging to come into the office meaning the Claimant was less likely to comply with the 40% attendance rule leading to poor performance/discipline.
 - ii) The Claimant alleges that **PCP 2** put the Claimant at the same disadvantages as for PCP 1.
 - iii) The Claimant alleges that **PCP 3** put the Claimant at the following disadvantages:
 - (1) Because her EDS causes joint pain, muscular spasms and locked joints, the Claimant needed to keep mobile and was advised to move around as often as possible. The one hour lunch break rule made it difficult for the Claimant to adhere to that advice or risk possible poor conduct allegations.
 - iv) The Claimant alleges that **PCP 4** caused the following disadvantage:
 - (1) Because all three impairments meant the Claimant was more likely to be absent from work on sick leave, the PCP meant that the Claimant was more likely to be managed through the respondent's

sickness absence policy leading to escalation and sickness absence warnings.

- v) The Claimant alleges that **PCP 5** caused the following disadvantage:
 - (1) Because all three impairments meant the Claimant was more likely to be absent from work on sick leave, the PCP meant that the Claimant was more likely to fail her induction and probation period.
- vi) The Claimant alleges that **PCP 6** caused the following disadvantage:
 - (1) Because the Claimant's atopy caused her to be sluggish and slow to get up in the morning, the Claimant was more likely to attend work late and therefore more likely to be disciplined as a result.
- vii) The Claimant alleges that **PCP 7** caused the following disadvantage:
 - (1) Because of the Claimant's stress/depression/anxiety impairment, she was less likely to be able to apply herself to her job properly and perform well and therefore more likely to be managed for poor performance as a result.

Knowledge

- e) Did the respondent know or ought reasonably to have known that the Claimant had the disability alleged?
- f) Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

Adjustments the Respondent allegedly failed to make

- g) What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - i) **All PCP disadvantages:**
 - (1) On 1 March 2022 onwards the respondent failed to:
 - (a) allow the Claimant to work from home;
 - (b) to allow the Claimant flexibility at work in terms of moving around the office from 27 April 2022;
 - (2) From 27 April 2022 onwards, the Respondent failed to allow the Claimant to attend meetings via Teams rather than in person;
 - ii) **Specific to PCP 3 and 6 disadvantage:**
 - (1) From 27 April 2022 onwards, the Respondent failed to:

- (a) allow the Claimant to move around the office flexibly by allowing her 5 – 10 minutes away from her desk every hour;
- (b) allow flexible start and finish times;
- (c) to provide flexibility with working hours.

iii) Specific to PCP 4, 5 and 7 disadvantage:

(1) From 1 March 2022 onwards and on 27 April 2022, the Respondent failed to:

- (a) Show leniency in managing poor performance;
- (b) Show leniency in applying the induction and probation policies;
- (c) Show leniency in applying the sickness and absence policies.

h) Was it reasonable for the respondent to have to take those steps and if so when?

i) Did the respondent fail to take those steps?

5) Direct discrimination (Equality Act 2010 section 13)

a) Did the respondent subject the claimant to the following acts or omissions compared to how the respondent did or would have treated a person either real or hypothetical who was in circumstances that were the same or not materially different from those of the Claimant:

i) On 9 – 14 and 22 – 24 March 2022, the Respondent failed to provide any cover for the Claimant's work to clear any backlog or incoming work and many incoming emails were left for the Claimant to action upon her return.

ii) The Claimant alleges that this was less favourable treatment compared to her colleagues Jane Paterson and/or Naz Siddique. Katy Wood covered for Jane Paterson whilst she was off sick with Covid in July 2022 and Thea Heintz assisted Naz Siddique when she too was feeling stressed and overloaded in May and June 2022.

b) Was that less favourable treatment?

c) If so, has the Respondent proved that the treatment complained about was in no sense whatsoever because of the protected characteristic?

d) Did the respondent's treatment amount to a detriment?

6) Harassment related to disability (Equality Act 2010 section 26)

a) Did the respondent do the following things:

i) It is the Claimant's case that on or around March or April 2022 when she was absent from work a lot, there was a lot of work that was left and a backlog. From this date onwards and when the Claimant returned to work, she alleges that the attitude towards her from her colleagues changed and became negative and combative as below:

