



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108555/2022 and 4104300/2023

5

Held in Glasgow on 4, 5, 6, 7, 8, 11 and 21 December 2023

**Employment Judge L Wiseman
Members L Brown & J Burnett**

10

Mrs Marie Temporal

**Claimant
Represented by:
Ms E Matheson -
Solicitor**

15

Home Start Falkirk Ltd

**Respondent
Represented by:
Ms C Maher -
Solicitor**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous decision of the tribunal was to dismiss the claim.

25

The tribunal also decided the alleged acts or omissions occurring prior to the 20 July 2022 in claim number 4108555/2022, and prior to the 15 May 2023 in claim number 4104300/2023 were timebarred.

REASONS

Introduction

30

1. The claimant presented the first claim (4108555/2022) to the Employment Tribunal on the 29 December 2022. In that claim the claimant complained of disability discrimination and brought complaints of direct discrimination, discrimination arising from disability, indirect discrimination, failure to make reasonable adjustments and harassment.

2. The claimant presented the second claim (4104300/2023) on the 14 August 2023, in which she complained of constructive unfair dismissal and victimisation.
3. The tribunal heard evidence from the claimant; Ms Erin Brooks, a colleague; Ms Pamela Cardwell, a colleague; Ms Sandra Rankin, Manager of the respondent; Ms Anne Hemfrey, Chair of the Board of Trustees of the respondent; Ms Karen McGill, HR Consultant and Ms Heather Gibson, Paediatric Staff Nurse who is a volunteer trustee with the respondent.
4. The tribunal was also referred to a jointly produced folder of productions.
5. The claimant's representative, at the start of the hearing, applied to add a further folder of productions. The respondent objected to this and questioned the relevance of many of the documents. The tribunal retired to consider the claimant's application. The tribunal decided not to allow the claimant's motion to have a supplementary folder of documents accepted. The tribunal made this decision because the documents had been in the claimant's possession and could (if relevant) have been included in the folder of productions for the hearing (which already stood at some 786 pages). The tribunal noted the case had been due to be heard in August 2023 and all documents must have been ready and prepared for that hearing. In those circumstances there had been no explanation why there was an application to include documents at this very late stage.
6. The tribunal confirmed to the claimant's representative that if there was a particular document in the supplementary folder that became an issue, it should be raised and the tribunal's decision could be reconsidered at that stage. The tribunal did allow pages 86 and 104 of the supplementary folder to be admitted (these were pages from the claimant's diary noting a meeting on the 12 May where workload was discussed).
7. This case had, with the agreement of parties, been listed for a six day hearing. The Employment Judge made clear to the claimant's representative that she had three days for completion of her side of the case. The Employment Judge

had, on several occasions, to remind the claimant about time and the need to conclude within the time allocated.

8. The cases have been subject to case management and a list of issues agreed by the representatives was produced at pages 124 – 131 of the joint folder of productions produced for this hearing. The issues to be determined by the tribunal are set out at the start of each section of the tribunal's discussion regarding the complaints brought by the claimant.
9. The claimant has Psoriatic Arthritis and the respondent conceded she was a disabled person in terms of section 6 of the Equality Act at the relevant time of the alleged discrimination.
10. The respondent is a small registered charity providing support to vulnerable families with young children. The claimant commenced employment with the respondent in April 2021 and reported to Ms Sandra Rankin, Manager. The complaints brought in this claim relate to a period of ill health following the claimant injuring her knee, and ultimately becoming unfit for work some 9 months later and an alleged deteriorating relationship between the claimant and her line manager.
11. The tribunal, on the basis of the evidence before it and the documents to which we were referred, made the following material findings of fact. The Judgment is not a record of all the evidence heard and does not deal with all points about which the parties disagreed: it deals with the facts necessary to allow the tribunal to determine the issues.

Findings in fact

12. The respondent is a small registered charity which supports vulnerable families with young children.
13. The respondent employs 9 employees. Ms Sandra Rankin is the Manager and she is responsible for the day to day running of the service and directly manages the 8 other employees. The employees comprise Family Support

Co-ordinators, Group Workers and an Administrator. There is also a number of volunteers who are trained and provide support as required to families.

14. The contact which the respondent's employees and volunteers have with families is primarily face-to-face contact. Initial visits, in particular, are carried out in-person in order to see the family and observe interactions and agree what support is required. The respondent had to adapt this practice during the pandemic and periods of lockdown but as soon as was possible the organisation returned to in-person visiting and interaction.
15. There is a Board of Trustees all of whom are volunteers. Ms Anne Hemfrey is the Chair of the Board of Trustees. The trustees' focus is on finance and governance rather than the day to day operations of the respondent.

The employment of the claimant

16. The claimant commenced employment with the respondent on the 26 April 2021 as a Family Support Coordinator.
17. The claimant's Statement of Terms and Conditions of Employment was produced at page 138 and a job description produced at page 132.
18. The main duties and responsibilities of the claimant's post were to recruit volunteers, deliver their training and match them to families to provide support and supervision; support families through initial visits to decide what support was needed and to raise the profile of the organisation and the work it does.
19. The main responsibilities set out in the job description were not exhaustive, and the job description included a clause stating "*postholders may be required to undertake any other duties that fall within the nature of the role and responsibilities of the post as detailed above*". There was also a general expectation that employees would "all muck in" together, particularly if there was an absence to cover. The claimant, for example, volunteered to attend and help out at one of the Fun Days in July 2021, which she had enjoyed (page 173 and 174).

20. The claimant informed Ms Rankin at the commencement of her employment that she was very keen to do the Thrive course (which is an NHS course) and this was agreed.
21. The claimant, in common with all other employees except Ms Rankin and the Administrator, worked 25 hours per week. This was increased temporarily to 30 hours per week.
22. The claimant settled into the role very well. There were no concerns on the part of the claimant or the respondent up to September 2021 and the supervision meetings (for example, page 176) were positive.
23. The respondent has a number of policies in place including a Covid policy, a Stress policy and a Health and Safety policy.

The claimant's disability

24. The claimant has Psoriatic Arthritis. This was disclosed to the respondent at the commencement of the claimant's employment (page 134) when the claimant explained she took weekly medication and that in a previous occupational health assessment an electric sit-to-stand desk and a better chair had been provided.
25. The claimant also completed a Health Questionnaire (page 136) and, when returning this to Ms Rankin, she provided further information about the condition and her medication in an email (page 169).
26. Ms Rankin met with the claimant following her appointment to discuss her disability and what adjustments may be required. Ms Rankin understood from the claimant that she suffered "occasional flares" of her condition but these were not severe and should not impact on her doing the role.
27. Ms Rankin noted the equipment the claimant had had in her previous role, but further noted the previous role had involved sitting at a desk for 7.5 hours or more per day with minimum breaks. This was very different to the role the claimant would be undertaking with the respondent where approximately 70%

of her time would be out with families and 30% of her time would be at her desk.

28. Ms Rankin and the claimant spoke of adjustments that would be required and this was limited to regular hand-washing. There was no requirement for adjusted equipment at that time because the claimant would be out visiting families.

29. The claimant was provided with equipment for home working (because of the pandemic and lockdowns) and she had a laptop, mobile phone, wireless keyboard and mouse, footrest, desk, wrist support, mouse mat and a laptop stand/riser (page 152).

The knee injury

30. Ms Rankin received a phone call from the claimant in mid-September 2021 to advise that she had hurt her knee. It was agreed the claimant would have her knee checked out and in the meantime work from home.

31. Ms Rankin kept in touch with the claimant on an almost daily basis. On one such occasion the claimant informed Ms Rankin that she was in bed propped up, but still working. Ms Rankin advised the claimant this was not appropriate and that she must see her GP because it sounded like the claimant needed a couple of weeks off in order to recover. The claimant took this advice and had a self-certified absence of one week and then attended her GP on the 20 September and was signed off for a week as unfit for work because of the knee injury (page 180).

32. The claimant returned to work at the end of September and worked entirely from home. The claimant updated Ms Rankin by email of the 29 September (page 183) and 19 October (page 182). The claimant was having difficulty bending and extending her leg because of the injury to the knee. The claimant made reference to not being able to drive. Ms Rankin confirmed the claimant was working entirely from home at that time and there was no expectation that she would drive or leave the house to do any duties.

33. Ms Rankin emailed the claimant on the 19 October (page 181) asking if the claimant's GP could send information regarding adjustments, and noted that the claimant would continue with meetings online. Ms Rankin confirmed she would take over the claimant's initial visits so they could be done in-person and although this was not ideal they would have to manage as best they could.
34. The claimant visited her GP on the 27 October (page 186) and received a Fit Note confirming that she may be fit for work but would benefit from amended duties and workplace adaptations. The note stated "*Awaiting physiotherapy and under rheumatology specialist care. Unable to drive, manage stairs, walking any distance. Remote working and working from home are options. Would recommend occupational health review*". The Fit Note was for two months.
35. The respondent complied with the terms of the fit note by ensuring the claimant worked remotely from home. The claimant was not required to attend the office or visit families at their homes.
36. Ms Rankin passed the Fit Note to the Trustees so that a referral to occupational health could be made.
37. The claimant worked from home during the period September 2021 until the end of January 2022.

20 **The ergonomic assessment**

38. Ms Hemfrey contacted Ms Joanne Cook of Involve Occupational Therapy to carry out an occupational therapy ergonomic assessment and report. Ms Hemfrey made the decision to obtain an ergonomic report rather than an occupational health report because the focus of the report was to ensure the claimant's home working environment was satisfactory in terms of the equipment in place for the claimant to work at home.
39. Ms Cook visited the claimant at home on the 9 December and produced her report on the 15 December (page 217).

40. The report noted that the current desk being used by the claimant was too high and it was recommended that a more easily adjustable chair was purchased or an adjustable height table.
41. Ms Hemfrey sent the report to Ms Rankin so that Ms Rankin could meet with the claimant to discuss the report.
42. Ms Hemfrey and Ms Rankin believed the claimant had been sent a copy of the report by Ms Cook because this is what had happened in a previous case. In fact the claimant had not been sent a copy of the report. The claimant did not advise Ms Rankin, during their discussion, that she had not received the report. The claimant made no mention of this until the 25 July 2022. The report was provided to the claimant immediately she raised the fact that she had not received it.
43. Ms Rankin met with the claimant to discuss the report and the recommendations. The claimant initially expressed a preference for a new chair because she thought it could be taken to the office when she returned to work. However, it was likely the claimant would be hybrid working (at home and in the office) and so the discussion moved to focus on being provided with a new desk. Agreement was reached that a new desk would be provided for the claimant for use at home and this was duly done in February. The claimant's existing chair was adjustable and could be used with the new desk.
44. The claimant completed a Display Screen Equipment (DSE) workstation checklist (page 153) in March 2022 after the desk had been delivered to her home in February 2022. The checklist identified a number of risk factors and asked a number of questions (for example, is it possible to find a comfortable keying position on the keyboard. A number of photographs were shown of good and bad keyboard positions for the hands). The claimant answered "yes" to each question and did not identify any action that needed to be taken.
45. Ms Rankin reviewed the checklist when it was returned by the claimant duly completed and understood from it that no further action was required.

Fit Notes and occupational health report

46. The claimant obtained a Fit Note from her GP dated 13 December 2021 (page 210). The Fit Note confirmed the medical issues related to “Psoriatic Arthropathy and meniscal tear” and that the claimant may be fit for work taking account of the following advice “amended duties”. There was a reference to the previous Fit Note and the discussion with occupational health (this was a reference to the Ergonomic Assessment carried out by Ms Cook).
47. The claimant was reviewed by her GP on the 31 January 2022 (page 239) and the Fit Note issued was in similar terms to above, but noted that “as per physio advice, struggles with stairs and inclines”.
48. The next Fit Note dated 18 March 2022 (page 252) noted the medical issue as being Psoriatic Arthropathy, and confirmed the claimant may be fit for work with amended duties and workplace adaptations. It further noted that “*due to limited movement, home working and reduced physical challenges from stairs*”.
49. The Fit Note dated 5 April 2022 (page 260) reiterated the medical issue and that the claimant may be fit for work with amended duties. It further noted that the claimant had problems with long standing, that stairs could be difficult and that she struggled to walk on an incline.
50. The Fit Note dated 24 June 2022 (page 291) advised the claimant was not fit for work because of psoriatic arthropathy and she was signed off for a month.
51. The Fit Note dated 21 July 2022 (page 306) noted the claimant was not fit for work and the reason for this was “psoriatic arthropathy and work related stress”.
52. The claimant remained unfit for work from June 2022 until the termination of her employment on the 15 June 2023.
53. The respondent adjusted the claimant’s duties following the advice in the Fit Notes. The claimant worked entirely from home in the period September 2021 until January 2022.

54. The claimant's recovery from the knee injury progressed and whilst she still struggled with stairs and inclines, she was able to manage some stairs and gentle inclines. The claimant started to drive again in May 2022. The claimant agreed to gradually take on more duties outwith her home when she felt able to do so, for example, she did, in February 2022, start to attend the Denny family group. Ms Rankin confirmed with the claimant prior to starting to attend the group, that she could access the building without difficulty.

Staff meeting on 12 January 2022

55. Ms Rankin met with some members of staff on the 12 January 2022. One of the issues for discussion was Family Groups. The Family Groups are an opportunity for families to come together to enjoy activities or have discussions. They are usually facilitated by a Family Group Worker and volunteers.

56. Ms Rankin informed the meeting that one of the Family Group Workers was absent on a period of sickness absence and so the Family Groups (which had had to stop temporarily) would need to be run differently. Ms Rankin and the Trustees had agreed the 5 groups should be condensed into 3, with groups being held in Bo'ness, Denny and Falkirk. Ms Rankin confirmed that she and the two Family Support Coordinators (the claimant and Ms Brooks) would help out by attending a Group. The plan was for Ms Brooks to take Bo'ness, the claimant to take Denny and Ms Rankin to take Falkirk. This was decided on the basis of Ms Brooks and the claimant living closest to the groups to which they were allocated. Students and volunteers would also be available to help at the groups.

57. Ms Rankin noted that she and the claimant would have a private discussion after the meeting to determine what role the claimant could take in circumstances where the claimant was still on restricted duties.

The Family Groups

58. The staff attending the Family Groups are required to collect and transport tea/coffee and play activities for the children from the respondent's premises

to the place where the group is being held. The venue for the group has to be set up: this is usually in two rooms so that there is a children's play area and a separate room for the parents. At the end of the group the tea/coffee and activities have to be packed up and transported back to the respondent's premises.

5

59. Ms Rankin and the claimant met to discuss what role the claimant could take in the Groups and it was agreed the claimant would not be expected to lift/carry or transport anything to/from the Group. There was no expectation or requirement of the claimant doing any physical tasks at the group: her role was to sit at the table in the parents' room and facilitate discussions. The claimant, who at this point was using a stick, confirmed to Ms Rankin that she could get to the Denny group venue and was content to attend the group.

10

60. The number of parents attending family groups varied each week, and a register of attendance was kept and entered on the Charitylog. The claimant was supported at the group by a number of other employees and volunteers. There is a fixed ratio of staff to parents at the groups.

15

61. The Denny group was a difficult group because the families knew each other well and it could be loud and difficult to control. The claimant struggled with this.

20

62. Ms Rankin, during a private return to work meeting in her office with a Senior Group Worker, to discuss how things had been in her absence, commented that the claimant was "*too soft for the Denny group*". This comment related to the fact the claimant was quiet and gentle and had struggled with the group. This had been recognised and so Ms Rankin and Ms Brooks had also attended the Denny group to help out. The claimant, unbeknown to Ms Rankin, overheard her comment.

25

63. The claimant was asked on one occasion to cover the Bo'ness family group. The claimant informed Ms Rankin that the disabled access ramp was too steep for her to walk up. Ms Rankin had assumed the disability access would be suitable for the claimant, but upon learning that it was too steep she agreed

30

with the claimant that she would not need to attend the group, and that she (Ms Rankin) would attend.

64. The claimant attended the Falkirk group on three occasions and raised on issues regarding this.

5 **The Manual Handling course**

65. A trustee decided it was important for all staff to attend manual handling training. Ms Rankin arranged for staff to attend the training. Ms Rankin understood the training would be online. This was the first time staff had attended such training and Ms Rankin was unaware of the content of the course.

10

66. Ms Rankin emailed the claimant on the 17 February 2022 (page 245) apologising for the short notice, but giving details for the manual handling training the following day. Ms Rankin noted she had thought the training was online but unfortunately it wasn't. Ms Rankin asked the claimant if she could attend at the training centre, and if not, she suggested one of the other employees could give the claimant a lift.

15

67. The claimant replied to Ms Rankin to say she too had thought it was an online course. She noted she had a PCR test that afternoon to check for Covid, and asked if there was anyone else who could attend.

68. Ms Rankin replied to explain no-one else was free to attend the training. She asked the claimant whether she would be well enough to attend if the PCR test was negative. Ms Rankin confirmed that if not, she would simply let the training centre know.

20

69. The claimant replied to say that if the test was negative she would attend the training but keep her mask on.

25

70. Ms Rankin acknowledged the claimant's email and said *"Don't think you have to go just because it's negative. It's about how well you feel too. Take care."*

71. The claimant subsequently phoned Ms Rankin to say the training centre was inaccessible. Ms Rankin, upon learning this, agreed with the claimant that she should not attend.

72. Ms Rankin subsequently learned that staff on the training course were required to lift and carry and she agreed the claimant could not have done this.

Meeting on 12 May 2022

73. Ms Rankin met with the claimant and Ms Erin Brooks on 12 May 2022. The purpose of the meeting was to look at the respective case-loads of the claimant and Ms Brooks in terms of the number of families they each had, the locations of the families, the complexity of the cases and access to the properties. The claimant, at this time, was driving again but struggled with stairs and inclines.

74. Home Start UK provides a benchmark of one family per number of hours worked in a week. The claimant worked 30 hours per week and, allowing 5 hours per week for training/projects, this meant the claimant had potential for supporting 25 families (although this was dependant on the level of support a family required).

75. The respondent produced a supplementary document prepared by Ms Rankin which listed all of the families on Charitylog, and whether they were being supported by her, Ms Brooks or the claimant. Ms Rankin does not usually carry a caseload, but she had taken on a number of families in order to carry out the initial visits whilst the claimant had been on restricted duties and because the number of families was at capacity.

