



EMPLOYMENT TRIBUNALS

Claimant: Ms. M. Baharier

Respondent : Cooltan Arts Limited (1)
Mr R. Truss (2)
Ms. L. Nalumansi (3)

Heard at: London South, Croydon

On: 4 – 13 October 2017 5-6 February 2018 and the 7-8 February 2018
and the 28 to the 30 August and the 3 September 2018 (in chambers) and

Before: Employment Judge Sage
Members Ms. J Forecast
Ms. M. Foster Norman

Representation

Claimant: Assisted by Mr Wood

Respondent: Ms. Y Montaz Peninsula

JUDGMENT

1. The dismissal was procedurally unfair but substantively fair
2. The Claimant's claim for direct discrimination is not well founded and is dismissed.
3. The Claimant's claim for discrimination for something arising from disability under Section 15 is not well founded and is dismissed.
4. The Claimant's claim for failure to make reasonable adjustments is not well founded and is dismissed.
5. The Claimant's claim for victimisation is not well founded and is dismissed.
6. The Claimant's claim for sex and disability harassment is well founded.
7. The Claimant's claim for wrongful dismissal is not well founded and is dismissed.
8. The Claimant's claim for holiday pay is not well founded and is dismissed.
9. The claims against the Second Respondent of direct discrimination on the grounds of sex and disability are not well founded and are dismissed.
10. The claims against the Third Respondent are not well founded and are dismissed.

REASONS

References to “the Respondent” in these reasons are to the First Respondent . Where reference is made to the Second and Third Respondent, this will be specially stated.

1. The Claimant presented a first claim on the 11 December 2015 claiming direct sex discrimination, harassment related to sex and/or conduct of a sexual nature, harassment related to disability, failure to make reasonable adjustments and victimisation. The Claimant claimed that the First ET1 and the further and better particulars provided in respect of this claim were protected acts. Subsequent to lodging the First Claim, the Claimant was dismissed. The Claimant presented a second claim on the 11 October 2016 adding claims of unfair and discriminatory dismissal, victimisation, wrongful dismissal and holiday pay. The Claimant was employed by the Respondent from 2006 until dismissal 25 May 2016. At the time of dismissal, the Claimant was employed as the CEO.
2. The Respondent stated that it had received a number of allegations of bullying and harassment by the Claimant which had led to a “significantly high turnover of staff and volunteers”. The Respondent engaged an independent HR and employment law consultancy to investigate who advised that the Claimant be suspended pending a full investigation. The Claimant took sick leave and on the 20 October 2015 she was suspended.
3. Whilst on sick leave the Claimant raised a number of grievances setting out 47 allegations. There was a hearing and two complaints were upheld and the rest dismissed. A number of reasonable adjustments were made to the appeal process and on the 18 December 2015 the appeal was not upheld. During the grievance appeal the Claimant raised a further 82 points of grievance which the Respondent proposed to address in a separate grievance process

The Issues

These were agreed to be as follows:

4. The Claimant pursued claims of ordinary unfair dismissal and disability discrimination contrary to sections 13, 15, 21 and 26 of the Equality Act. The Claimant claimed sex discrimination contrary to section 26, victimisation, breach of contract and/or wrongful dismissal and holiday pay.

The issues in relation to these claims are as follows:

Ordinary Unfair Dismissal.

5. Was the reason for the Claimant’s dismissal on 25 May 2016 conduct, specifically gross misconduct?
6. Did the First Respondent hold a reasonable belief in the Claimant’s misconduct?
7. Was that belief formed on reasonable grounds?
8. Did the First Respondent carry out a reasonable investigation?

9. Did the decision to terminate the Claimant's employment fall within the band of reasonable of responses that a reasonable employer would take?
10. Was the dismissal procedurally fair when taking into account the size and administrative resources of the First Respondent?
11. Was the Claimant's dismissal substantively fair?

Disability discrimination.

12. It was conceded by the Respondents that the Claimant suffered from a mental health disability and dyslexia prior to the start of the hearing.

Direct Discrimination contrary to section 13 of the Equality Act.

13. Unfair discriminatory dismissal: Did the First Respondent treat the Claimant less favourably by dismissing her?
14. Did the Second Respondent on the 3 August 2015 fail to act by not asking Mr Deo to desist with his conduct of discriminatory behaviour? (paragraph 14 of the further particulars on page 19c)
15. Did the Second Respondent on the 15 September 2015 send the Claimant's partner an email enquiring about her? The Claimant states that this is less favourable treatment because of sex (see paragraph 18 of the further particulars at page 19c)
16. Who is the comparator? – the Claimant confirmed in evidence that she was relying on a hypothetical comparator.

Discrimination arising as a consequence under section 15 of the Equality Act.

17. Did the First Respondent dismiss the Claimant (the unfavourable treatment) because her behaviour and communication were affected by her purported mental health disability (the 'something arising')?
18. If so can the Respondent demonstrate that this was a proportionate means of achieving a legitimate aim?

Failure to make reasonable adjustments contrary to section 21 of the Equality Act.