- (1) On the 16 May 2022, despite notifying Naz Saddique and Thea Heintz that the Claimant needed to attend A&E due to being advised by her GP to attend to have her abscess under her armpit assessed and dealt with, the Claimant came back to work to see an email from Jane Paterson to the Bartlett Mailbox copying in Felicity Atekpe, Naz Saddique, Katy Woods and Femi Oresanya (another course tutor) saying, "*Femi, Sabrina ought to have been in touch with you last week to advise on who has Registered for the Unit 6 Summer Orals. S - can you advise? Your auto reply is still on. Are you working from 10am today?*" The Claimant alleges this was humiliating because it was a public email and showed no concern for her wellbeing.
- (2) On 27th April 2022, the first probation meeting, the Claimant alleges she was presented with a hostile environment. The Claimant says she was not made aware that this meeting was going to happen until half an hour before it commenced so was unprepared. In the meeting, Naz Saddique was very combative and dismissive of the Claimant's condition (namely impairment 1) and reported very negatively about the Claimant's performance. NS said that the Claimant was not operating at grade 7 level and when the Claimant asked her to refer her to occupational health, NS asked her why she needed to be referred and when the Claimant suggested that it was for reasonable adjustments to be made, Naz Saddique came across as hostile and dismissive generally.
- (3) Between March 2022 and October 2022, the Respondent failed to address the Claimant's concerns about bullying and harassment raised about impairments 1, 2 and 3 this created a hostile, intimidating and degrading working environment. The dates the complaints were failed to be dealt with as alleged were:
 - (a) On 25 May 2022 @11:02am, the Claimant emailed Felicity Atekpe to state that she was concerned about her work environment causing stress and colleagues becoming combative copied to Thea Heintz.
 - (b) 26 July 2022 the Claimant explained to Thea Heintz that she believed she was being ousted from her role and there had been a failure to respond to emails about the Claimant's work;
 - (c) On 5 August 2022 @ 10:25 the Claimant emailed Felicity Atekpe copied to Naz Saddique. The Claimant sent an email in response

Case No: 2212188/2022

to some work because the Claimant alleges, she was being ousted from her role. The Claimant says the email was about candidate certificates following candidate enquiry and Felicity responded by saying this work was now in hand. However, this was work that was part of Claimant's role and when liaising with Nas Saddique after the time the Claimant had been absent, Naz Saddique stopped communicating with her and this supports the fact the Claimant was being ousted from her role, which created a hostile work environment. The Respondent allegedly failed to respond to this concern.

- (d) On 16 August 2022 @ 11:09 the Claimant emailed Felicity Atekpe and Jane Paterson re "pathway one". This was about work that the Claimant alleges she had been chasing since May 2022 and the Claimant requested a meeting about inclusion in pathway one. This email was ignored. This is alleged to have created a hostile work environment and the Claimant felt she could not approach colleagues about work she was doing, creating more stress for her.
- (e) On 15 September 2022 @ 10:27 the Claimant emailed Felicity Atekpe copying in Jane Paterson and Thea Heintz. This was another example of where the Claimant was asking about the progress of a piece of work and Felicity responded again by saying that this work had been dealt with. The Claimant asked to know the objectives of the team and stated that pathway one email had not been responded to. The Claimant also requested to be kept in the loop with this work. This created a hostile environment by creating difficulty in doing her job and added to the negative comments about her performance.
- (f) On 3 October 2022, a meeting took place between the Claimant and Thea Heintz as a one-to-one meeting. The Claimant alleges that at this time no work was coming from the programme team and that her probation was unsuccessful but would be referred to Helen Crane because Thea Heintz thought the Claimant was too involved in the situation. During this meeting the Claimant alleges that she was being bullied in this role and advert had been released and a person recruited to do aspects of her work namely Jamie Day. It was communicated to the claimant that the team had lost confidence in her performance. The Claimant requested adjustments and the Claimant alleges her concerns were not being responded to. This created a hostile, humiliating and degrading environment. The Claimant alleges that she was constantly having to prove herself that she was doing the work requested of her.
- (g) The Claimant alleges that it was clear by 3 October 2022, that none of the previous emails were going to be responded to.

- (h) The Claimant alleges that issues raised in the meeting 3 October 2022 were not going to be responded to upon her dismissal 13 June 2023.
- (4) The Claimant alleges that from April 2022 until July 2022 the Claimant was micromanaged and, in her view, excessively monitored related to all or any of her impairments. The examples of this are:
- (a) In April 2022, there was a discussion between Naz Saddique and Jane Paterson about monitoring work and producing a task list in teams. In the chat function of this teams page the Claimant started to note that Naz Saddique was sending constant messages about various discrepancies she might find about the Claimant's work amongst the Claimant's team, when the Claimant believes this should have been discussed privately with the Claimant.
- (b) In May 2022, in response to the Claimant's request to meet with Felicity Atekpe, instead of meeting with the Claimant, Felicity created a system where she would meet with the team to discuss any objections to any work and decide what needed to be done, which resulted in an email list of what the Claimant needed to do every Monday and the Claimant would need to do the work in that list. The Claimant felt this was isolating her and created a hostile work environment. The Claimant felt she was being treated like a baby and constantly being monitored for reasons related to impairment 1.
- (c) On 30 March 2022 @12:01, the Claimant sent a teams message to Naz Saddique complaining about micro management and that the Claimant felt Ms Saddique was excessively creating meetings complaining about the Claimant's work and "nit piking" constantly which was stressful and combative. Naz Saddique in response distanced her work relationship from the Claimant and did not like the email. The Claimant alleges that Naz Saddique ceased line managing her and it was now Thea Heintz. This created a hostile work environment.
- (5) On 25 May 2022 @ 08:05 the Claimant received an email from Naz Siddique and this was in response to an email about face to face remote oral examinations. There was a discrepancy in some of the data sent to Jane Paterson and Jane highlighted this discrepancy in the data that the Claimant stated she would look into. The email from Naz Siddique copied in Jane Paterson, Felicity Atepkpe and Katie Wood and was sent to the main Bartlett mailbox that all colleagues had access to and, at some point, Thea Heintz got copied into it as well. Ms Saddique's email referred to previous instructions and allegedly criticised the Claimant publicly for not completing the data task correctly. Naz Siddique allegedly assumed that the Claimant hadn't done the work when the Claimant alleges that this was data that Naz Siddique had originally sent to the Claimant when she first