76. Ms Rankin discussed with the claimant and Ms Brooks which families had concluded their support and so could be removed from the list, and who was best placed to take each family. The discussion looked at the level of support required for each family, where they lived and whether the property was accessible for the claimant. One family on the claimant's list lived on the third floor of a block of flats where the long corridors were frequently cluttered. This

was identified and the family was moved over to Ms Rankin's list. The move to Ms Rankin's list did not happen immediately but when the claimant noted it had not been changed, the move was put into effect.

- 5 77. The outcome of the meeting was that Ms Brooks' list of families was reduced from 20 to 12. The claimant's list of families was reduced from 16 to 12 and Ms Rankin's list was increased.

The Administrator

- 10 78. Mr Neil Hemfrey was employed as an Administration Assistant. He is Ms Anne Hemfrey's son. Mr Hemfrey took on tasks in addition to his role: for example, he developed Charitylog and trained staff to use this IT resource tool. He also developed the respondent's website and looked after its social media.

- 15 79. Ms Rankin approached the Trustees to advise Mr Hemfrey had taken on these additional duties. Ms Rankin was tasked with contacting employment agencies to establish what role his total duties amounted to. Ms Rankin informed the Trustees the role was that of Administrator and she provided them with a salary range. The Trustees (excluding Ms Hemfrey) accepted Mr Hemfrey's role had changed and expanded and they recognised this by changing his job title to that of Administrator.

- 20 80. The claimant's role did not change and/or expand. The claimant's attendance at Family Groups was not referred to in the Job Description but fell within the nature of the role and responsibilities.

Welfare meetings

- 25 81. Ms Rankin regularly spoke with the claimant (in welfare meetings and supervision meetings) to discuss how she was getting on. The claimant had been working from home but as her knee improved she started (February 2022) to attend the Denny family group once a week and occasionally at the office. The amount the claimant did outwith her home was determined by whether she could comfortably walk to, and access, the place.

82. The claimant made Ms Rankin aware (in March 2022) that her son was awaiting an autism assessment. She requested, and was granted, the day off once a date was offered for this. The claimant subsequently advised Ms Rankin that her son had been diagnosed with autism. In June 2022 (page 289) the claimant emailed Ms Rankin to advise her about her children's health and to inform her that her son had had a "*big meltdown*" following the diagnosis of autism.
83. Ms Rankin took notes of the meeting she had with the claimant on the 5 July 2022 (page 293) and she sent them to the claimant to check whether anything was missing or inaccurate. The claimant raised no issues with the note.
84. Ms Rankin, in her note, recorded the claimant had been signed off sick for a month (from June to July 2022) due to Psoriatic Arthropathy, which had flared quite badly and was causing extreme fatigue. Ms Rankin also noted the claimant believed the flare up had been caused by the stress she was currently experiencing and she went on to note all of the information which the claimant had provided regarding her sons. Ms Rankin and the claimant spoke of ways to reduce stress and Ms Rankin confirmed she would send the claimant the Self Care audio clips from the Wellbeing course she had attended.
85. Ms Rankin forgot to send the claimant the audio clips (which were freely available online in any event).

Occupational Health referral

86. Ms Rankin sent the claimant's Fit Note for June/July 2022 to Ms Hemfrey because the claimant had told Ms Rankin that the GP had wanted to sign her off for two months, but the claimant had objected and insisted on one month. The GP had commented "*that's the problem – you keep going back too soon*". Ms Hemfrey decided to obtain an occupational health report.
87. Ms Hemfrey completed the referral to occupational health (page 297) with Ms Rankin who had most of the information. Ms Hemfrey phoned the claimant on or about 14 July 2022 to explain an occupational health referral was being

made in order to receive a report regarding the long term prognosis and the claimant's capability to do the role. The claimant raised no objections.

5 88. Ms Hemfrey submitted the referral together with a copy of Ms Rankin's note (page 293) on 19 July (page 301). She received an email confirming the referral had been submitted successfully and stating "*please ensure your referred employee is aware of the content of this referral.*"

89. Ms Hemfrey emailed the claimant on the 19 July (page 303) to confirm Everwell Occupational Health had been appointed to conduct a full occupational health assessment, and sent a copy of the referral.

10 90. The claimant replied (page 304) to Ms Hemfrey stating the information on the form was "*completely incorrect*" regarding the equipment she had been given and the role she had been carrying out. The claimant requested a meeting.

15 91. Ms Hemfrey acknowledged the claimant's email and said she and Ms Rankin would be happy to meet to discuss this, but the referral had only included a factual account of the period since she had been signed off sick in September 2021. Ms Hemfrey asked the claimant to provide some written comments on the referral highlighting what she felt was completely incorrect.

20 92. Ms Hemfrey contacted Everwell to put the referral on hold until she had met with the claimant to discuss the matter. Ms Hemfrey advised the claimant she had done this, and also arranged a meeting for 25 July.

93. Ms Hemfrey noted that the day after the claimant had been sent the referral, she had visited the GP and obtained a Fit Note signing her off as unfit for work due to Psoriatic Arthropathy and Stress. This was the first time stress had been referred to on a fit note.

25 **Meeting on 25 July 2022**

94. Ms Hemfrey and Ms Rankin met with the claimant and Ms Brooks on 25 July 2022 and a note of the meeting was produced at page 315.

95. The claimant raised, for the first time, the fact she had not been provided with a copy of the Ergonomic Report. This came as a surprise to both Ms Hemfrey and Ms Rankin. A copy of the report was given to the claimant.
96. The claimant set out a long list of issues which included the fact she felt “very strongly” that she had been fulfilling all tasks asked of her. She referred to everyone working from home the previous Autumn, and therefore the fact she could not walk far or drive was irrelevant. The claimant thought her condition had been exacerbated by taking part in the Fun Days and by having to set up Family Groups. The claimant also referred to the Manual Handling course and again said she had been performing her role in its entirety.
97. The claimant made reference to the referral and said that although she was contracted to work 25 hours per week, she was currently working 30 hours; she felt she was a lone worker; everyone was working entirely from home; she had only been provided with a desk; she had problems climbing flights of stairs; no-one had ever asked her how far she could drive; she could undertake in-person training of volunteers and assist at family groups; she had not given permission for her sons’ medical condition to be released to a third party and she wanted a full investigation into why it had been said that she had been unable to carry out part of her role.
98. The claimant told Ms Hemfrey that she thought she was being made a “scapegoat” because the respondent wanted to dismiss her for capability. Ms Hemfrey denied this and assured the claimant that if she needed to one/two months off for complete rest and was then able to resume her full duties, that would be fine. The respondent simply wanted to obtain as full a picture as possible of the long term prognosis.
99. Ms Hemfrey was totally “gobsmacked” at the very long list of things the claimant was unhappy with regarding work and the way in which the service was run. Ms Hemfrey also considered the claimant was incorrect in a number of the assertions she had made: for example, by Christmas, people had been back working in the office; the claimant had been happy to take part in the

Fun Days and had never raised any issues before and the claimant had asked to increase her hours to 30 hours per week.

100. Ms Hemfrey asked the claimant if she was registered disabled. The claimant replied that she was unsure. Ms Brooks asked the claimant if she had a blue badge and the claimant confirmed she had. Ms Hemfrey asked this question because she was trying to access as much information as possible about the claimant's condition.
101. Ms Hemfrey reported the meeting to the members of the Board and it was decided the referral would be put on hold until a full investigation was done into the issues raised. Ms Hemfrey sent the claimant the notes of the meeting and advised her an investigation would be done (page 314).
102. The claimant told Ms Hemfrey that she had a list of issues and would provide Ms Hemfrey with a copy of it. Ms Hemfrey followed this up on the 15 August and was advised by the claimant that she had made progress pulling it all together and would have it to Ms Hemfrey the following evening (page 336).
103. The claimant had still not provided the list by the end of August and so Ms Hemfrey emailed her again. The claimant replied (page 343) to say that the delay was caused by her seeking advice. She also requested that the wellbeing/catch up meetings be done by someone other than Ms Rankin. Ms Hemfrey confirmed to the claimant that Ms Heather Gibson, Trustee, would carry out the wellbeing meetings (page 344).
104. The claimant emailed a document entitled "*Falsified Account of Marie Temporal, submitted to third party inc data breach*" on the 6 September 2022 (page 361 - 367).
105. The claimant also provided the respondent with an amended version of the notes of the meeting on the 25 July (page 368).

The investigation

106. Ms Hemfrey, on behalf of the Board of Trustees, carried out the investigation of the claimant's complaints. She did this by speaking with Ms Rankin and

reviewing all documents, notes and video recordings of meetings. Ms Gibson assisted in reviewing documents for accuracy and ensuring all responses by the respondent were factual.

5 107. Ms Hemfrey emailed the claimant on the 7 October (page 395) attaching a copy of the Trustees response to the complaints raised, and a letter regarding a return to work. The report ran to nine pages and set out each complaint made by the claimant and the response to it.

10 108. The letter to the claimant (page 405) referred to an email from the claimant stating she could not give a timescale for a return to work. Ms Hemfrey noted that an occupational health assessment would be arranged to determine when she was likely to be able to return to work and what reasonable adjustments would be appropriate to allow her to do so. Ms Hemfrey confirmed the referral form would be sent to the claimant before it was sent to Everwell.

15 **Referral to occupational health in October 2022**

20 109. The claimant objected to the respondent using Everwell to do the occupational health assessment (page 407). The respondent identified Ethos Health to do the assessment. Ms Hemfrey wrote to them on the 31 October (page 428) asking if they could undertake an assessment and also provide an estimate of cost and timescale for it to be done. Ms Hemfrey explained a member of staff, who suffered from psoriatic arthropathy had been on restricted duties from October 2021 until the beginning of June 2022, but had then been signed off as unfit for work, and remained so.

25 110. Ms Hemfrey received a response the same day indicating the occupational health physician had availability on the 8 November and if this was suitable they would send out a referral form for completion.

111. Ms Hemfrey emailed the claimant that day to ask if she could attend an appointment on the 8 November. Ms Hemfrey noted she had not completed a referral form yet, and would let the claimant see it before it was submitted.

112. The claimant replied to say she had an appointment that day. She also asked Ms Hemfrey to correct the information in the initial email because the claimant insisted she had performed her role per her job description and had not been on restricted duties.
- 5 113. Ms Hemfrey replied to say an appointment could be offered on the 15th November. Ms Hemfrey noted that the reason for stating the claimant was on restricted duties was because the Fit Notes had said the claimant was fit for work with amended duties, which the respondent had accommodated. Ms Hemfrey said that once the appointment was confirmed she would complete
10 the referral and include all the doctor's sick notes, the letter from the Consultant and the previous occupational health assessment.
114. The claimant replied to say that she had been carrying out her role as per her job description and what Ms Hemfrey had written gave a false impression of her.
- 15 115. Ms Hemfrey replied (page 425) confirming that no referral had been done yet. She reiterated that reference to restricted duties referred to the adjustments made by the respondent. Ms Hemfrey asked the claimant to confirm she would attend the appointment on 15 November where she would be able to provide a full account of the past year.
- 20 116. The claimant replied stating she was not on restricted duties and insisted it be corrected.
117. Ms Hemfrey replied to say that records showed the claimant was unable to drive from October to April and that she had difficulty climbing stairs during this time. Ms Hemfrey asked the claimant if that was incorrect.
- 25 118. The claimant replied with a lengthy explanation which did not answer Ms Hemfrey's question.
119. The email exchanges continued. Ms Hemfrey emailed the claimant on the 5 November 2022 (page 420) confirming there had been no breach of confidentiality and they wished to move forward to obtain an assessment to
30 focus on when the claimant could return to work and what adjustments may

be needed. Ms Hemfrey stated *“you seem to be preoccupied with dwelling on the past”*. Ms Hemfrey asked the claimant to confirm she was willing to attend the appointment on 15 November, or was she formally declining attendance.

120. The claimant replied and repeated that she was happy to attend occupational health but the information had to be corrected.
121. A referral form for an occupational health report was agreed with the claimant in March 2023 (page 448) and an occupational health report dated 25 April 2023 was provided to the respondent (page 455). The report confirmed the claimant was medically unfit for work due to her depression and anxiety and the psoriatic arthritis. There were no workplace adjustments that could facilitate a return to work. The report recommended an Individual Stress Risk Assessment to seek out practical and sustainable solutions. The report noted the claimant’s conditions carried a good prognosis with optimal treatment and suggested a further occupational health review in around 8 weeks.
122. Ms McGill picked up the issue of the Individual Stress Risk Assessment with the claimant and provided her with the form for completion in mid-May. The form was not ever completed by the claimant.

Secondment to cover the claimant’s post

123. The claimant was unfit for work from June 2022. The respondent tried different things to manage covering the work. The respondent decided, in March 2023, to offer another employee (who was a group worker) the opportunity of a three month secondment to the claimant’s post of Family Support Co-ordinator. The purpose of the secondment was to enable the respondent to deal with the current workload whilst also giving the employee the chance to gain experience in another aspect of work. The letter to the employee (page 442) confirmed no extension would be offered beyond the three month period.

Family Support Worker post advertised

124. The respondent was one of four charities invited by Falkirk Council to carry out pre-employability training. The respondent received a grant for this work and advertised for, and recruited, a Family Support Co-ordinator to deliver two

training courses. This was a completely new post. The contract for this post was for 25 hours per week and the contract will end in March 2024 when the funding ends.

125. The claimant was advised of this by email of 24 May 2022 (page 502).

5 **Claim to the Employment Tribunal**

126. The claimant contacted ACAS regarding early conciliation on the 19 October 2022 and the early conciliation certificate was issued on the 30 November 2022. The claim to the Employment Tribunal was presented on the 29 December 2022.

10 127. Ms Rankin became aware that staff were anxious that “*something was going on*” and that they believed it must be a financial issue and jobs were at risk. The trustees decided Ms Rankin should address the matter at a staff meeting in January 2023. Ms Rankin informed staff that the claimant had brought tribunal proceedings against the respondent. They were not to worry about
15 their jobs because the respondent had insurance.

The second investigation

128. The claimant was not happy with the outcome of her grievance and raised additional matters she wished to have investigated. The respondent did not deal with these additional issues because they understood that they would be
20 addressed by the tribunal proceedings.

129. The claimant advised Ms Gibson, at a wellbeing meeting in March 2023, that she wished to have these additional issues to be investigated. Ms Gibson advised the claimant to detail her concerns to the Board of Trustees. The claimant subsequently did this.

25 130. The respondent was subsequently advised by their representative that they were required to investigate these matters, and they duly did. Ms Hemfrey conducted a further investigation into the additional points raised by the claimant and, by letter of the 23 May 2023 (page 487 - 495) sent the claimant the outcome of the investigation.

131. The claimant appealed against the outcome (page 506). Ms McGill, HR Consultant, responded to confirm the appeal would be heard by Ms Moyra McKeand, Treasurer of the Board of Trustees and Ms McGill, who would attend as an Advisor. The date of 15 June was offered for the appeal.
- 5 132. An alternative date for the appeal was offered to the claimant on one of the dates noted by the claimant as being suitable. Ms McGill emailed the claimant on 8 June, to offer an appeal hearing on 23 June. Ms McGill followed this up twice because there was no reply from the claimant.

Resignation

- 10 133. The claimant resigned with immediate effect on 15 June 2023 (page 508). The claimant, in her letter of resignation, cited a failure to make reasonable adjustments; issues with public events and the working environment; breaches of the respondent's policies; unprofessional conduct; unwanted remarks and the fact all of her grievance points had been rejected, as the reasons for her resignation.
- 15
134. Ms McGill acknowledged the resignation on behalf of the respondent.

Credibility and notes on the evidence

135. The tribunal found the respondent's witnesses to be both credible and reliable.
- 20 Ms Rankin and Ms Hemfrey had a very good knowledge of the case and recall of facts. They were both very well able to explain what had happened and why it had happened. Their credibility was supported by the fact that they were willing to accept or concede points where appropriate.
136. Ms Rankin gave her evidence very openly and honestly and she impressed
- 25 as someone who actively supported her staff. We say that based on the evidence that adjustments were put in place quickly, Ms Rankin took on duties to ease staff pressures and the equipment required for staff was purchased for working at home.

137. Ms Rankin put adjustments in place very quickly to support the claimant. For example when the claimant injured her knee, she was immediately allowed to work from home and this only changed when the claimant was ready, willing and able to do more. Ms Rankin took on some of the claimant's duties (for example, initial visits). The respondent is a very small organisation and it was clear from the evidence generally and Ms Rankin's in particular that it was a supportive environment for staff.
138. Ms Rankin accepted that a comment had been made, in jest, at a staff meeting in October, when she had said "*It's better if you don't come, you'll just get in the way*". Ms Rankin accepted at the meeting on 25 July, that this had not been appropriate and she apologised for it.
139. There was one specific issue where we preferred the evidence of Ms Rankin to that of the claimant. The claimant asserted that on or about 12 May 2022 Ms Rankin said to the claimant that she *should* "*stop leaving everything to Erin*". Ms Rankin denied making that statement, and we preferred and accepted her evidence. We reached that conclusion because the claimant called Ms Brooks to support that the statement had been made, but Ms Brooks' evidence on this point was very shaky. Ms Brooks essentially did not know whether she had heard the comment or been told about it by the claimant. Furthermore, if the comment was alleged to have been made at the meeting on 12 May, there was evidence (page 364, being the claimant's own grievance document) where the claimant states Ms Brooks had left the room before the comment was allegedly made.
140. Ms Hemfrey was a witness who impressed the tribunal. She, again, acknowledged errors which had been made (for example, advising the claimant, in error, that her grievance would be dealt with by Home Start UK) and gave her evidence very clearly and in a straightforward manner. Ms Hemfrey acknowledged that she had not investigated the grievance by speaking to other employees. She did not consider this to be an error in circumstances where it was for Ms Rankin to answer the allegations made against her and provide the information which could be supported by paperwork. The investigation undertaken by the respondent was incredibly

thorough in terms of checking all available written and recorded evidence to check what the claimant said/alleged and to ensure that statements made by the respondent in response to the allegations were factual.

- 5 141. The claimant alleged Ms Hemfrey had said to her, on 14 July 2022, that it was becoming clear she had been hired for a job that she was not capable of doing. We preferred the evidence of Ms Hemfrey regarding this matter and accepted she had not made this statement. We preferred Ms Hemfrey's evidence because where she had made statements (for example, asking the claimant if she was registered disabled) she accepted it and so we found her evidence that she had not made the statement alleged, to be credible.
- 10 142. Ms McGill and Ms Gibson gave their evidence in a very clear and straightforward manner and there were no issues of credibility.
- 15 143. The tribunal did not find the claimant to be an entirely credible or reliable witness. The claimant was absolute in her evidence and there was no scope for her to have been wrong or mistaken in her view of events or for any version of events other than her own. For example, the claimant considered the wording of the referral to occupational health to have been incorrect and she essentially refused to attend occupational health until the respondent corrected it. There was no scope for the claimant to consider the respondent may have a view different to hers, or that she could discuss this with the occupational health physician. It also appeared to the tribunal that the claimant would happily engage in events or discussions but then seek to re-write history. This was a key theme throughout the claimant's evidence. For example, the claimant volunteered to attend a fun day to help out and told Ms Rankin at the time that she had enjoyed it. However, in the subsequent grievance the attendance at fun days was raised as an issue.
- 20 25 144. The claimant was very reluctant to accept or concede any points, and on occasions when she had to accept a point, her acceptance would be qualified.
- 30 145. The claimant also undermined significant parts of her evidence by making assertions in evidence in chief and giving a contrary answer in cross examination. The claimant, for example, insisted she had not ever worked

entirely from home. The claimant was taken through the timesheets for each week following her return from absence in September 2021 and accepted she had worked from home, entirely, during the period September 2021 until January 2022. The fact the claimant had, on one occasion, attended a family review with Ms Rankin, who drove, did not mean she was not working from home.

5

10

146. The claimant also refused to accept she had been on restricted duties because others had also been working from home and she had carried out the duties per her job description. There was no dispute regarding the fact staff worked at home during the lockdown restrictions but as soon as was possible staff returned to work, and by this we mean that staff returned to doing home visits. The claimant, during the period of her fit notes, was restricted insofar as she did not, and could not, carry out home visits until well into the second half of the period covered by fit notes.

15

20

25

147. The claimant was also prepared to make some serious accusations regarding the respondent without any evidence to support it. For example, the respondent produced pages from the Charitylog recording numbers attending at family groups. The claimant had no evidence to suggest the numbers were wrong or inaccurate, but instead of agreeing with the information or stating she did not know if the numbers were accurate, she suggested the extract from Charitylog was from a section which could be edited and therefore may have been tampered with. That was a very serious accusation to level against Ms Rankin/ the respondent in circumstances where the claimant did not have anything to support what she was saying. The claimant, when challenged, confirmed she was not accusing Ms Rankin of tampering with the information recorded, but still insisted the information could not be agreed. This was in contrast to the information noted by the claimant in minutes, or in her diary, which she expected to be accepted without challenge.

30

148. Ms Brooks was a credible witness who gave her evidence very fairly. She did not add anything to the claimant's case other than to verify there had been occasions when the claimant had become upset. Ms Brooks did confirm that at the family groups there had to be a certain ratio of staff to those present.

149. Ms Pamela Cardwell's evidence was limited because she only worked with the claimant for 3 / 4 months. Ms Cardwell confirmed she had helped the claimant at the family groups as much as possible. She also confirmed she knew the claimant was feeling stressed and that it was "snowballing".

5

Claimant's submissions

150. Ms Matheson presented a lengthy written submission which she read out. The written submission focussed almost entirely on the evidence given by the claimant and why it should be preferred to the evidence of the respondent.

10 151. There were several themes running through Ms Matheson's submissions:

- Ms Rankin and Ms Hemfrey took against the claimant because she was not capable of fitting in with the Home Start model of home visits;
- Ms Rankin took against the claimant because she believed the claimant had downplayed the impact of her disability at the commencement of her employment;
- The claimant had fulfilled all duties asked of her during the period September 2021 to June 2022;
- The fact the claimant worked from home was no different to other employees, for example, Ms Brooks and
- The claimant had not worked exclusively from home in the period September 2021 to June 2022.

15

20

152. The tribunal has considered the evidential submissions below.

153. Ms Matheson invited the tribunal to find the claimant's witnesses to be credible and reliable. Ms Brooks and Ms Cardwell were still employed by the respondent and it had taken courage and conviction to attend the tribunal and give evidence. Ms Matheson accepted Ms Gibson and Ms McGill were credible and reliable, but she described Ms Rankin and Ms Hemfrey's

25

evidence as being rehearsed and memorised, rather than answering the questions put in cross examination.

154. Ms Matheson, citing the case authorities of ***Price v Surrey County Council*** **UKEAT/0450/10** and ***Wilcox v Birmingham CAB Services Ltd*** **UKEAT/0293/10** invited the tribunal to depart from the list of issues in certain respects where it was necessary to vary the issue to reflect the evidence. For example, the list of issues specified that with regards to the complaint of direct discrimination, the less favourable treatment was that “on or around 3 August 2022, the respondent appointed an employee to an administrative position”.
5
10 In her submission, Ms Matheson invited the tribunal to deviate from the list of issues to reflect that the less favourable treatment related to the fact Mr Hemfrey’s post was re-evaluated and re-graded because he had taken on additional duties, whereas this did not happen when the claimant took on additional duties.

15 155. Ms Matheson produced an extensive list of authorities which included:

- (1) ***Price v Surrey County Council and Another - UKEAT/0450/10***
- (2) ***Wilcox v Birmingham Cab Services Limited - [2011] UKEAT/0293/10 2306***
- (3) ***Olasehinde v Panther Securities Plc UKEAT/0554/07/ZT***
- 20 (4) ***Sheikholeslami -v- Edinburgh University - UKEATS/0014/17/JW***
- (5) ***United First Partners Research v Carreras [2018] EWCA Civ 323***
- (6) ***Martin -v-Devonshire Solicitors [2010] UKEAT/0086/10***
- (7) ***Deer -v- Oxford University – UKEAT/0532/12, [2013] UKEAT/0532_12_1007***
- 25 (8) ***Wright v Silverline Care Caledonia Ltd (insert citation)***
- (9) ***Blackburn -v- Aldi Stores Limited – UKEAT/0185/12/JOJ***

(10) *Greenhof -v-Barnsley Metropolitan Burgh Council –
 UKEAT/0285/05/DZM*

(11) *Abertawe Bro Morgannwg University Health Board -v- Morgan -
 [2018] EWCA Civ 640,*

5 (12) *ECHR Statutory Code of Practice for Employment*

156. Ms Matheson also made reference to the cases of *Western Excavating Ltd
 v Sharp; Malik v BCC; Wright v Silverline Care Caledonia Ltd; Blackburn
 v Aldi Stores Ltd UKEAT/0185/12; WA Goold (Pearmark) Ltd v McConnel;
 Chindove v William Morrisons Supermarket plc UKEAT/0201/13* and
 10 *Greenhof v Barnsley Metropolitan Borough Council UKEAT/0285/05.*

Respondent's submissions

157. Ms Maher also presented a written submission which she spoke to. Ms Maher,
 referring to the case of *Ijegede v Signature Senior Lifestyle Operations
 15 Ltd 2022 EAT 4*, submitted the tribunal should not deviate from the list of
 issues unless variation is necessary or in the interests of justice, and neither
 was necessary in this case.

158. Ms Maher submitted that to the extent the claimant sought to rely on any
 alleged act or omission occurring prior to 20 July 2022 (in respect of the first
 20 claim) and 15 May 2023 (in respect of the second claim) those complaints
 were time barred and the tribunal did not have jurisdiction to consider them.

159. Ms Maher made submissions regarding the burden of proof and referred to
 the cases of *Madarassy v Nomura International plc 2007 IRLR 246* and
The Chief Constable of Kent Constabulary v Bowler UKEAT/0214/16. Ms
 25 Maher submitted that the fact the claimant fervently believed the respondent
 had acted unreasonably was not evidence that some form of discrimination
 had taken place. The respondent's position was that no evidence had been
 led which proved facts from which it could be inferred that discrimination had
 taken place.

160. Ms Maher invited the tribunal to accept the respondent's witnesses had been credible and reliable. The claimant's evidence, in contrast, did not sit well with the evidence in the joint bundle. Ms Maher cited an example where the claimant challenged the note of the 5th July, stating she would never identify her children as a source of her stress; but there was reference in the claimant's GP notes that referred to "stress with her 18 year old" and the diagnosis of autism.
161. The claimant, it was submitted, had undermined her own evidence and credibility and had used a scattergun approach to raise as many complaints as possible against the respondent (39 alleged acts of discrimination as well as a constructive dismissal complaint). The claimant had not been truthful in her account of events and accentuated matters which suited her perspective that she had been discriminated against. The claimant had also alleged that evidence provided by the respondent in the joint bundle had been falsified. There was not one shred of evidence to support that position and this pointed to the claimant being unreasonable and/or deliberately attempting to smear the character of Ms Rankin, Ms Hemfrey and Ms Gibson and bring their credibility into question.
162. Ms Maher submitted, with regard to the complaint of direct discrimination, that the alleged less favourable treatment did not take place and, even if it did, there was no evidence to suggest this was because of the protected characteristic of disability.
163. Ms Maher submitted, with regard to the complaint of discrimination arising from disability, that the claim was ill-founded. The unfavourable treatment alleged by the claimant did not happen and, even if it did, it did not arise from something in consequence of the disability. The something arising in consequence of disability was that the claimant struggled with stairs and inclines due to restricted mobility. This was not the reason why the claimant was required to carry out tasks which contravened her fit notes. The same submission was made in respect of the two other alleged instances of unfavourable treatment.

164. Ms Maher, in respect of the complaint of failure to make reasonable adjustments, invited the tribunal to prefer the evidence of Ms Rankin and find there had been an agreement to provide the claimant with a desk following the ergonomic assessment. Further, that Ms Rankin was aware of the content of the fit notes, and sought to ensure they were fully complied with. For example, Ms Rankin had a very accommodating approach and agreed the claimant should not do anything she was uncomfortable with. Ms Maher submitted that where the claimant had been asked to do something that she felt went against the advice of the fit notes, she simply told Ms Rankin she felt unable to do it, and Ms Rankin agreed she should not do it. There was no substantial disadvantage for the claimant.
165. The respondent arranged an ergonomic assessment because the claimant was working at home. It was only after the claimant was signed off as unfit for work in June 2022 that the respondent wanted to arrange an occupational health assessment. The claimant, it was submitted, acted unreasonably regarding this matter and this was supported by reference to the email trails. The claimant's insistence, for example, that the term "sick note" was amended to "fit note" demonstrated how difficult and pedantic the claimant was.
166. Ms Maher, in respect of the complaint of harassment, made submissions regarding whether the conduct alleged occurred, whether it was unwanted and whether it was related to the protected characteristic of disability. The detail of these submissions is dealt with below.
167. Ms Maher accepted, with regard to the complaint of victimisation, that the claimant had done the protected acts as alleged. The detail of the submissions is dealt with below.
168. Ms Maher submitted, with regards to the complaint of constructive dismissal, that the most recent act which the claimant said caused or triggered her resignation was the outcome of the grievance issued on 23 May 2023. The respondent's position was that the claimant delayed in resigning (until the 15 June 2023) and thus affirmed the contract. The claimant engaged with Ms

McGill in the intervening period in terms of an appeal against the outcome of the grievance and on recommendations in the occupational health report.

169. The handling of the claimant's grievance was not of itself a repudiatory breach of contract. The respondent carried out a reasonable grievance process considering its size and resources. It was submitted the last straw relied upon by the claimant did not give rise to a breach of trust and confidence. Further, viewed objectively and looking cumulatively across all matters relied on by the claimant, this was not a case where the respondent's actions overall amounted to a breach of the implied term of mutual trust and confidence.
170. The respondent submitted the claimant did not resign in response to the breach. The claimant resigned when she had acquired two years' service. The claimant had had the benefit of legal advice and waited until she had two years' service and for the outcome of the grievance because there was nothing else that she could rely upon.
171. Ms Maher invited the tribunal to dismiss the claim.

Discussion and Decision

Direct discrimination

172. The issues for the tribunal to determine in this complaint are:
- 1/ did the respondent subject the claimant to less favourable treatment when it (a) advised the claimant on the 12 May 2022 that her workload would be doubled and (b) appointed an employee on or around the 3 August 2022 to an administrative position. The comparators relied upon were (a) Erin Brooks and (b) Neil Hemfrey and
 - 2/ if so, was the reason for the less favourable treatment because of the claimant's disability.
173. The tribunal, in considering this complaint, had regard firstly to the relevant statutory provisions set out in section 13 of the Equality Act. This section

provides that “a person discriminates against another if, because of a protected characteristic, s/he treats that other less favourably than s/he treats or would treat others.” The claimant, in bringing a complaint of direct discrimination must show that the alleged treatment occurred, that it amounted to less favourable treatment in comparison to the treatment received by Ms Brooks and Mr Hemfrey respectively and that the reason for the less favourable treatment was because of the protected characteristic of disability.

10 ***Did the respondent subject the claimant to less favourable treatment on 12 May 2022***

174. The tribunal noted there was no dispute regarding the fact a meeting took place on the 12th May 2022, with Ms Rankin, Ms Brooks and the claimant present. The purpose of the meeting was to look at caseloads in circumstances where Ms Rankin recognised the organisation was working at capacity in terms of the number of families on the books. Ms Brooks referred to the meeting as “an allocations meeting” and that was a helpful way to describe the purpose of the meeting.

175. Ms Rankin prepared for the meeting by noting all families currently allocated to her, Ms Brooks and the claimant. The supplementary document produced by the respondent showed the lists and also, at the top of the document noted “expected workload”. In this section it was stated that Ms Brooks’ expected workload was 12 families and the claimant’s was 25 families. These figures were based on the benchmark of one family per hour of week worked. The claimant worked 30 hours per week, but after allowing 5 hours per week for training, the claimant would have had 25 hours and potentially capacity for 25 families.

176. The tribunal accepted Ms Rankin’s evidence, supported by Ms Brooks, that during the meeting they went through the lists of families and first removed the families who had come to the end of their support. They then discussed

each family in terms of the level of support required and complexity, together with their location in terms of accessibility for the claimant.

177. The tribunal also accepted Ms Rankin's evidence, supported by the supplementary document, that Ms Brooks started the meeting with 21 families, but support ended for 7 families and 2 were moved to Ms Rankin, leaving Ms Brooks with 12 families. The claimant started the meeting with 16 families, support was ended for 3 families, 2 families were moved to Ms Rankin and the claimant received one family from Ms Rankin, leaving the claimant with 12 families at the end of the meeting.
178. The claimant told the tribunal that she had 27 families at the start of the meeting, and also did the Denny and Falkirk family groups, volunteer training, Thrive and the Big Hope Big Futures projects. The claimant accepted her workload had been reduced to 15 families but asserted that "*in effect my workload was doubled*". The claimant referred to two documents from the folder of late productions not admitted. The document at page C86 provided a breakdown of families and the document at C104 was a note of the meeting made by the claimant. The claimant, based on this document told the tribunal she started the meeting with 25 families and that it reduced to 17 families.
179. The tribunal considered the claimant's evidence regarding the number of families she started and ended with to be confused and inconsistent. The tribunal preferred the evidence of Ms Rankin and the supplementary document and concluded from this that the claimant started the meeting with 16 families, and ended the meeting with 12 families: there was no doubling of the claimant's workload at the 12 May meeting.
180. The tribunal noted the claimant accepted, during cross examination, that on 12 May her workload had been reduced, but that her concern (our emphasis) was that it was "*due to go back up to double*".
181. The tribunal concluded, based on the evidence and the claimant's acceptance that her workload had been reduced at the meeting on 12 May, that the allegation made by the claimant has not been established. There was no doubling of the claimant's workload and there was no less favourable

treatment: accordingly, we dismissed this aspect of the complaint for these reasons.

Did the respondent subject the claimant to less favourable treatment when it appointed Mr Hemfrey to an administrative position

182. The tribunal next addressed the question whether the claimant had been treated less favourably when, on or about 3 August 2022, the respondent appointed Mr Hemfrey to an administrative position.

183. Ms Matheson invited the tribunal to deviate from the List of Issues because the less favourable treatment alleged was not in fact to do with the fact Mr Hemfrey was appointed to the post of Administrator, it was to do with the fact his role was re-evaluated and regraded. Ms Matheson, referred to the case of ***Price v Surrey County Council UKEAT/0450/10*** where it was said that a tribunal hearing the case is not required to “*slavishly follow the list presented to it*”. Ms Matheson invited the tribunal to deviate from the list of issues because this was a “slight diversion” and was necessary to properly capture the evidence.

184. The tribunal did not accept Ms Matheson’s invitation to deviate from the list of issues. We acknowledged a list of issues is not written in a tablet of stone, but its purpose is to set out what issues the tribunal must determine in terms of the component parts of a claim. The representatives agreed the list of issues, and, it is the basis upon which the parties have prepared for the hearing. It is for the claimant, having alleged less favourable treatment, to bring forward the evidence to demonstrate it (or from which the tribunal may draw an inference). The hearing is not an exercise in hearing evidence and then deciding what allegation should be made, which was effectively what Ms Matheson was endeavouring to do. I

185. The tribunal considered it was clear from the claimant’s evidence that she thought this aspect of the claim concerned the appointment of Mr Hemfrey to the post because she told the tribunal she had a background in administration and could have been considered for the role as redeployment; and, that she

5 did not think there was any requirement for additional administrative employees. It was only in cross examination, when the claimant had to accept there had not been an administrative vacancy and that Mr Hemfrey's title had been changed to reflect the increase in his duties, that the claimant started to argue she should also have been regraded. The tribunal, for these reasons, refused to allow the proposed "deviation" to the list of issues.

10 186. The tribunal considered the allegation as set out in the list of issues (that the claimant had been treated less favourably than Mr Hemfrey when the respondent appointed Mr Hemfrey to an administrative position) and we decided the claimant had not shown there was less favourable treatment. We say that because there was no "appointment" of Mr Hemfrey to an administrative position. There was no administrative vacancy and no recruitment exercise. Mr Hemfrey's title was changed to reflect the increase in his duties.

15 187. We should state, for the sake of completeness, that if we had been required to consider the argument that the claimant made (which was that she had been treated less favourably than Mr Hemfrey when his role was re-evaluated and regraded and hers was not in circumstances where she had also had an increase in duties) we would have dismissed this complaint because there was no less favourable treatment in circumstances where the claimant had not had an increase in duties and responsibilities.

20 188. The claimant asserted that she carried out duties not in her job description, for example, attending the family groups and fun days. The claimant's job description was produced at page 132. The document outlines the purpose of the job and the main responsibilities. The job description does not set out every duty which the postholder could be required to do. There was a clause at the end of the job description stating "*the post holder may be required to undertake any other duties that fall within the nature of the role and responsibilities of the post as detailed above*".

25 30 189. The tribunal, based on the evidence regarding the type of work and activities undertaken at the family groups, concluded that they fell very much within the

description of being within the nature of the role and responsibilities of the claimant's post. We reached the same conclusion regarding the Fun Days.