started. The Claimant hadn't produced the data. This public email triggered other colleagues then responding to the email criticising the Claimant publicly. This created a hostile, degrading and embarrassing situation related to the fact that the Claimant had been off with stress and people were not fact checking things before criticising the Claimant's performance.

(6) On 5 July 2022, Jamie Day was recruited into a role that covered part of the Claimant's work. The Claimant alleges that she was not informed of this recruitment exercise and that this proved that she was gradually being ousted from her role and this created a hostile work environment related to Impairment 1. The Claimant found out about this because an email on 11 July 2022 @ 14:39 was misdirected to the Claimant by Jamie Day when it was supposed to go to an external candidate, which would be a job that the Claimant says she would ordinarily be doing. The Respondent was also purposefully not using the general email inbox so that the Claimant would miss emails about work going on between members of the team, when it was firmly communicated earlier that year that all work emails should use the general team inbox.

(7) Also on 5 July 2022, Jane Paterson started absence because of sick leave. Ms Paterson notified the candidates of a piece of work that was a different variation to the work discussed with the Claimant and Katie Wood. When the candidates responded to the Unit 3 submissions, the wording used had created a frenzy with the candidates because it had caused confusion because they were asked to provide a Unique ID number with their submissions but Jane had failed to provide each candidate with their ID number to use. Katie Wood called the Claimant and said the Claimant needed to sort it out but was being very rue. An email was also received from Felicity Atekpe the same day saying that it would have been sensible for the Claimant to have checked with Jane or Naz Saddique before sending this information out to the candidates to avoid the confusion. Thea Heintz was copied into that email to create embarrassment and the Claimant alleges she had to respond to say this was Jane Paterson who had sent the information out. This was related to all three impairments because the sole reason for why these colleagues thought this was her fault was because of the previously created hostile environment and was an extension of the hostile environment from the date I started absences because of her impairments.

- b) If so, was that unwanted conduct?
- c) Did it relate to disability? The Claimant alleges that the conduct above was related to all or any of her alleged impairments.
- d) 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?

- e) If not, did it have that effect when taking into account:
- i) The claimant's perception;
 - ii) the other circumstances of the case; and
 - iii) whether it is reasonable for the conduct to have that effect?
- f) 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?
- g) Did the respondent treat the claimant less favourably because the claimant rejected or submitted to the conduct?

7) Victimisation (Equality Act 2010 section 27)

- a) Did the claimant do a protected act as follows in accordance with section 27 of the Equality Act 2010:
- i) 18 October 2022, the Claimant's grievance where she raises concerns about her disabilities and how they are being managed Protected Act 1;
 - ii) On 22 December 2022 the Claimant presented her ET1 claim form (Protected Act 2);

The Respondent admits that these are protected acts for the purposes of s27 but denies any mistreatment of the Claimant because of them.

- b) Did the Respondent do the following things:
- i) As a result of Protected Act 1, the Claimant was denied a grievance investigation, grievance meeting and process. The Claimant alleges the decision about denying the Claimant these things was made on or around 27 October 2022, by email at 08:55am from Saima Allee sent to the Claimant and her Union representative.
 - ii) As a result of protected act 2, the Claimant alleges she was dismissed.
 - iii) Also, as a result of protected act 2, the Respondent rejected the claimant's appeal against dismissal.
- c) By doing so, did it subject the claimant to detriment?
- d) If so, was it because the claimant did a protected act?
- e) Was it because the respondent believed the claimant had done, or might do, a protected act?

8) Remedy for discrimination or victimisation

Case No: 2212188/2022

- a) Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- b) What financial losses has the discrimination caused the claimant?
- c) Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- d) If not, for what period of loss should the claimant be compensated?
- e) What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- f) Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- g) Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- h) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- i) Did the respondent or the claimant unreasonably fail to comply with it?
- j) If so is it just and equitable to increase or decrease any award payable to the claimant?
- k) By what proportion, up to 25%?
- l) Should interest be awarded? How much?