190. The tribunal decided the duties and activities undertaken by the claimant which were not in her job description were either part of her role, or fell the nature of the role and responsibilities. This was in contrast to Mr Hemfrey's position where (accepting the evidence of Ms Rankin) he had taken on duties and responsibilities outwith his original role, and these were duties and responsibilities which appeared to be well above the grade/role of administrative assistant. The tribunal would have concluded, for these reasons, that the claimant had not been treated less favourably than Mr Hemfrey.

191. The claimant has been unable to show she was treated less favourably and the tribunal, for the reasons set out above, dismissed the complaint of direct discrimination.

15

Discrimination arising from disability

192. The issues for the tribunal to determine are:

- 1/ Did the respondent treat the claimant unfavourably when it –
 - (a) required her to carry out tasks in or around June 2022, that contravened the advice in her fit notes;
 - (b) misrepresented the claimant and her children in a referral to occupational health in July 2022 and failed to share the referral with her prior to submission and
 - (c) stated on the 14 July 2022 that *“it was becoming clear that the claimant had been hired for a job that she was not capable of doing, certainly at that stage anyway”* or words to that effect.
- 2/ If so, was this due to something arising in consequence of the claimant's disability, namely that the claimant struggled with stairs and

inclines due to restricted mobility and was more vulnerable to injury and experienced pain and other symptoms during a flare?

3/ If so, was the treatment of the claimant a proportionate means of achieving a legitimate aim.

5 193. The tribunal had regard to section 15 of the Equality Act which provides that a person discriminates against a disabled person if they treat the disabled person unfavourably because of something arising in consequence of the disabled person's disability and they cannot show that the treatment is a proportionate means of achieving a legitimate aim. The tribunal also had
10 regard to the case of ***Secretary of State for Justice v Dunn EAT/0234/16*** where it was said that four elements must be made out in order for a claimant to succeed in a section 15 claim:

- there must be unfavourable treatment;
- there must be something that arises in consequence of the claimant's
15 disability;
- the unfavourable treatment must be because of (that is, caused by) the something that arises in consequence of the disability and
- the alleged discriminator cannot show that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

20 ***Did the respondent treat the claimant unfavourably in June 2022 when it required her to carry out tasks in contravention of her fit notes***

194. We asked whether the respondent, in or around June 2022, required the claimant to carry out tasks in contravention of the advice on her fit notes, and if so, whether this was unfavourable treatment. The claimant provided fit notes
25 to her employer in the period from the time of the injury to her knee in September 2021 onwards. The Fit Notes provided in the period to June 2022 noted the claimant may be fit for work with amended duties and that she struggled with stairs and inclines and struggled to walk any distance. The

respondent was also aware the claimant could not (for most of the period) drive.

195. We noted three important points. Firstly, there were improvements in the claimant's condition and she did start to drive again in April/May 2022 and started to walk (on occasion) to some locations close by and to the office. Secondly, in cross examination, the claimant was taken through each of her timesheets and accepted (a) that she had worked entirely from home during the period September 2021 until January 2022 with the exception of getting a lift to the office on one occasion, being driven by Ms Rankin to a review and going to an event at Denny library on another occasion; (b) in the period from January 2022 until April 2022 she continued to work from home and, from February 2022, started to attend the Denny family group once a week and (c) in the period April to June 2022 she continued to work from home but attended a coffee morning at a suitable venue, a volunteer lunch at the Denny family group venue, training and the office on a few occasions. Thirdly, the claimant accepted in cross examination that in the period September 2021 to January 2022 the respondent did nothing to contravene the fit notes.

196. The claimant's submissions made clear that this complaint was focussed on the claimant being asked to attend the Denny group on a weekly basis, being asked to attend the Falkirk group on three occasions and being asked on one occasion to cover the Bo'ness group. There was no dispute regarding the fact that those attending the family groups were required to set up the venue for the occasion. This involved attending at the office to collect tea/coffee and the equipment necessary to make and serve it and the equipment necessary for any activities to be undertaken. The equipment would then need to be set up for the occasion and then packed away again and delivered back to the office.

197. The claimant invited the tribunal to accept that she had been required to do this. The tribunal preferred the evidence of Ms Rankin and found as a matter of fact that the claimant had not been required to carry, or load, equipment into (or out of) a car. The claimant accepted in cross examination that she had been told not to go into the creche or take part in children's games or activities.

She further accepted that her role was to sit with the parents in the group and facilitate any discussion or activity being undertaken.

198. Ms Rankin and the claimant had a discussion prior to the claimant attending the Denny group, to establish whether the claimant could attend the venue and access it. There was a gentle incline to access the premises which were then all on the one level. The claimant confirmed she would get a lift to the venue (which was on the street where she lived) and that she was able to access the premises.
199. The claimant was, on one occasion, asked to cover the Bo'ness group because Ms Brooks was unable to attend. The venue for the Bo'ness group was unsuitable for the claimant to access and upon sharing that with Ms Rankin, it was agreed the claimant would not attend and that Ms Rankin would attend.
200. The claimant was asked to attend the Falkirk group on three occasions but no issues were raised regarding this venue.
201. The tribunal concluded from this evidence and our findings of fact that the request for the claimant to attend the Denny group did not contravene the advice in the Fit Notes. We say that for two reasons: firstly, Ms Rankin discussed with the claimant whether she could get to the venue for the Denny group and whether accessing the premises would present any difficulty for the claimant. Ms Rankin was aware the Fit Notes stated the claimant had difficulty with stairs and inclines. Ms Rankin asked the claimant about accessing the premises because of the slight incline and to understand the scope of what was to be avoided and what could be managed. The claimant confirmed to Ms Rankin that she could access the premises. Secondly, the claimant was not expected, or required, to lift and carry any of the equipment.
202. The claimant's position appeared to be that based on the Fit Notes she should have only been working at home and therefore any request to carry out a task outside home contravened the Fit Note. The tribunal could not accept the claimant's position. The Fit Notes stated the claimant may be fit for work taking account of the following advice, and with the employer's agreement,

working amended duties and taking into account the advice from physio to the effect the claimant struggled with stairs and inclines. The Fit Notes did not say the claimant had to be restricted to only working from home. The Fit Notes also did not say the claimant could not walk up any stairs or inclines. It was a question of fact and degree and the claimant accepted that she could manage some stairs and a gentle incline. This was all against a background where, if the claimant told Ms Rankin she could not do something, that would be accepted.

5
10
15
203. The tribunal further concluded that the request for the claimant to attend the Bo'ness family group did not amount to unfavourable treatment in circumstances where the claimant was not "required" to attend. The tribunal considered there was a distinction to be drawn between being required to attend, and the circumstances in this case where a request was made but withdrawn when the claimant confirmed the premises at Bo'ness were not accessible to her. There were no consequences or detriments arising from the fact the claimant did not attend. The tribunal decided the request, immediately withdrawn when the claimant confirmed she could not access the premises, did not amount to unfavourable treatment, particularly where there were no ramifications from this.

20
204. The tribunal concluded the respondent did not require the claimant to carry out tasks in contravention of the Fit Notes. There was no unfavourable treatment and accordingly this aspect of the complaint was dismissed.

Did the respondent treat the claimant unfavourably when it misrepresented the claimant and her children in a referral to occupational health

25
30
205. The tribunal next asked whether the respondent misrepresented the claimant and her children in a referral to occupational health and failed to show her the referral before submission; and if so, whether this was unfavourable treatment. There was no dispute regarding the fact that in July 2022 the respondent wished to make a referral to occupational health to obtain a report regarding the claimant's current fitness for work and likely return to work.

206. Ms Rankin had had a wellbeing meeting with the claimant on the 5 July and Ms Rankin's note of that meeting was produced at page 294. Ms Rankin described the note as "*pretty much verbatim*". The note recorded that the claimant believed the flare up in her condition had been caused by the stress she was currently experiencing. The note went on to set out the information the claimant provided to Ms Rankin regarding her children. This note accompanied the referral.
207. The referral completed by Ms Hemfrey and Ms Rankin (page 298) set out a brief background and noted that since returning to work after her knee injury she had been working on restricted duties entirely from home. The claimant was unable to drive, climb stairs and was in a great deal of pain. The referral made reference to the Ergonomic Report and stated "*a desk, office chair etc*" had been provided. Ms Rankin acknowledged that statement was an error which she thought had been amended. The referral went on to state that initially the restrictions on the claimant's ability to work were acceptable because all staff had been working from home and the full service was not being provided; however from March 2022 the full service had resumed with the main focus being on families. The claimant was able to resume some duties in March 2022 such as attending family groups and one or two family review visits close to her home which did not require her to drive or climb stairs. The claimant had been able to drive short distances from May 2022. The referral concluded by stating the claimant had continued to work on restricted duties until 20 June 2022 when she had been signed off as unfit for work.
208. The additional information provided on the referral noted that working from home on restricted duties meant the claimant was not able to undertake many of the key functions of her role, for example visiting families in their own homes to assess and review them, undertaking in-person training of volunteers and assisting at family groups and events.
209. The claimant challenged a number of points in the referral as being inaccurate: she disputed that she was working entirely from home; she disputed she was not driving; she disputed she could not climb stairs; she

disputed she was just doing training online and she disputed that she had been provided with a chair and desk. The claimant also challenged Ms Rankin's note of the meeting on 5 July. The claimant did not consider the meeting had been a wellbeing meeting, she did not know it was being noted, she disputed her children were a source of stress and she believed Ms Rankin had put a spin on what had been said to make it look like her children were the cause of stress rather than workplace issues.

5

210. The tribunal, in considering this complaint, had regard to the fact the cause of the claimant initially being on sickness absence was the injury to her knee. The recovery from this injury was long and slow, but it was a situation where the claimant did recover from the injury and make progress in terms of getting back to being able to do things like driving before going off on sickness absence again in June 2022. The key to determining the allegation made by the claimant regarding the accuracy or otherwise of the information in the referral was to look at the timescales.

10

15

211. The referral made by Ms Hemfrey and Ms Rankin gave a brief history of what had happened. It was said that the injury occurred in September 2021 and initially the claimant took a period of two weeks' absence: that is correct. The claimant returned to work on a sick note with restricted duties (working entirely from home): that is correct. The claimant was unable to drive, climb stairs and was in a great deal of pain: that is correct. The referral went on to note the reduced service during Covid, but stated that as at March 2022 the service resumed in full. The claimant, as at March 2022, was able to resume some of her duties, for example, attending family groups and one or two family visits close to her home which did not require her to drive or climb stairs: that is correct. The claimant was able to drive short distances from mid-May: that is correct.

20

25

212. The referral recorded the fact the claimant's condition improved to allow her to get back to driving, walking short distances and carrying out some work in-person. The claimant's challenge to the referral (as set out above) did not differentiate between different timeframes and it appeared the claimant was noting her position at a much later date when she had recovered ability to, for

30

example, drive, rather than reflecting the position as it had been at the relevant time.

213. There was one error in the terms of the referral and that was the statement in relation to the Ergonomic Report when it was said that a chair and desk had been provided to the claimant. The respondent accepted this was an error and should have been corrected.
214. The tribunal preferred the evidence of Ms Rankin regarding the accuracy of the note of the wellbeing phone call on 5 July (page 294) and we accepted that what was noted by Ms Rankin reflected what she had been told by the claimant. We further noted that when a copy of the note was sent to the claimant, she raised no issues or concerns with it.
215. Ms Rankin recorded that the claimant believed the flare up was caused by the stress she was currently experiencing. The note did not go on to state what the stress was or its source. The note did go on to record the claimant was “*coping*” with her son’s diagnosis and supporting him through it and his anxiety regarding a college course; there was also reference to pain from her knee and having to do everything herself for the family. The paragraph went on to note the position regarding the claimant’s physiotherapy.
216. The note made by Ms Rankin did not link the claimant’s stress to her children, nor did it put a “*spin*” on the information to make it look like this. The tribunal considered that the only point which could be inferred from the note was that the claimant had a lot going on in her life.
217. The tribunal concluded from all of the above that in July 2022 the respondent did not misrepresent the claimant and her children in the referral to occupational health and did not treat the claimant unfavourably in this respect. We have acknowledged (above) that an incorrect statement was included regarding the provision of a chair, but we did not consider this to be unfavourable treatment because the claimant and Ms Rankin had agreed that a desk, and not a chair, would be provided for home working.

218. The claimant, in her submissions, invited the tribunal to treat the evidence of Ms Rankin with caution because, it was said, her view of the claimant had become tainted by her belief the claimant had minimised her health condition at the start of her employment, and because the claimant could not fit in with the Home Start model of home visits. Ms Rankin, very honestly in the opinion of the tribunal, told the tribunal she thought the claimant had minimised the impact of her disability because she had described herself as having the occasional flare up which resolved itself within 2/3 weeks. This contrasted starkly to the claimant's recuperation from the knee injury.
219. The claimant submitted this had tainted Ms Rankin's view of the claimant and supported the position that Ms Rankin doubted the claimant's ability. The tribunal could not accept either of those submissions. There was no evidence (direct or by way of inference) to suggest Ms Rankin doubted the claimant's ability. The notes of the supervision sessions between Ms Rankin and the claimant all suggested the claimant was doing well in her role and this was recognised and appreciated by Ms Rankin. The fact the claimant was going to take longer than expected to recover from the knee injury was something the respondent would have to deal with and, as Ms Rankin stated, it was not ideal but they would have to cope. This statement, in the context of the respondent being a very small organisation, appeared to the tribunal to be an accurate reflection of what happened.
220. The claimant suggested that Ms Rankin and Ms Hemfrey's view of the claimant was tainted by the claimant not being able to fit in with the Home Start model of home visiting. It was submitted that they had home visiting fixed in their minds and that this indicated a conscious discriminatory process. There was no dispute regarding the fact the ethos of the respondent organisation is home visiting because it is best to see where a family lives and how they interact in order to understand the support they may need. Initial visits are, for example, all carried out by a home visit. The respondent had to adapt during the pandemic to remote working, but as soon as restrictions were lifted, they reverted to home visiting.

221. The claimant was not able to carry out home visits whilst restricted to working at home. In the circumstances Ms Rankin took on the claimant's initial visits until such time as the claimant could start visiting families again.
222. The tribunal could not accept the submission that this caused Ms Rankin and M Hemfrey to have a tainted view of the claimant. The respondent is a very small organisation and has to make changes to accommodate staff absences or restrictions such as those faced by the claimant. For example Ms Rankin, Ms Brooks and the claimant covered family groups whilst the member of staff who usually led the groups was absent. There was no evidence to suggest, or from which we were prepared to infer, that this caused the respondent to have a tainted view of the employee who was absent.
223. The claimant argued that it was not unusual to work from home and she cited Ms Brooks as another employee who worked from home. This argument was misleading. Ms Brooks worked at home in the sense that she based herself at home rather than in the office, but she carried out home visits and face to face training and meetings. This was not the same as the claimant who worked from home and carried out work remotely.
224. The tribunal, for all of the above reasons, did not accept the submission that Ms Rankin and/or Ms Hemfrey had a tainted view of the claimant.
225. The tribunal noted there was no dispute regarding the fact the respondent did not share the referral with the claimant prior to its submission. The respondent sent the referral to the occupational health company and it was only when receipt was acknowledged and it was noted that the employer should ensure the employee had a copy of the referral, that this was done. The claimant did not state the basis upon which she believed she was entitled to see the referral before it was sent to occupational health. The claimant's submissions suggested that this simply would have been the claimant's preference. The tribunal, on that basis, concluded this did not amount to unfavourable treatment.
226. We should state that if we are wrong in this and not sharing the referral with the claimant prior to its submission was unfavourable treatment, we would

have next asked what was the something arising in consequence of the disability. We answered that it was the claimant's absence which arose as a consequence of the disability. The claimant's absence/being unfit for work was the reason the referral to occupational health was being made.

5 227. We asked whether the unfavourable treatment (not sharing the referral with the claimant before it was submitted) was caused by the claimant's absence/being unfit for work. In other words, was the referral not shared with the claimant before it was submitted because of her absence/being unfit for work. We answered that question in the negative. The respondent did not
10 share the referral with the claimant before it was submitted because they did not know to do so. This had nothing whatsoever to do with the claimant's absence or being unfit for work.

228. We decided to dismiss this aspect of the claim because the claimant has not been able to show there was unfavourable treatment and, even if there was
15 unfavourable treatment (in respect of not sharing the referral before it was submitted) that did not arise as a consequence of her disability.

Did the respondent treat the claimant unfavourably when Ms Hemfrey made a comment on 14 July 2022

229. The claimant alleged Ms Hemfrey had, on 14 July 2022, commented that "*it was becoming clear that [the claimant] had been hired for a job that she was not capable of doing, certainly at that stage anyway*" or words to that effect. The claimant, in her submissions, invited the tribunal to prefer her evidence that this statement had been made and submitted there were inferences to be drawn from the evidence which made it more likely than not that the statement
20 had been made. The tribunal was invited to draw an inference from the fact Ms Hemfrey relied on Ms Rankin for information and Ms Rankin had a tainted view of the claimant because she thought the claimant had minimised her condition and/or that because of the claimant's condition she could not fit with the Home Start model of home visiting.

30 230. The tribunal, in considering this submission, noted Ms Rankin stated during her evidence that she thought the claimant had minimised her condition at the

start of her employment. Ms Rankin alluded to the fact that in her discussions with the claimant she understood the claimant had occasional flare-ups of her condition but these settled quickly. The tribunal, rather than drawing an adverse inference from this, considered Ms Rankin had been very honest and open in expressing the difference between the impression she had been given, and the reality of the situation. The initial expectation had been that the knee injury would resolve in a relatively short period of time whereas in fact it took months for any improvement.

5
10
15
20
25
30

231. The Home Start model of working with families is to visit the home to see, observe, understand and support the family. This model had to be adapted during the pandemic and various lockdowns, but as at March 2022 the respondent was back to home visiting and supporting. The claimant invited the tribunal to accept Ms Hemfrey and Ms Rankin held an adverse view of the claimant because she had been unable to undertake home visiting for many months due to her condition. This was not a submission the tribunal accepted because adjustments were made to accommodate the fact the claimant could not visit families at home and the expectation of Ms Hemfrey and Ms Rankin that the physio and support was all being undertaken with a view to the claimant getting back to visiting families.

20
25
30

232. The claimant, in her submission, suggested Ms Rankin was of the view that the Home Start model would not permit home working. The claimant, in response to this, suggested Ms Brooks worked entirely from home. The tribunal considered both of these statements to be incorrect because they were too general, and by that we mean the issue was not working from home (as in being based at home), the issue was visiting/reviewing/supporting families remotely rather than visiting in their homes. For example, the initial review with a family entailed visiting the family home to see it and the family members and their interactions to determine what support was required. This was done remotely because there was no other option during lockdowns. Adjustments were made for the claimant whilst she recovered from the knee injury but this was temporary until she returned to being able to visit families in their homes.

233. Ms Brooks worked from home: this meant Ms Brooks was based at home rather than in the office. The claimant's statement in this respect was correct. However, Ms Brooks did not work remotely: she did not carry out remote visits/support rather than at home visits and support. The claimant's statement
5 in this respect was incorrect and misleading.

234. The tribunal, having considered the submissions made and the invitation to draw adverse inferences, decided for the reasons set out above to not accept the submissions and not to draw any adverse inferences. The tribunal preferred the evidence of Ms Hemfrey and decided she did not make the
10 statement alleged. We have stated above (section regarding credibility) that we found Ms Hemfrey to be a credible witness and we noted that she willingly accepted the occasions when statements had been made. We considered that if Ms Hemfrey had made the statement alleged, she would have accepted this and explained it. She did not do so.

15 235. The tribunal concluded the claimant has been unable to demonstrate there was unfavourable treatment and for this reason this aspect of the complaint is dismissed.

236. The tribunal decided to dismiss the complaint of discrimination arising from disability.

20

Failure to make reasonable adjustments

237. The issues to be determined in respect of this complaint were very confused principally because of the way in which the list of issues had been set out and the failure to differentiate between what was said to be a provision, criterion
25 or practice (PCP) and indeed what the PCP was, what was said to relate to physical premises and auxiliary aids. This confusion was compounded by the fact that in submissions the claimant's representative added a further PCP (being the expectation that staff would "all muck in"). This appeared simply to have been added to reflect the evidence heard without any prior notice that

this was going to be an issue. We accordingly did not include this on the list of issues to be determined.

238. The List of Issues set out the following points:

- 5 1/ The provision, criterion or practice (PCP) or physical feature or lack of an auxiliary aid relied on by the claimant is:
- (i) in or around December 2021, the respondent failed to provide auxiliary aids as recommended in the Ergonomic Assessment, namely an electric sit/stand desk and chair and a laptop screen cover and footrest;
- 10 (ii) from October 2021 to April 2023 the respondent failed to take account of the contents of the claimant's fit notes which stated that challenges from stairs and inclines should be removed when allocating tasks;
- 15 (iii) from October 2021 to 15 June 2023 the respondent failed to arrange a full occupational health assessment;
- (iv) from January 2022 to 20 June 2022 the respondent required the claimant to carry out physical work during groups without assistance or support and
- 20 2/ Did any such PCP, physical feature or lack of auxiliary aid put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.
- 3/ If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage;
- 25 4/ If so, would the steps identified by the claimant, namely provision of the aids and removal of the challenges of stairs and inclines have alleviated the disadvantage and

5/ If so would it have been reasonable for the respondent to take those steps.

239. The tribunal next had regard to section 20 of the Equality Act which provides as follows:

5 “(3) where a provision, criterion or practice of the employer’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with person who are not disabled, there is a duty to take such steps as it is reasonable to have to take to avoid the disadvantage;

10 (4) where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with person who are not disabled, there is a duty to take such steps as it is reasonable to have to take to avoid the disadvantage;

15 (5) where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a duty to take such steps as it is reasonable to have to take to provide the auxiliary aid.

Point 1(i)

20 240. This point related to the provision of auxiliary aids. The claimant argued the Ergonomic Assessment had identified the desk she used was too high and recommended the purchase of a more easily adjustable chair with castors or the purchase of an adjustable height desk. There was no dispute regarding the fact that initially the claimant’s preference was to be provided with the chair and the rationale for this was that it would be easier to transport to and from the office. Ms Rankin explained the claimant would in all likelihood be hybrid working and therefore have a desk and chair (and other equipment) at both the office and at home. The tribunal accepted Ms Rankin’s evidence that following discussions it was agreed a desk would be purchased, and this was
25
30 duly done.

241. The tribunal acknowledged a chair was not provided for the claimant but there was no evidence to suggest this put the claimant at a substantial disadvantage. We say that because the claimant already had a chair at home which the respondent had provided and which was only not suitable because the desk was too high. Further, the claimant completed the display-screen equipment assessment after being provided with the desk, and indicated on that form that there were no issues with either the new desk or the chair or indeed any of the other equipment the respondent had provided.
242. The claimant told the tribunal that during the ergonomic assessment measurements had been taken in respect of desk height, seat height, distance from the screen and such like, and that she had been unable to do this herself when she completed the DSE report. The tribunal accepted this, but there was no requirement for the claimant to do this. The DSE report is detailed and shows pictures of correct positions and distances. The tribunal considered that if the claimant had had any concerns at this time, or indeed at any time in the future, she would have raised them but did not do so.
243. The tribunal noted the reference in point 1(i) to a footrest and laptop screen. The Ergonomic Assessment noted the claimant had been provided with a footrest and that it was at an appropriate angle. We were satisfied, based on this evidence, that this aid had been provided for the claimant. There was no evidence regarding a laptop screen (other than that the claimant had her own laptop screen cover), and it was not referred to the ergonomic assessment. We decided on that basis that there had not been a failure to provide this.
244. The claimant, in her submissions, argued that the equipment with which she had been provided was not what had been specified in the report, and when she raised this with Ms Hemfrey on 25th July, the response (in the grievance outcome dated 7 October 2022) was that the equipment would not be provided. We consider we have dealt with the provision of equipment above, and explained that we accepted Ms Rankin's evidence that there had been agreement with the claimant that a desk would be provided, and this was done.

245. We acknowledged the claimant raised the issue in her grievance and was advised in the outcome that the equipment (that is an electric sit/stand desk and chair) would not be provided. The claimant was, by this time, signed off unfit for work. The claimant was not working: she was not using the desk and chair to carry out work. The claimant was accordingly not placed at a substantial disadvantage.

246. The claimant referred to a report from her GP in September 2023 (page 784) where the GP commented that there were times, probably around late 2022 when he had had some hope that a return to work could be quite imminent. The claimant submitted that if the equipment had been provided the claimant may have been able to return to work. The tribunal rejected that submission because by late 2022 the claimant was unfit for work for reasons not connected to the provision or otherwise of the equipment.

247. The tribunal, in conclusion, decided auxiliary aids (desk and footrest) had been provided by the respondent. Further, a chair was not provided by the respondent, but this was by agreement with the claimant. The claimant was not put at a substantial disadvantage by not being provided with a chair in circumstances where she already had one which was adjustable and could be used with the new desk. We decided to dismiss this aspect of this complaint.

Point 1(ii)

248. We firstly asked whether the respondent had a provision criterion or practice of failing to take account of the advice in Fit Notes. We answered that in the negative because all of the evidence demonstrated the respondent did take account of the advice in the Fit Notes. The allegation that the respondent asked the claimant to carry out duties in contravention of the Fit Notes is dealt with above and not repeated here: suffice to say that we concluded the respondent had not required the claimant to carry out duties in contravention of her Fit Notes. We should state that if we had decided the respondent did have a practice of failing to take account of advice in Fit Notes, we would have concluded that this did not put the claimant at a substantial disadvantage

because on any occasion when she was asked to go to a place she could not access (for example, the Bo'ness family group or the manual handling training) the request was immediately withdrawn when it became apparent there would be difficulties with access. We concluded from this that the claimant was not put at a substantial disadvantage.

249. We next asked whether a physical feature (that is, stairs and inclines) put the claimant at a substantial disadvantage in comparison with persons who are not disabled. We answered that question in the affirmative: stairs and inclines did put the claimant at a substantial disadvantage because she struggled with them due to her knee injury. The duty to take such steps as it was reasonable to take to avoid that disadvantage was placed on the respondent.

250. The tribunal decided the respondent made such adjustments as it was reasonable to make in order to remove the disadvantage to the claimant and we say that because the respondent adjusted the claimant's duties in the following ways:

- in the period September 2021 to January 2022 the claimant worked entirely from home;
- in the period January 2022 to April 2022 the claimant took on attendance at the Denny family group. The respondent discussed access to the premises where the family group was held with the claimant and she confirmed that she would get a lift to the venue and could then access the premises;
- in May 2022 Ms Rankin met with the claimant and Ms Brooks to discuss workload allocation and part of that discussion focussed on where families lived and whether the claimant could access the premises. The respondent removed families from the claimant if she could not access the premises and swapped them for families where the claimant could access the properties and

- the claimant increased the number of times she visited the office or attended other events only when she decided she was comfortable and able to do so.

251. We concluded, having regard to the above, that the respondent did take such
5 steps as it was reasonable to take to avoid the disadvantage placed on the claimant by the physical features of stairs and inclines.

252. We have acknowledged, above, that the respondent did ask the claimant to
attend the Bo'ness family group on one occasion. Ms Rankin made this
request because she believed the claimant would be able to access the
10 premises using the disabled ramp. The claimant informed Ms Rankin that she could not access the premises and it was agreed the claimant did not need to attend. We decided the physical features of the access to the venue of the Bo'ness family group put the claimant at a substantial disadvantage, and that the respondent made a reasonable adjustment when it withdrew the request
15 to attend. We decided to dismiss this aspect of the complaint. We make the same comments and conclusions regarding the request to attend the manual handling training course.

Point (iii)

253. The claimant complained that in the period October 2021 to 15 June 2023 the
20 respondent failed to arrange a full occupational health assessment. This (by a process of elimination) must be a complaint about an alleged PCP which put the claimant at a substantial disadvantage. The PCP was not defined by the claimant: what was the alleged practice of the respondent which put the claimant at a substantial disadvantage? The burden lies on the claimant to
25 establish the PCP, and it must be identified with precision otherwise the claim may fail at the first hurdle.

254. The PCP was not identified by the claimant: what was stated by the claimant
was an allegation that the respondent had failed to arrange an occupational
health assessment. The tribunal could not determine from what was said
30 whether it was being alleged the respondent had a practice of failing to arrange occupational health assessments. If the claimant was not making this

assertion, then this element of the complaint must fail because no PCP has been identified. If the claimant was, however, making an assertion that the respondent had a practice of not arranging occupational health assessments, then we considered the claim must still fail because there was no evidence to support that there was such a practice. The only evidence before the tribunal related to what happened to the claimant: there was no evidence to suggest the respondent had failed to obtain occupational health assessments for others, or that in practice they generally failed to obtain such reports.

255. The tribunal decided to dismiss this aspect of the complaint. The PCP was not defined, and even if the tribunal assumed the PCP was the practice of not obtaining occupational health reports, there was no evidence to support this or demonstrate that the respondent did have such a practice.

Point (iv)

256. The claimant complained that from January 2022 to 20 June 2022 the respondent required the claimant to carry out physical work during groups without assistance or support. The PCP was not defined but against the background of the evidence we made an assumption that the PCP was that the respondent had a practice of asking staff to carry out physical work during groups without assistance or support.

257. There was no dispute regarding the fact that the staff members and volunteers who were attending the family groups were responsible for collecting the equipment required, setting it up and repacking it to return it to the office. This was the practice in place.

258. The tribunal accepted this practice placed the claimant at a substantial disadvantage because she could not carry weights or pack them into a car or take them out of a car.

259. The respondent, in the circumstances, was under a duty to make such adjustments as it was reasonable to make in order to avoid the disadvantage. The claimant suggested to the tribunal that she had been required to collect equipment, load it into the car, transport it to the venue for the family group,

unpack it, set it up, repack it and return it to the respondent's office. The tribunal preferred the evidence of Ms Rankin to that of the claimant and found as a matter of fact that the claimant was not required to collect equipment from the office, or pack and transport it, or repack and transport it back to the office. The claimant's role was to attend the family group, sit at the table with parents and facilitate discussions or interactions.

5

10

15

20

25

260. The claimant's witnesses, when asked about this point, did not support the claimant in her version of events. Ms Brooks attended the Denny family group on two or three occasions with the claimant. Ms Brooks referred to equipment being collected, set up and returned, but did not suggest the claimant had had to do this. Ms Brooks was asked directly in cross examination whether she had observed the claimant doing heavy lifting and responded "*I don't recall*".

261. Ms Cardwell, who was a Senior Group Worker, confirmed that at the Denny family group she would have been working with the children, and the claimant would have been with the adults. She confirmed equipment required to be collected, transported, set up and returned, and confirmed the claimant would set out tea and coffee on the table/s for the parents. Ms Cardwell had observed the claimant lift a carrier bag of tea/coffee/biscuits but if there were any heavy bags, other members of staff would carry them.

262. The tribunal concluded from all of the evidence that the respondent had made a reasonable adjustment to avoid the practice disadvantaging the claimant. The reasonable adjustment in place was that the claimant was told she was not required to pack, unpack, transport equipment or do any heavy lifting in this respect. The claimant could help to set out tea and coffee, but her role was restricted to facilitating the parents at the group.

263. The tribunal decided, for these reasons, to dismiss this aspect of the complaint.

Point (v)

30

264. The claimant complained that on 5 July 2022 the respondent failed to send links to the claimant which would assist her in reducing her stress. The tribunal

decided the claimant had failed to identify the PCP said to have been in place. The allegation is of a singular act personal to the claimant. There was no evidence to suggest any “practice”. The tribunal decided to dismiss this aspect of the complaint because the claimant had not discharged the burden on her to establish the PCP.

265. The tribunal decided, for all of the reasons set out above, to dismiss the complaint of failure to made reasonable adjustments.

Harassment

266. The issues for the tribunal are:

1/ Did the respondent engage in the following conduct:

(i) failed to provide a copy of the ergonomic assessment report of December 2021;

(ii) failed to make any adjustments for the claimant (the auxiliary aids referred to in the Ergonomic Report);

(iii) on or around 17 February 2022, Ms Rankin requested the claimant to attend an in-person moving and handling training course;

(iv) on or around 12 May 2022 Ms Rankin doubled the claimant’s workload and advised that she should stop leaving everything to Erin;

(v) on or around 11 October 2022 to 15 June 2023 the respondent failed to arrange a full occupational health assessment for the claimant;

(vi) on or around 19 May 2022 Ms Rankin stated that “Marie is far too soft for the Denny group” or words to that effect;

- (vii) on or around October 2021 – 20 June 2022 Ms Rankin repeatedly made requests that the claimant carry out tasks that contravened the advice in her fit notes;
- 5 (viii) on 5 July 2022 Ms Rankin failed to send links to the claimant which would assist in reducing her stress;
- (ix) on 6 July 2022 Ms Rankin provided notes of the telephone call of 5 July 2022 which misrepresented what the claimant had said on the call. Ms Rankin placed an inaccurate gloss and emphasis that the claimant's disabled children were the cause of her stress;
- 10 (x) on 14 July 2022 Ms Hemfrey stated "*it was becoming clear that the claimant had been hired for a job that she was not capable of doing certainly at that stage*" or words to that effect;
- (xi) on 25 July 2022 Ms Hemfrey asked the claimant whether she was formally registered as disabled;
- 15 (xii) after providing the claimant with the December 2021 ergonomic report on 25 July 2022, the respondent failed to implement any measures therein;
- (xiii) in or around August 2022, Ms Hemfrey and Ms Rankin investigated the grievance which had been raised on 25 July 2022;
- 20 (xiv) there was a delay in the outcome of the claimant's grievance;
- (xv) the respondent carried out a flawed and inadequate investigation into the issues raised in the claimant's grievance;
- 25 (xvi) this was withdrawn in submissions;
- (xvii) on or around 5 November 2022 Ms Hemfrey told the claimant she was preoccupied with dwelling on the past in response to the claimant requesting that her grievance be concluded;

(xviii) this was withdrawn in submissions and

(xix) Ms Rankin and Ms Hemfrey and the Board of Trustees failed to uphold any of the claimant's grievance.

2/ If so, was it unwanted conduct?

5 3/ If so, was it related to disability?

4/ If so, did the conduct have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

10 267. The tribunal referred to the statutory provisions set out at section 26 of the Equality Act. The section provides that a person harasses another if the person engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating the other person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person. The section goes on, at
15 subsection (4), to say that in deciding whether conduct has the effect referred to above, each of the following must be taken into account (a) the perception of the other person, (b) the other circumstances of the case and (c) whether it is reasonable for the conduct to have that effect.

20 268. The tribunal, following the guidance set out in ***Richmond Pharmacology v Dhaliwal 2009 ICR 724***, dealt with this complaint by taking each of the above points and asking did the alleged conduct occur; if so, was it unwanted conduct; if so, did it have the purpose or effect of violating the claimant's dignity or creating an adverse environment (we have used the term adverse environment as shorthand for intimidating, hostile, degrading, humiliating or
25 offensive) and if so, was it related to disability.

269. The tribunal also had regard to the guidance set out in the case of ***Pemberton v Inwood 2018 ICR 1291*** where it was said that in order to decide whether any conduct has either of the proscribed effects, a tribunal must consider both whether the putative victim perceives themselves to have suffered the effect
30 in question (the subjective question) and whether it was reasonable for the

conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances.

Did the respondent act as alleged in points 1(i) – (xix) above; if so, was the conduct unwanted; if so, did it create an offensive environment and if so, was it related to disability

Point (i)

270. The claimant alleged the respondent had failed to provide a copy of the December 2021 ergonomic assessment. There was no dispute regarding the fact the ergonomic assessment of December 2021 was not provided to the claimant in December 2021. It was provided to the claimant on 25 July 2022 when Ms Rankin and Ms Hemfrey learned the claimant had not received a copy of the report. The tribunal accepted the report was not provided to the claimant at the time it was received in December 2021.

271. We next asked whether the conduct was unwanted, and we concluded it was because the claimant would have preferred to have received the report at the time in December 2021.

272. We then asked whether the conduct was related to disability. The tribunal had regard to the case of ***Tees Esk and Wear Valleys NHS Foundation Trust v Aslam 2020 IRLR 495*** where the EAT observed that the question of whether conduct is related to a protected characteristic is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it. There must be some feature of the factual matrix identified by the tribunal which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question and in the manner alleged in the claim.

273. We also had regard to the fact that the context and surrounding circumstances are relevant considerations for the tribunal and may be matters from which the tribunal could draw an adverse inference.

274. The tribunal, having had regard to this guidance, noted that we accepted the evidence of Ms Hemfrey and Ms Rankin that they both believed a copy of the

report had been sent by Ms Cook (who carried out the assessment) to the claimant. The basis for this belief was that this is what had happened on the previous occasions when the respondent obtained a report from Ms Cook.

5 275. The tribunal also had regard to the fact Ms Rankin met with the claimant to discuss the report. Ms Rankin told the tribunal the claimant appeared well informed of the content of the report and there had been nothing to alert her to the fact a copy of the report had not been sent to the claimant. This was compounded by the fact the claimant did not tell Ms Rankin she had not received a copy of the report, and did not ask for a copy to be provided.

10 276. The tribunal concluded from this evidence that the reason the report was not provided to the claimant was an error based on Ms Hemfrey and Ms Rankin believing a copy of the report had been sent directly to the claimant by Ms Cook. In other words, the fact a copy of the report was not provided to the claimant related to the erroneous belief it had been sent directly to the claimant by Ms Cook. This conduct was not related to the protected characteristic of disability and the tribunal dismissed this aspect of the complaint for this reason.

Point (ii)

20 277. The claimant alleged the respondent had failed to make any adjustments for the claimant when they failed to provide auxiliary aids as recommended in the December 2021 ergonomic assessment, namely an electric sit/stand desk and ergonomic chair and a laptop screen and footrest. This matter is dealt with above: the tribunal concluded there had not been a failure to provide the auxiliary aids as recommended in the December 2021 report in circumstances where there was discussion and agreement with the claimant that what she wished to be provided with was a desk at the correct height. The chair the claimant had already been provided with was suitable when used with a desk at the correct height. The claimant was provided with a footrest and there was no evidence before the tribunal regarding a laptop screen.

30 278. We should state that if we are wrong in our above conclusion and the “failure” to provide a chair should stand as such, then we would have found this was

not unwanted conduct because of the agreement the claimant reached with Ms Rankin (above). Further, any failure was not related to the protected characteristic of disability in circumstances where there was agreement that the chair would not be provided.

5 279. We decided for these reasons to dismiss this aspect of the claim.

Point (iii)

280. The claimant alleged that on or around 17 February 2022 Ms Rankin requested that she attend an in-person moving and handling training course. There was no dispute regarding the fact this did happen.

10 281. We next asked if this was unwanted conduct. We answered that question in the affirmative once the claimant learned the building was not accessible.

15 282. We then asked whether the conduct was related to disability. The tribunal accepted Ms Rankin's evidence that at the time of making the request she believed the course would be online (because all training during the pandemic and up to that point in time had been online). Ms Rankin, in her email to the claimant (page 245) gave the claimant details for the training and noted that although she may have said the training was online, it was not. Ms Rankin asked the claimant if she was able to get over to the training centre or whether she could get a lift from another employee who was attending the training.
20 The claimant responded to say she had also thought it was online and that she was going for a PCR test, but if it was negative she would go and keep her mask on. Ms Rankin replied to confirm the claimant should only go if she felt well enough.

25 283. The venue for the training was not a suitable venue for the claimant to access and the claimant could not have undertaken the training in any event.

284. The tribunal also had regard to the fact that the decision that all staff should attend manual handling training was taken by a Trustee and not by Ms Rankin.

285. The tribunal concluded from this evidence that the reason the claimant was asked to attend the training was because every employee was to do it. The reason the claimant was asked to attend related to the decision taken by a Trustee: it did not relate to the protected characteristic of disability. The tribunal decided for this reason to dismiss this aspect of the complaint.

Point (iv)

286. The claimant alleged that on or around 12 May 2022 Ms Rankin doubled the claimant's workload and advised that she should stop leaving everything to Erin Brooks. The tribunal concluded above that the claimant's workload was not doubled at the meeting on 12 May: in fact the claimant's workload was reduced. Further, the tribunal preferred the evidence of Ms Rankin to that of the claimant and accepted Ms Rankin did not make a comment about leaving everything to Ms Brooks. The tribunal decided to dismiss this aspect of the complaint because the respondent did not engage in the conduct alleged.

Point (v)

287. The claimant alleged that in the period October 2021 to 15 June 2022 the respondent failed to arrange a full occupational health assessment for the claimant. There was no dispute regarding the fact that no occupational health assessment was arranged during this period.

288. The tribunal asked whether this was unwanted conduct and answered that in the affirmative.

289. We next asked whether the conduct was related to disability. The tribunal noted the respondent was keen to obtain an occupational health assessment for the claimant and endeavoured to do so, but their attempts to make progress with this matter were thwarted by the claimant who refused to attend occupational health until such time as the respondent "corrected" the information in the referral which the claimant believed was giving a false impression of her.

290. The tribunal concluded from this evidence that the reason there was a failure to arrange a full occupational health assessment was related to the claimant's

refusal to attend, and it did not relate to the protected characteristic of disability. We were supported in this conclusion by the fact that once the referral was in a format the claimant agreed (March 2023) she did attend for an occupational health assessment. We decided to dismiss this aspect of the claim for these reasons.

Point (vi)

291. The claimant alleged that on or about 19 May 2022 Ms Rankin stated she was far too soft for the Denny group. Ms Rankin accepted this comment had been made.

292. We asked if this was unwanted conduct and agreed it was.

293. We then asked whether the conduct was related to disability. We noted the comment was made by Ms Rankin to another member of staff during a private meeting in her office. It was overheard by the claimant.

294. There was no dispute in the evidence regarding the fact the Denny group was a challenging group: it was loud and difficult to control and to engage the parents in discussions. We accepted that Ms Rankin made the comment regarding the claimant being too soft as an observation about her personality and because the claimant was quieter she struggled to deal with the louder members of the group and to be firm with them.

295. The tribunal noted there was no suggestion by the claimant that her disability made her “soft” or impacted on her ability to deal with the family group dynamics. The whole thrust of the claimant’s evidence regarding her disability was the impact it had on her mobility. The tribunal, in those circumstances, concluded the reference to the claimant being soft was not related to the claimant’s disability. We accordingly concluded that the comment made was related to the claimant’s personality and not the disability. We decided to dismiss this aspect of the complaint for this reason.

Point (vii)

296. The claimant alleged that in the period October 2021 to 20 June 2022 Ms Rankin repeatedly made requests that the claimant carry out tasks that contravened the advice in her fit notes. This matter has been dealt with above
5 where the tribunal's conclusion was that the only task that contravened the claimant's fit note was the request to attend the Bo'ness family group.
297. We asked whether the request to attend the Bo'ness family group was unwanted conduct and concluded it was.
298. We next asked whether the conduct was related to disability. Ms Rankin
10 asked the claimant on one occasion to attend the Bo'ness family group because Ms Brooks was unable to attend. The claimant could not access the venue where the Bo'ness family group was held. She advised Ms Rankin of this and the request was withdrawn.
299. The tribunal acknowledged the claimant could not attend the venue because
15 of the impact of her disability. However, the question the tribunal has to ask is whether Ms Rankin's conduct (in asking the claimant to attend the Bo'ness family group) was related to disability. We concluded it was not. We reached that conclusion because the conduct was related to the need for the family group to be covered and it was not related to anything to do with the claimant's
20 disability.
300. We noted the claimant was asked on one occasion to attend the manual handling training. We have set out above that the claimant was asked to attend the manual handling training because it had been decided that all employees should attend such training. We asked was the conduct (in asking
25 the claimant to attend the training) related to disability. We answered that question in the negative: the conduct was related to the decision taken by the Trustees.
301. We decided for these reasons to dismiss this aspect of the complaint.

Point (viii)

302. The claimant alleged that on 5 July Ms Rankin failed to send links to the claimant which would assist her in reducing her stress. Ms Rankin accepted that she had forgotten to send the claimant the links.

5 303. We accepted this was unwanted conduct.

304. We next asked if this was conduct related to disability. There was no dispute regarding the fact that at the meeting on 5 July 2022, Ms Rankin told the claimant that she had attended a Wellbeing course earlier in the year and would send the claimant the self-care audio clips from the course. The tribunal
10 accepted Ms Rankin's evidence that she had forgotten to do so.

305. The tribunal noted that in submissions the claimant argued that Ms Rankin had formed an unfavourable view of her because of her disability and that this was demonstrated by Ms Rankin not believing the claimant fitted the Home Start model of home visiting and that Ms Rankin believed the claimant had
15 downplayed her disability. These points are dealt with above and not repeated here: suffice to say we did not accept Ms Rankin had formed an unfavourable view of the claimant and we declined to draw any adverse inference.

306. The tribunal accepted Ms Rankin's evidence that she had simply forgotten to forward the audio clips to the claimant. This was not related to the claimant's
20 disability: it was related to human error. We decided for this reason to dismiss this aspect of the complaint.

Point (ix)

307. The claimant alleged that on 6 July 2022 Ms Rankin provided notes of the telephone call of 5 July 2022 which misrepresented what the claimant had
25 said on the call. Ms Rankin placed an inaccurate gloss and emphasis that the claimant's disabled children were the cause of her stress. This matter has been dealt with above where the tribunal concluded that Ms Rankin did not misrepresent what the claimant had said on the call. The tribunal accepted that what was noted by Ms Rankin had been an "almost verbatim" record of
30 what she had been told by the claimant. The tribunal did not accept there had

been any “gloss” or “emphasis” as suggested by the claimant in circumstances where the fact of the claimant’s stress was not linked in the note to either her children or the workplace. The tribunal concluded for these reasons that the allegation made by the claimant did not occur.

5 **Point (x)**

308. The claimant alleged that on 14 July 2022 Ms Hemfrey stated that *“it was becoming clear the claimant had been hired for a job she was not capable of doing certainly at that stage anyway”* or words to that effect. The tribunal preferred the evidence of Ms Hemfrey (for the reasons already set out above) and accepted Ms Hemfrey did not say those words or words to that effect. The tribunal decided to dismiss this aspect of the claim.

10

Point (xi)

309. The claimant alleged that on 25 July 2022 Ms Hemfrey asked her if she was formally registered as disabled. Ms Hemfrey accepted she had asked this question.

15

310. The tribunal accepted this was unwanted conduct.

311. We next asked if this was related to disability and we were satisfied it was.

312. The next question for the tribunal to determine was whether the conduct had the purpose or effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The tribunal noted in this regard that in deciding whether conduct has the effect of violating a person’s dignity or creating an offensive environment, each of the following factors must be taken into account:

20

- the perception of the person;
 - the other circumstances of the case and
 - whether it is reasonable for the conduct to have that effect.
- 25

313. The test to be applied has both subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of

the alleged harasser has on the complainant. The objective part requires the tribunal to ask itself whether it was reasonable for the complainant to claim that the alleged harasser's conduct had that effect.

5 314. The comment made by Ms Hemfrey occurred at the meeting on 25 July. Ms Hemfrey, in her evidence in chief, told the tribunal that at the meeting the claimant expressed unhappiness with *"an awful lot of things regarding work and the way the service was run"*. Ms Hemfrey described herself as *"gobsmacked"*. Ms Hemfrey accepted she had asked the claimant if she was *"registered disabled"* and she had said *"no"*. Ms Hemfrey explained that it was
10 all part of finding out information regarding the claimant's disability condition: as she had been trying to get as full a picture of everything as possible. Ms Hemfrey denied that her tone had been *"dismissive"* and she denied the suggestion that her comment could have come across as dismissive.

15 315. Ms Brooks told the tribunal that Ms Hemfrey had asked the claimant if she was on a disability register. The claimant had replied that she was unsure. Ms Brooks asked the claimant if she had a blue badge, and the claimant confirmed she did.

20 316. The claimant did not provide any evidence in chief regarding this matter. It was suggested to the claimant in cross examination that it was not reasonable to think this request for further information was harassment and she disagreed.

25 317. The claimant was provided with a note of the meeting, and amended it to include points she considered had been omitted (page 368). The claimant's note provided *"AH asked if MT was in fact registered disabled to which MT replied she was not aware that there was a need to be on a register. EB asked MT if she had a blue badge to which MT confirmed, yes"*.

30 318. The submissions made by the claimant suggested the claimant had objected to the comment and viewed it as dismissive and derogatory. It was also said that Ms Brooks had given evidence that the claimant had been *"dumbfounded"*. It was submitted the comment could reasonably be perceived

as dismissive at best and derogatory at worst because it cast doubt on what the claimant had been telling the respondent.

319. The tribunal considered the evidence did not support the submission made by the claimant. There was no evidence to suggest the claimant had been
5 “dumbfounded” (or indeed that Ms Brooks had said that in her evidence) or had objected to the comment at the time it was made.

320. The submission that the comment was derogatory because it cast doubt on what the claimant had been telling the respondent about her disability was not put to Ms Hemfrey in cross examination. Further, although Ms Rankin was of
10 the opinion the claimant had minimised the impact of her disability, there was never any suggestion by the respondent’s witnesses (or in cross examination) that they doubted what the claimant was telling them about her disability. Ms Hemfrey, whose evidence the tribunal accepted, made the statement because she was trying to get as much information as possible about the
15 claimant’s condition.

321. The tribunal must firstly decide whether the conduct had the purpose of violating the claimant’s dignity or of creating an offensive environment for her. The tribunal, in the absence of any admission regarding purpose, would need to draw inferences from the surrounding circumstances. The surrounding
20 circumstances were that Ms Hemfrey had endeavoured to obtain an occupational health report and the claimant had objected to the terms of the referral which she considered created a false impression of what she had been doing and was incorrect. The meeting on 25 July was arranged to discuss this. The claimant, at this meeting, felt very strongly that she had been
25 fulfilling all the tasks asked of her and the fact she was unable to drive or walk far was irrelevant because everyone had been working from home and no-one was in the office. The claimant also felt the tasks she had undertaken in the summer of 2021 had exacerbated her condition and she provided a detailed account of what she felt she had been asked to do which was not
30 appropriate.

322. The picture presented by the claimant was very different to that which Ms Hemfrey had understood, and this was the reason why the matters were treated as a grievance and investigated. The tribunal drew an inference that having been thwarted in obtaining an occupational health report, Ms Hemfrey was trying to find other sources of information about the claimant's condition. The comment regarding the disability register was not made with the purpose of violating the claimant's dignity or creating an offensive environment but with the purpose of obtaining further information.
323. The tribunal next asked whether the comment had the effect of violating the claimant's dignity or creating an offensive environment for her. The tribunal, in considering this, must have regard to the perception of the claimant. The tribunal noted there was a difference in the way the claimant perceived the comment at the time and what was described in submissions. By that we mean that at the time the claimant was not shocked or upset or angered by the comment. The claimant was unsure what Ms Hemfrey meant and the only response she made was to Ms Brooks asking if she had a blue badge. We considered that given the claimant did not know what Ms Hemfrey meant, or what she was referring to, there could be little shock, upset or anger at the time. The claimant, although including the comment in her amended notes of the meeting, did not add any commentary to suggest it was a comment she considered objectionable in any way.
324. The tribunal next considered the other circumstances of the case, and these are set out above.
325. The tribunal then considered whether it was reasonable for the conduct to have that effect. The tribunal (above) could not accept the submission that the comment was derogatory because it cast doubt on what the claimant had been telling the respondent about her disability. The respondent accepted what it had been told by the claimant about her disability and had made adjustments when required. There was no casting of doubt on whether the claimant had a disability, but there was a desire for more information given what the claimant had said in the meeting.

326. The tribunal also had regard to the fact this was a single comment made in the context of the need for further information in circumstances where the claimant was suggesting she had been able to do more than the respondent had understood at the time.

5 327. The tribunal concluded, having had regard to all of the above points, that the comment did not have the purpose or effect of violating the claimant's dignity. The tribunal further concluded that given the circumstances of why the discussion on 25 July took place, the fact the claimant did not react at the time the comment was made or in framing the amended notes of the meeting, that
10 the comment did not have the effect of creating an offensive environment for the claimant. We decided for these reasons to dismiss this claim.

Point (xii)

15 328. The claimant alleged that after providing the claimant with a copy of the December 2021 ergonomic report, the respondent failed to implement any measures therein. This point is the same point as taken at (ii) above. The tribunal decided there had not been a failure to make adjustments (and further, even there was such a failure, it was not unwanted conduct and it was not related to the claimant's disability). The tribunal dismissed this aspect of the claim for these reasons.

20 ***Point (xiii)***

25 329. The claimant alleged that in or around August 2022 Ms Hemfrey and Ms Rankin investigated the claimant's grievance which was raised on 25 July 2022. There was no dispute regarding the fact Ms Hemfrey, on behalf of the Board of Trustees, investigated the claimant's grievance and relied on Ms Rankin for information. The tribunal concluded the allegation made by the claimant did occur but only in respect of Ms Hemfrey investigating the grievance: Ms Rankin did not investigate the grievance.

30 330. We asked if this was unwanted conduct and we concluded it was not. The issue taken by the claimant was with the way in which Ms Hemfrey carried out the investigation, rather than there being any objection to Ms Hemfrey herself.

331. We should state that even if we had concluded the conduct was unwanted, we would have decided it was not related to disability. We say that because in circumstances where Ms Rankin could not investigate the grievance, it fell to the Board of Trustees to deal with it. That had nothing whatsoever to do with disability. We decided for these reasons to dismiss this aspect of the complaint.
332. Ms Hemfrey investigated the claimant's grievance. The claimant challenged Ms Hemfrey's investigation because she did not interview other employees and was "determined to uncritically uphold Ms Rankin's narrative rather than spend any time making enquiries into the claimant's perspective". It was submitted the investigation was a "sham and simply served to rubber stamp Ms Rankin's account and vindicate her". The submission concluded that it would not have mattered what evidence the claimant presented because the only version of events that mattered to Ms Hemfrey was Ms Rankin's.
333. The tribunal noted that Ms Hemfrey acknowledged that she not spoken to others regarding the issues raised in the claimant's grievance. She considered it was not appropriate to speak to other members of staff on the same grade as the claimant. The suggestion the investigation was a sham was not a submission this tribunal could accept in circumstances where the evidence demonstrated Ms Hemfrey carried out a lengthy and in-depth investigation. Ms Hemfrey looked at emails, notes, meeting notes and video recordings of meetings to check what the claimant alleged against the factual evidence.
334. The issue for the tribunal is not the reasonableness of the investigation into the grievance, but rather whether Ms Hemfrey's actions in investigating the grievance in this way related to disability. The tribunal concluded, having regarding to the context and circumstances of the investigation, that the way in which Ms Hemfrey carried out the investigation related to her view that on the one hand she the claimant's grievance, on the other hand she had Ms Rankin's response and consideration of the factual information provided weight to one side or the other. For example, if it was alleged that a comment

was made at a meeting, the video recording of the meeting would show what had happened and what was said.

335. The tribunal concluded the way in which Ms Hemfrey carried out the investigation was not related to disability and for this reason we decided to dismiss this aspect of the complaint.

Point (xiv)

336. The claimant alleged the outcome of her grievance was delayed. There was no dispute regarding the fact the claimant raised a number of matters at the meeting on the 25 July 2022 which were the basis of her grievance. However, the claimant told Ms Hemfrey, at that meeting, that she had a list of issues she wished to have addressed. The claimant agreed to provide a copy of this to the respondent, but, notwithstanding the fact Ms Hemfrey chased the claimant twice for this information, it was not provided to the respondent until September. The investigation was carried out and the outcome sent to the claimant on 7 October 2022. The tribunal concluded on those facts that there was no delay to the outcome of the grievance.

337. The claimant subsequently (in October 2022) raised additional issues which she wished to be treated as part of her grievance. The tribunal noted that it was not until March 2023 that the claimant confirmed to Ms Gibson that she wished these matters to be treated as part of the grievance. The respondent accepted there was some delay in dealing with those additional matters, and a letter of outcome was not issued to the claimant until May 2023.

338. The tribunal concluded from these facts that there was no delay to the outcome of the first part of the grievance, but there was a delay to the outcome of the additional matters raised.

339. The tribunal accepted this was unwanted conduct.

340. We next asked if the conduct was related to disability. The additional matters were raised in October 2022 and an outcome not provided until May 2023. The tribunal, in looking at the context and circumstances around this matter, had regard to the evidence of Ms Hemfrey who told the tribunal that the

respondent had thought the additional matters raised by the claimant would be dealt with as part of the claimant's claim to the employment tribunal. The respondent knew, at the time the additional matters were raised, that the claimant had taken legal advice, contacted ACAS for early conciliation and would be making a claim. The tribunal also had regard to the fact that as soon as the respondent sought legal advice regarding the situation and were advised to deal with the matters raised by the claimant, they did so. Further context was provided from the fact there was a continuing employment relationship and an attempt by the respondent to obtain an occupational health report with a view to the claimant returning to work.

341. The tribunal concluded from these facts that it was clear the delay in dealing with the additional matters was related to the respondent's mistaken belief regarding how those matters would be dealt with and it was not related to disability. The tribunal, for this reason, dismissed this aspect of the complaint.

Point (xv)

342. The claimant alleged the respondent had carried out a flawed and inadequate investigation into the issues raised in the claimant's grievance. The basis for this allegation was the fact Ms Hemfrey did not interview other employees regarding the allegations. Ms Hemfrey accepted she had not interviewed employees other than Ms Rankin and explained this was for two reasons: firstly, the complaints concerned Ms Rankin and secondly, Ms Hemfrey wanted to review the factual information such as emails, notes, timesheets and video recordings of meetings. The tribunal concluded, based on the evidence of Ms Hemfrey (supported by Ms Gibson) that whilst the respondent did not carry out the investigation wished for by the claimant, that did not of itself mean the investigation was flawed or inadequate. The tribunal concluded the respondent in fact carried out an incredibly thorough investigation of the grievance. The tribunal dismissed this aspect of the complaint for this reason.

Point (xvi)

343. This point was withdrawn in submissions.

Point (xvii)

344. The claimant alleged that on or around 5 November 2022 Ms Hemfrey told the claimant she was preoccupied with dwelling on the past in response to the claimant requesting that the grievance be concluded. Ms Hemfrey accepted this comment had been made to the claimant.

345. The tribunal accepted this comment was unwanted conduct.

346. We next asked if the conduct was related to disability. The tribunal, in considering this matter, had regard to the string of emails between the claimant and Ms Hemfrey and noted that, essentially, an impasse was reached whereby Ms Hemfrey wanted the claimant to confirm a date to attend an occupational health assessment appointment, following which a referral would be agreed with her; whereas the claimant refused to do this unless and until the initial email from Ms Hemfrey to Ethos was corrected.

347. The tribunal considered the key point arising from the context and circumstances of the email exchange was that things had moved on considerably from when the claimant injured her knee (September 2021). The email exchange took place in early November 2022, at which point the claimant had been signed off as being unfit for work since June 2022 and the knee injury was no longer referenced on the fit note. Accordingly, what the claimant had and had not been able to do in 2021 was background information and not the crux of the reason for the referral to occupational health.

348. The email exchange demonstrated that from the respondent's perspective they wished to obtain an occupational health assessment to inform of the likelihood of the claimant's return to work, a possible timescale for this and whether any reasonable adjustments would be necessary. The claimant wanted what she perceived to be false information corrected but this information related to background information and a timeframe which was no longer relevant in circumstances where the claimant was not fit to attend work in any capacity.

349. The tribunal, having balanced and considered all of the above points, concluded the comment about dwelling in the past related to the claimant's focus on duties she could/could not do at a period of time which was not the focus of the current occupational health referral. The comment did not relate to the disability, but to the claimant's failure to move forward and acknowledge the focus of the occupational health referral would be on the claimant's fitness for work moving forward. The tribunal, for this reason, decided to dismiss this aspect of the complaint.

Point (xviii)

350. This point was withdrawn in submissions.

Point (xix)

351. The claimant alleged Ms Rankin, Ms Hemfrey and the Board of Trustees' failure to uphold any aspect of her grievance was an act of harassment. Ms Rankin was not involved in the decision to not uphold any aspect of the claimant's grievance. The tribunal accordingly accepted that there was a failure by Ms Hemfrey and the Board of Trustees to uphold any aspect of the grievance.

352. The tribunal (in the absence of any submissions dealing specifically with this point) considered the same issues arose here as in point (xiii) above. The tribunal therefore decided to dismiss this aspect of the complaint for the same reasons as are set out above.

353. The tribunal, in conclusion and for the reasons set out above, dismissed the complaint of harassment.

Victimisation

354. The issues to be determined by the tribunal in respect of this claim are:

1/ Did the claimant do a protected act when she:

(a) raised a grievance on the 25th July 2022;

(b) notified ACAS on the 19 October 2022 that she intended to bring an Equality Act claim against the respondent;

(c) presented a claim under the Equality Act 2010 against the respondent on the 29 December 2022.

5 2/ Was the claimant subjected to the following detriments:

(i) Ms Hemfrey's comment made by the meeting on 25 July 2022 asking if the claimant was registered disabled and the dismissive tone she used;

10

(ii) Ms Hemfrey and Ms Rankin investigating the grievance raised on the 25 July 2022;

(iii) The respondent's failure to respond to enquiries into the progress of the claimant's grievance (the claimant emailed on 17 September, 27th September, 4 October and 19 December);

15

(iv) The delay in the outcome of the grievance from 25 July 2022 until 23 May 2023;

(v) Ms Rankin, Ms Hemfrey and the Board of Trustees carrying out a flawed and inadequate investigation into the issues raised in the claimant's grievance;

(vi) Ms Hemfrey's comment about dwelling the in past;

20

(vii) Ms Rankin and the Board of Trustees advertising a role with the same title, pattern and hours as the claimant's on or about 20 May 2023 and failing to notify her and

(viii) Ms Rankin, Ms Hemfrey and the Board of Trustees failing to uphold any of the claimant's grievance.

25

3/ If so, was the claimant subjected to the detriment because of having done a protected act?

355. The tribunal noted that detriments (i), (ii), (iii), (iv), (v) and (vi) were said to have happened because of protected act (a).

356. The detriments (ii) to (viii) inclusive were said to have happened because of protected act (b).

5 357. The detriments (v), (vii) and (viii) were said to have happened because of protected act (c).

358. The tribunal next had regard to the relevant statutory provisions in section 27 Equality Act, which provides that a person victimises another person if s/he subjects the other to a detriment because that other person did a protected
10 act. A protected act is defined as bringing proceedings under the Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes of or in connection with the Act and making an allegation that a person has contravened the Act.

Did the claimant do a protected act

15 359. The respondent accepted that points (a), (b) and (c) above were protected acts.

Was the claimant subjected to a detriment and if so, was she subjected to that detriment because she had done a protected act

Point (i)

20 360. The tribunal accepted Ms Hemfrey's comment asking whether the claimant was registered disabled was a detriment.

361. The tribunal asked whether the claimant was subjected to that detriment because she had done a protected act (that is, raised a grievance on 25 July). The tribunal, when considering whether the detriment was because the
25 person had done a protected act, noted that the essential question in determining the reason for the claimant's treatment is what consciously or subconsciously motivated the employer to subject the claimant to the detriment. In the majority of cases, this will require an inquiry into the mental

processes of the employer. The protected act need not be the sole reason for the detriment, but it must be a significant influence.

5 362. The claimant's amended notes of the meeting of 25 July provide some insight into the conversation between Ms Hemfrey and the claimant. The claimant suggested she was being made a "scapegoat" and that the respondent wanted to dismiss her on medical grounds. Ms Hemfrey replied to say that this was not the case, but legally an employer could dismiss an employee with less than two years' service with no requirement for any reason to be given. She advised that if the claimant had to take 1 or 2 months off work for complete rest, and then return to work to resume full duties, this would be 10 acceptable to the respondent. Ms Hemfrey reiterated the respondent wanted to get as full a picture as possible of the claimant's long term prognosis. The claimant replied that if her work was not the issue, then the dismissal procedure did not apply under the Equality Act. Ms Hemfrey responded to ask 15 the claimant if she was in fact registered disabled.

20 363. The tribunal concluded from this (and Ms Hemfrey's evidence) that Ms Hemfrey was motivated to make the comment because the claimant had suggested dismissal procedures did not apply under the Equality Act. It appeared to the tribunal that what Ms Hemfrey's comment was getting at was whether the claimant was "registered disabled" for the purposes of the Equality Act.

25 364. Ms Hemfrey acknowledged that she had been "gobsmacked" on the 25th July at the sheer scale of the claimant's concerns regarding not only her role but the way in which the business was run. There was no hint in Ms Hemfrey's evidence that she was angry or concerned about the issues raised. There was no hint of any connection between the raising of the grievance and the comment made.

30 365. The tribunal concluded from the above points that the fact the claimant raised concerns/grievances at the meeting on the 25th July was not a factor motivating Ms Hemfrey consciously or subconsciously to make the comment. We decided to dismiss this aspect of the claim for these reasons.

Point (ii)

366. The second detriment related to Ms Hemfrey and Ms Rankin investigating the grievance. We have set out above that Ms Rankin did not investigate the grievance. We therefore asked whether the claimant was subjected to detriment by Ms Hemfrey, on behalf of the Board of Trustees, investigating the grievance. There was nothing to inform the tribunal what detriment arose from Ms Hemfrey investigating the grievance: there was, for example, no suggestion that someone other than Ms Hemfrey should have investigated it. There was criticism of the way in which Ms Hemfrey investigated the grievance, but the alleged detriment was not framed round the way in which Ms Hemfrey investigated. The tribunal decided for this reason that there was no detriment arising from Ms Hemfrey investigating the grievance.

Point (iii)

367. The third detriment was that the respondent failed to respond to enquiries into the progress of the claimant's grievance. The tribunal noted reference to four occasions when it was said the claimant had chased for an update (17 September, 27 September, 4 October and 19 December).

368. The tribunal in considering this point noted the claimant sent an email on the 17 September (page 382) and received a response from Ms Gibson on the 20 September. The claimant's email of 27 September (page 39) was responded to by Ms Hemfrey hours later. The claimant's email of 4 October (page 389) was responded to by Ms Hemfrey on the same day. The tribunal was not referred to an email dated 19 December chasing for a response.

369. The tribunal concluded from the above that there had been no failure by the respondent to respond to enquiries into the progress of the grievance. The claimant received a prompt response on each occasion and was assured the grievance outcome would be delivered shortly. We decided, for this reason, to dismiss this aspect of the complaint.

Point (iv)

370. The fourth detriment was that there was a delay in the outcome of the grievance from 25 July 2022 until 23 May 2023. The tribunal noted that the respondent had to wait from the 25 July until early September for the claimant to produce all of the details of the grievance. The respondent then investigated and issued a response on the 7 October. We concluded there was no delay in this regard.
371. The claimant subsequently raised further matters she wished to have considered and investigated as part of the grievance. There was a delay in dealing with these additional matters. The tribunal concluded that notwithstanding there was a delay, there was no detriment to the claimant. We say that because the claimant was not awaiting the outcome of the additional grievance for any purposes: she had taken legal advice and was progressing a tribunal claim. The claimant was still in employment but not fit to work and the outcome of the grievance was not a matter which would influence a return to work. The tribunal acknowledged the delay to the grievance outcome may have been a frustration to the claimant, but we did not consider it caused any disadvantage or detriment to the claimant and for this reason we dismissed this aspect of the claim.
372. We should state that if we had decided the claimant had been subjected to detriment by the delay in issuing an outcome to the additional grievance matters, then we would have had to decide whether the claimant was subjected to this detriment because she had raised the grievance on 25 July and/or because she had commenced early conciliation with ACAS on 19 October. The tribunal, in considering this question noted the gap in time between the raising of the grievance on 25 July and the claimant raising additional matters in the grievance in October. These matters were not investigated until March/April 2023. There was nothing to suggest any link between the “delay” in investigating the additional matters and the grievance raised in July. This was particularly so given the fact the issues raised in July had been investigated and concluded by 7 October. In those circumstances

the tribunal was satisfied the detriment was not because the claimant had done the protected act of raising a grievance in July.

5 373. There were no submissions from the claimant to inform the tribunal of the basis upon which it was said the detriment was linked to, or caused by, the protected act of commencing the early conciliation process. There was nothing to suggest the respondent had been angered or troubled by this or wanted to punish the claimant for having done so. The respondent's explanation for the delay was the fact they had mistakenly understood the additional matters raised by the claimant would be dealt with as part of any
10 tribunal proceedings and on that basis they did not start an investigation. The tribunal noted the fact the respondent immediately investigated when they received legal advice to do so.

15 374. The tribunal concluded from these facts that the reason for the delay in investigating the additional matters was due to the respondent's mistaken belief and was not because the claimant had done the protected act of starting early conciliation.

375. We decided for these reasons to dismiss this aspect of the claim.

Point (v)

20 376. The fifth detriment was that Ms Rankin, Ms Hemfrey and the Board of Trustees carried out a flawed and inadequate investigation into the issues raised in the grievance. We have noted above that Ms Rankin was not involved in investigating the claimant's grievance. The investigation was undertaken by Ms Hemfrey on behalf of the Board of Trustees.

25 377. The tribunal decided above that the investigation undertaken by Ms Hemfrey was not flawed or inadequate. We acknowledged Ms Hemfrey did not interview people other than Ms Rankin but that fact of itself does not mean the investigation was flawed and inadequate. We concluded (for the reasons set out above and not repeated) that the investigation carried out by Ms Hemfrey was detailed and thorough. We decided the alleged detriment did
30 not occur and we dismissed this aspect of the complaint for this reason.

Point (vi)

378. The sixth detriment related to Ms Hemfrey's comment regarding dwelling on the past which, it was said, was in response to the claimant requesting that her grievance be concluded. There was no dispute regarding the fact the comment was made by Ms Hemfrey, but we did not accept this comment was made in response to the claimant requesting that her grievance be concluded. We set out (above) the emails regarding this matter and it was clear from those emails that the comment arose in the context of the initial email to Ethos Health regarding an occupational health assessment. We therefore limited the alleged detriment to the fact a comment was made. We accepted this comment was a detriment.
379. We next considered whether Ms Hemfrey's comment on 5 November 2022 about dwelling in the past happened because the claimant had raised a grievance on 25 July and/or because the claimant had notified ACAS on 19 October 2022 that she intended to bring an Equality Act claim against the respondent.
380. The tribunal, when considering what motivated Ms Hemfrey to make the comment, and whether it was because of the grievance raised on 25 July, noted there was a 3.5 month gap between the raising of the grievance and the comment. In that time the grievance had been investigated and an outcome given.
381. We next noted the context in which the comment was made. The email trail is set out above and we concluded (above) that it was clear that whilst the claimant wanted the comments made in the initial email to Ethos "corrected", Ms Hemfrey was endeavouring to get the claimant to understand the issue was not what the claimant had or had not done in the period September 2021 to June 2022, but the fact she had been signed off as unfit for work since June 2022 and the respondent needed to understand the prognosis for a return to work and an indicative timescale. Further, Ms Hemfrey wanted the claimant to confirm a date for the occupational health assessment and then the terms of the referral would be agreed with the claimant.

382. There was nothing to suggest to the tribunal, either directly or by way of inference, that the fact of the claimant having raised a grievance three months earlier was influencing Ms Hemfrey's mind at all let alone to a significant extent. The tribunal concluded Ms Hemfrey was motivated to make the comment to encourage the claimant to move on and go to occupational health. The comment was not made because the claimant had raised a grievance three months earlier.

383. The tribunal next considered whether the comment was made because the claimant had notified ACAS on the 19 October 2022 that she intended to bring an Equality Act claim against the respondent. The tribunal, having had regard to all of the points previously made regarding the context and circumstances in which the comment was made, concluded that what motivated Ms Hemfrey (consciously and subconsciously) to make the comment was her frustration that the claimant would not move forward to attend an occupational health assessment to assist with planning for a return to work in the future. This frustration had nothing whatsoever to do with the fact the claimant had commenced early conciliation, and everything to do with the fact the claimant was, in real terms, refusing to attend for an occupational health assessment. We decided, for these reasons, to dismiss this aspect of the complaint.

Point (vii)

384. The seventh detriment was that Ms Rankin and the Board of Trustees advertised a role with the same title, pattern and hours as the claimant's on or around 20 May 2023 and failed to notify her. The tribunal accepted the respondent had agreed with the claimant in or around mid-March 2023 to keep the claimant informed of operational updates that related to her role. The advertisement of the new role was not an operational update that related to the claimant's role. The role which was advertised was a completely new role which arose from the fact the respondent had been successful in obtaining funding to run an Employability training course. This had nothing to do with the claimant, or her work or role. The tribunal concluded for this reason that the claimant was not subjected to a detriment in this respect.

Point (viii)

385. The eight detriment related to the failure to uphold any aspect of the grievance. The claimant, in submissions, stated this was a detriment because the claimant felt she was not being heard and she required the grievance to be addressed in order to return to work. The tribunal accepted that a failure to uphold any aspect of a grievance may result in a person feeling they are not being heard and for this reason we accepted this was a detriment. The submission that the claimant required the grievance to be addressed in order to return to work was not one the tribunal could accept in circumstances where the claimant was not fit to return to work.
386. The tribunal next considered whether the claimant was subjected to the detriment of the Board of Trustees failing to uphold any aspect of her grievance because she had notified ACAS she intended to bring an Equality Act claim against the respondent and/or she had raised a claim under the Equality Act against the respondent on the 29 December 2022. The tribunal acknowledged the submissions made by the claimant regarding delay in dealing with the additional aspects of the grievance and the adequacy of the investigation and noted there were no submissions to suggest why it was said the failure to uphold any aspect of the grievance was because of the two protected acts.
387. The tribunal, in considering the issue, had regard to the fact there was no evidence to suggest the respondent was shocked, upset or angry at the fact the claimant had commenced early conciliation and/or presented a claim. Their reaction to it was a standard reaction in terms of seeking legal advice and acting in accordance with that advice which was to investigate the additional aspects of the grievance and issue an outcome.
388. The tribunal also noted that a key feature of this case was that there was no hint (and no evidence from which we could draw an adverse inference) that the respondent wished to end the claimant's employment: the entire focus for the respondent was on the claimant doing what she needed to do in order to be able to return to work. This was evidenced by the fact the respondent made

many adjustments for the claimant whilst she was recovering from the knee injury, and wanted the claimant to attend occupational health for an assessment regarding the prognosis for a return to work and what adjustments may be necessary. The respondent had not made any reference to or suggestion of termination of employment for reasons of capability. The only person who had raised this was the claimant.

389. The tribunal next noted that the outcome of the investigation into the additional grievance matters was issued on 23 May 2023. This was 7 months after the claimant had initiated early conciliation and 5 months after the claim had been presented. There was no evidence to suggest why, after that passage of time, the fact of the early conciliation being initiated or the claim being presented, influenced the respondent to not uphold any aspect of the grievance.

390. The tribunal concluded from all of the above that what motivated the Board of Trustees not to uphold any aspect of the grievance was the fact that their investigations led them to that outcome. The tribunal acknowledged the claimant was critical of the investigation carried out by the respondent but the investigation into the additional matters followed the same format as the investigation into the original grievance, which was raised prior to the protected acts relied upon.

391. The tribunal decided, for these reasons, to dismiss this aspect of the complaint and to dismiss the complaint of victimisation.

Timebar

392. The respondent argued that any alleged act or omission occurring prior to 20 July 2022 (in respect of the first claim) and any alleged act of omission occurring prior to 15 May 2023 (in respect of the second claim) was timebarred.

393. The claimant submitted there had been a course of conduct, the last act of which occurred on 23 May 2023 when the claimant's grievance was finally issued. The alleged acts of discrimination were accordingly in time. If the tribunal was not with the claimant on this point, then it was submitted that it

would be just and equitable to allow the claim to proceed in circumstances where the claimant's health was a factor affecting her actions. It was further submitted that the claimant had been engaging in internal procedure and reference was made to the case of ***Abertawe Bro Morgannwg University Health Board v Morgan***.

394. The tribunal, having considered and dismissed all of the alleged acts of discrimination, concluded there was no continuing course of conduct in this case and accordingly the complaints identified by the respondent (above) had been presented out of time.

395. The tribunal acknowledged the evidence regarding the claimant's health but there was no indication the claimant had been so unfit as to be unable to present a claim. The claimant was sufficiently fit to engage in an internal process regarding her grievance and, more importantly, sufficiently fit to seek advice from at least two different sources. On this basis the tribunal concluded there was no basis for a just and equitable extension of time.

Constructive unfair dismissal

396. The issues to be determined by the tribunal are:

- did the respondent's treatment of the claimant amount to a breach of an express or implied term of the claimant's contract of employment?
- if so, was the breach sufficiently serious as to constitute a repudiatory breach giving rise to an entitlement to treat the contract as terminated without notice;
- was there reasonable and proper cause for any of the respondent's acts or omissions relied on by the claimant;
- if there was any repudiatory breach by the respondent then (a) did the claimant resign in response to such breach and (b) did the claimant delay too long in resigning and therefore affirm her contract of employment.

397. The tribunal had regard to the statutory provisions set out in section 95(1)(c) Employment Rights Act. A constructive dismissal occurs where an employee terminates the contract under which s/he was employed (with or without notice in circumstances in which s/he was entitled to terminate it by reason for the employer's conduct.
- 5
398. The onus is on the claimant to establish:
- (i) there has been a fundamental breach of contract on the part of the respondent that repudiated the contract of employment;
 - (ii) that the breach caused her to resign and
 - 10 (iii) that she did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
399. The tribunal next had regard to the relevant case law. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment (***Western Excavating Ltd v Sharp 1978 ICR 221***). It is an implied term of every contract of employment that the employer shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee (***Malik v BCCI International SA (in compulsory liquidation) 1998 AC 20***).
- 15
400. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract of employment (***Lewis v Motorworld Garages Ltd 1986 ICR 157***)
- 20
401. The test of whether there has been a breach of the implied duty of trust and confidence is objective. The conduct relied upon as constituting the breach must impinge on the relationship in the sense that, looked at objectively, it is likely to destroy the degree of trust and confidence the employee is reasonably entitled to have in the employer (***Malik***).
- 25
402. There may be a cumulative course of conduct relied on by the employee who subsequently resigns in response to a last straw. A relatively minor act may

be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. (*Lewis v Motorworld Garages Ltd 1986 ICR 157* and *Omilaju v Waltham Forest London Borough Council 2005 IRLR 35*).

5 403. The tribunal also had regard to the case of *Chindove v William Morrison Supermarkets plc EAT 0201/13* where it was held that affirmation of the contract is about conduct, not about passage of time. It was said that what matters is whether the employee's conduct has shown an intention to continue in employment rather than resign.

10 404. The tribunal also had regard to the guidance provided in the case of *Kaur v Leeds Teaching Hospital NHS Trust 2018 IRLR 833* where the Court of Appeal set out the questions it will normally be sufficient for tribunals to ask in order to decide whether an employee has been constructively dismissed. The questions are:

15 (i) what was the most recent act (or omission) on the part of the employer which the employee says caused or triggered the resignation;

(ii) was s/he affirmed the contract since that act;

(iii) if not, was the act or omissions by itself a repudiatory breach of contract;

20 (iv) if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term and

(v) did the employee resign in response (or partly in response) to the breach.

25 405. The tribunal next had regard to the claimant's submissions. The claimant, in her submissions, confirmed she was relying on a breach of the implied term of trust and confidence and that she resigned in response to the grievance outcome and the manner in which the grievance had been handled. The submission went on to argue the claimant also sought to rely on a breach of

some express terms of her contract: these arose from the contractual policies which the claimant believed had been breached (Covid 19 policy; Health and Safety policy relating to stress and the disability policy). It was further argued that the claimant's contract of employment explicitly referenced the Equality Act 2010 and the Employment Handbook's Equality and Diversity policy, and that if the respondent was found to be in breach of their obligations in terms of equality and diversity they would also be in breach of the employment contract. This breach, it was submitted, would be of such a serious nature that it would have entitled the claimant to resign.

5
10 406. The claimant submitted she had "soldiered on" and affirmed earlier breaches, but that this was not fatal to her case because in the *Kaur* case (above) it was stated that if the conduct in question is continued by a further act or acts, in response to which the employee does resign, s/he can still rely on the totality of the conduct in order to establish a breach of the Malik term. It was submitted
15 the respondent had revived the claimant's right to terminate the contract by carrying out further acts, and specific reference was made to the grievance. It was also submitted the respondent's conduct as a whole had been repudiatory.

20 407. The tribunal took from this submission that the claimant relied on the respondent's conduct as a whole, throughout the course of her employment, and culminating in the grievance outcome (as a last straw) as entitling her to resign.

408. The tribunal next had regard to the claimant's letter of resignation (page 508). The claimant stated she was resigning for the following reasons:

- 25
- Failure to make reasonable adjustments – this related to the alleged failure to provide the equipment noted in the ergonomic report; failing to adhere to medical guidance in fit notes; being told to carry out tasks that were outwith her job description and physical ability and being asked to do things contrary to her fit notes.
- 30
- Public Events – this related to the alleged running of events which were understaffed and with no certified first aider; failure to follow the covid

policy; failure to carry out risk assessment regarding her safety; failing to acknowledge risk assessments were required by law and scheduling her to cover a group with no other staff or volunteers present;

- 5 • Working environment – this related to an alleged faulty fire door; providing different stories why the repair to the door was not fixed; failing to deal with the repair promptly; no arrangement for equipment in the office; the amendment to the initial visit form to be made in May 2022 to ask about access to property, was not done and her workload was increased.
- 10 • Breach of policies and statutory rights – this related to an alleged breach of the covid 19 policy; health and safety policy (stress) and disability policy
- Unprofessional conduct – this related to mishandling of personal data and passive aggressive remarks about ability.
- 15 • Grievance – this related to there not having been an independent person appointed to investigate it; unreasonable timescale to conclude it and all points of the grievance being rejected.

409. The tribunal next addressed the questions set out in ***Kaur*** above. The first question was “*what was the most recent act (or omission) on the part of the* 20 *employer which the employee says caused or triggered the resignation*”. The answer to this question is the grievance outcome issued on the 23 May 2023.

410. The second question is “*has the claimant affirmed the contract since that act*”. The tribunal noted the claimant’s submissions that where an employee is off sick inferences cannot easily be drawn from delay. It was further submitted 25 the tribunal should have regard to the fact the claimant had caring responsibilities and was undergoing medical treatment at the time and should conclude the contract could not have been affirmed in three weeks. The respondent invited the tribunal to find the claimant had delayed and thereby affirmed the contract. This was particularly so in circumstances where the 30 claimant, in the intervening period, was engaged with Ms McGill in terms of

an appeal against the grievance outcome (which was lodged on the 30 May 2023) and on the recommendations in the occupational health report.

5 411. The tribunal, in considering this matter, had regard to the fact the grievance outcome was received by the claimant on 23 May 2023. The claimant did not
10 resign until 15 June 2023. There was an intervening period of just over three weeks. The key issue for the tribunal, however, was what the claimant did in that period of three weeks. Firstly, the claimant actively engaged with the respondent regarding an appeal against the outcome of the grievance. The claimant, in her email of 30 May to Ms Gibson (page 506) noted she *“would be grateful if you could let me know when my appeal can be heard and by whom.”* She also indicated that she would like to have a witness attend with her. The claimant then engaged in correspondence with Ms McGill regarding a date for the appeal hearing (page 506). The claimant advised Ms McGill on 7 June, that the date was not suitable and she was offered an alternative date.
15 The claimant did not reply to this.

412. Secondly, the claimant engaged with Ms McGill for a check-in meeting on 7 June.

20 413. Thirdly, the claimant engaged with Ms McGill regarding the completion of the individual stress risk assessment. The plan had been that Ms McGill would send the form to the claimant, who would see her GP and then speak with Ms McGill on 7 June. At the meeting on 7 June the claimant and Ms McGill discussed completion of the form. They discussed completing the form on the basis of the claimant being 50% of the time in the office and 50% of the time visiting families. There was also a discussion about allocation of families and
25 provision of information about access to properties.

30 414. The tribunal considered that the above points demonstrated an intention by the claimant to continue in employment. We say that because the completion of the grievance process, the completion of the individual stress risk assessment and the discussion about allocation of families and access to property are all forward-looking issues to do with returning to work. We

decided, on this basis, that the answer to the second question was yes, the claimant had affirmed the contract since the outcome of the grievance.

5 415. The tribunal, notwithstanding our answer to the second question, went on to answer the remaining questions. The third question was *“if the employee has not affirmed the contract, was the act or omission by itself a repudiatory breach of contract”*. The claimant submitted a failure to address a grievance could constitute a breach of the implied term of trust and confidence and the claimant complained in particular about the delay in dealing with the grievance and the involvement of Ms Rankin. The tribunal (above) concluded there was
10 no delay in dealing with the initial grievance raised on 25 July 2022. The outcome to this grievance was issued on 7 October. The claimant raised additional matters she wished treated as a grievance and these matters were not investigated until March 2023 and an outcome issued in May 2023. The tribunal accepted there had been some delay in dealing with these additional
15 matters.

416. The tribunal noted this was not a situation whereby the respondent failed to address a grievance. The respondent did address both parts of the grievance by investigating the issues raised by the claimant. The tribunal found as a matter of fact the investigation was carried out by Ms Hemfrey on behalf of
20 the Board of Trustees. Ms Rankin was not involved in the investigation. Ms Hemfrey spoke to Ms Rankin about the grievance because most of the complaints either concerned her or the way in which she ran the service. Ms Rankin also provided information to Ms Hemfrey, but all information was checked and reviewed by Ms Hemfrey and the other trustees.

25 417. The tribunal accepted, in relation to the delay in dealing with the additional grievance, that the respondent mistakenly believed the issues would be dealt with as part of the tribunal process. We noted the claimant did not confirm until March 2023 that she wished the issues to be investigated. We further noted the respondent undertook an investigation as soon as they had
30 received advice to do so. We concluded from these facts that the delay did not amount to a repudiatory breach of contract.

418. The tribunal further concluded that the investigation carried out by the respondent was reasonable in all the circumstances. Ms Hemfrey was an independent person insofar as she had not been involved in the issues to be investigated; Ms Hemfrey spoke to those she considered relevant and appropriate and the relevant correspondence and video records of meetings were all reviewed very thoroughly.
419. The tribunal decided, for these reasons, that the way in which the respondent dealt with the claimant's grievance did not amount to a repudiatory breach of contract.
420. The fourth question was *"if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term"*. The tribunal, in considering this question, firstly had regard to the fact the claimant's discrimination complaints have been dismissed. Further, we were satisfied there had not been any breach of the claimant's contract in respect of equality and diversity.
421. We secondly had regard to the submission in respect of the Covid 19 policy (page 147), and noted there was scant evidence about this. The claimant referred to the section in the policy which provided that those who were immunosuppressed must not undertake work that entails direct and face-to-face contact and referred to having undertaken face-to-face work at the family groups. We noted the claimant, in her disability impact statement, referred to the fact she had been shielding throughout Covid. She referred to a discussion with Ms Rankin about the work once covid restrictions had been lifted and where she agreed she would be able to manage family visits. We also noted that when Ms Rankin was asked if a risk assessment had been carried out regarding covid, and visiting families, she confirmed it had and a check had been done with families prior to a visit to enquire if any member of the family had covid.
422. We concluded from this that the claimant was asked to attend family groups once covid restrictions had been lifted, and there was accordingly no breach

of the policy. Further, and in any event, the evidence demonstrated the claimant had been attending various venues, for example, the office, family homes, the library without objection; and without reference to the wearing of a face mask. The claimant did not object to attending family groups and did not suggest she could not do so because it was in breach of the policy. We concluded that in the circumstances there was no breach of the covid policy and, even if the request made to attend a family group was a breach of the covid policy (and we do not say it was) then the claimant affirmed this breach by agreeing to attend, and in fact attending on a number of occasions.

5
10 423. The third point to which we had regard was the submission that the Health and Safety policy section regarding stress (page 149) had been breached. The policy stated that *“It is also the aim of Home Start Falkirk to identify and assist those employees who are suffering from stress, for whatever reason, and finding it difficult to cope by offering reasonable, practical alternatives and support”*. The tribunal was satisfied there was no breach of this policy in
15 circumstances where the respondent endeavoured to assist the claimant. This was evidenced by the fact of the adjustments made for the claimant, the referral to occupational health and the regular wellbeing meetings with the claimant (who was, at this point, signed off as being unfit for work).

20 424. The fourth point to which we had regard was the submission in respect of the extract from the Disability policy (page 150) and the section relied on that *“In cases where advice is needed on a medical condition or on the safety implications of recruiting an employee with a disability, the Employment Medical Advisory Service will be contacted”*. The claimant gave no evidence
25 about this. Ms Rankin confirmed no advice had been taken regarding the employment of the claimant because during her discussion with the claimant, she had told Ms Rankin her condition had “minimal impact on her ability to work”. Ms Rankin confirmed that if adjustments had been required, then the respondent would have taken advice. The tribunal decided there was
30 insufficient evidence before the tribunal to show there had been a breach of this policy.

425. The tribunal, in answering the fourth question which was whether the grievance (that is, the grievance outcome/way in which it was handled) was part of a course of conduct which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence, concluded that it was not. We
5 reached that conclusion because the alleged course of conduct relied on by the claimant was either not supported by the evidence heard by the tribunal, or was a complaint of discrimination which the tribunal dismissed (above).
426. The tribunal, notwithstanding our above conclusions, did go on to ask the fifth question which was "*did the employee resign in response (or partly in
10 response) to the breach*". This question has to be asked in the context of there having been a breach of contract which the claimant had not affirmed. The respondent's representative submitted the claimant did not resign in response to the breach (if there was one) but instead resigned when she acquired two years' service and the right to bring an unfair dismissal complaint. Ms Maher,
15 in support of that submission, pointed to the fact the case had been ongoing since October 2022 and the claimant had had the benefit of legal advice. The claimant waited until she had the requisite service and waited for the grievance outcome because she had nothing else to rely upon.
427. The tribunal, in considering this submission, had regard to the fact that the
20 claimant acquired two years' service on 26 April 2023. The tribunal also had regard to three points made by the claimant in her evidence which we considered illustrative. The first point related to the fact that at the meeting on 25 July 2022, it was the claimant who made reference to the respondent wanting to dismiss her for reasons of capability. The tribunal considered this
25 odd in circumstances where there was no suggestion by the respondent that they were moving in that direction. The second point related to the grievance outcome received by the claimant on 7 October 2022. The claimant, in response to this said, "*they didn't uphold anything. The onus was back on me to raise concerns ...*". The third point also concerned the grievance outcome
30 when the claimant stated that upon receiving it "*I couldn't go back*".
428. The tribunal questioned why, if the claimant knew she could not go back in October 2022, did she continue to raise the additional grievance and continue

in employment. We noted the claimant was, by this time, in receipt of legal advice. We inferred from all of these points, that the reason why the claimant presented additional matters was to pass time in order to acquire two years' service. We considered we were supported in that conclusion by the fact that there would never have been a satisfactory conclusion to the grievance process unless or until the respondent gave the claimant what she wanted.

429. The tribunal, in conclusion, decided there was no repudiatory breach of contract and no course of conduct which breached the implied term of trust and confidence. Further, even if there had been a breach of the implied term of trust and confidence, the claimant affirmed that breach or did not resign in response to it. The tribunal decided to dismiss this complaint for these reasons.

430. The tribunal decided, for all the reasons set out above, to dismiss this complaint in its entirety.

15

20

25

L Wiseman

Employment Judge

21/02/2024
Date

Date sent to parties