19. Did the Respondent have in place a written disciplinary procedure/policy (the PCP)?
20. Did the PCP put the Claimant at a disadvantage due to her disability?
21. Did the Respondent fail to put in place the adjustments:
 - a. They failed to prevent the Claimant from being exposed to unnecessary stress during her period of suspension;
 - b. They failed to safeguard her mental health;
 - c. They failed to implement any adequate reasonable adjustments or any reasonable adjustments whatsoever and rejected those which were requested on the Claimant's behalf;
 - d. They refused to remove Mr Ifill being involved with the matter despite being fully aware of the stress it caused the Claimant;
 - e. They did not make any arrangements at any stage with an Occupational Health provider or take legal and appropriate steps to obtain a report from her GP to explore how her needs could be accommodated either in relation to her suspension or the conducting of disciplinary and/or grievance hearings;
 - f. They should have treated the Claimant's suspension more sensitively and not ambushed her;

- g. The allegations should have been fully particularised and verbally explained to the Claimant;
 - h. They should have handled the Claimant's matter in a more sensitive way;
 - i. They should have considered alternatives to suspension such as permitting the Claimant to work from home.
22. The Claimant also provided further particulars of her claim, seen at page 21 of the bundle and the PCP's were described as follows:
- a. The policy of not providing pastoral care to staff made the subject of accusations;
 - b. Holding a meeting with the Claimant on the 25 August 2015 to discuss allegations in Mr Deo's letter without giving the Claimant any prior warning;
 - c. Suspending the Claimant beyond the two week period which was in her contract of employment.
23. The disadvantages were identified as follows:
- a. The Claimant due to her mental health condition was subject to stress and anxiety and left unsupported by her employer;
 - b. Due to her dyslexia, the Claimant struggled to cope with the information provided to her;
 - c. The Claimant due to her mental health condition was subject to stress and anxiety as the disciplinary proceedings dragged on and she was unable to return to work, when work assisted her mental well being.
24. Are the adjustments reasonable when taking into account all the circumstances? The Claimant identified the following reasonable adjustments:
- a. A welfare meeting should have been arranged by the Trustees who should have met with the Claimant to identify whether she was well enough to work and/or what steps were required to assist the Claimant to remain in work;
 - b. Advance notice of the meeting with advance presentation to the Claimant of documents to be referred to in the meeting and agenda for discussion/ questions for discussion.

Disability harassment contrary to section 26 of the Equality Act.

25. Did the Respondents subject the Claimant to unwanted conduct in that:
- a. The Second Respondent purportedly alleging the Claimant was using her disability as a delaying tactic.
 - b. The Third Respondent issuing a public notice regarding her dismissal;
 - c. The Respondent's insistence that Mr Ifill be involved in the Claimant's disciplinary despite her protestations?
 - d. Subjecting the Claimant to an unreasonably long and disproportionate suspension;
 - e. The Respondent purportedly refusing to engage with the Claimant either to return or permits her to retrieve her belongings;
 - f. The Respondent's instructing Rachel to contact the Claimant regarding the CoolTan 25 year Anniversary Book;
 - g. not permitting the Claimant to sign the memorial book of the colleague who had passed away.
26. Did the First Respondent subject the Claimant to unwanted conduct as alleged in the further particulars provided (on page 20 of the bundle):

- a. On the 2 July 2015 did the Claimant tell Mr Deo (Trustee) that she was suffering from stress and did he tell the Claimant that this was irrelevant and did he shout at the Claimant for not doing her job?;
 - b. On the 9 September 2015 did Mr Taylor say to the Claimant in a meeting "it's your spelling that holds us all up. It's a wonder we get anything done"?
 - c. On the 29 October 2015 did Mr Sanders make a comment when the Claimant attended the Respondent's premises to collect her belongings mocking the Claimant's dyslexia? The Claimant spelled aloud the word "S A N K E" and he allegedly mockingly corrected the Claimant.
 - d. On or around the 30 October 2015 did Mrs Sereen and Mr Ajay call the Claimant's GP and Community Mental Health Team requesting copies of her medical records without authority from the Claimant.
27. Was the purported conduct at paragraphs 25 and 26 above related to the protected characteristics of disability?
28. Did the conduct either violate the Claimant's dignity or create an intimidating, hostile, humiliating, offensive and/or degrading environment for the Claimant?
29. When considering the perception of the Claimant and all the circumstances of the case would it be reasonable for the conduct stipulated at paragraphs 25 and 26 above to have the effect purported at paragraph 28?

Sexual harassment contrary to section 26 of the Equality Act.

30. Did the First Respondent subject the Claimant to the following unwanted conduct (see pages 19B-C in the bundle):
- a. On the 8 January 2015 did Mr Deo shout at the Claimant and say that she could not do her job and was paid too much?
 - b. On the 15 January 2015 did Mr Deo shout at the Claimant?
 - c. On the 5 February 2015 did Mr Deo tell the Claimant that her work was rubbish and did he ask the Claimant why she did not have children?
 - d. On the 25 February 2015 did Mr Taylor sexually harass the Claimant?;
 - e. On the 17 March 2015 did Mr Deo say to the Claimant "Cooltan is your baby and sometimes you feed the milk and then you are poisoning the baby you see what I mean maybe you can take a 3% pay cut"?
 - f. On the 19 March 2015 did Mr Deo shout at the Claimant and tell her she should take a pay cut?
 - g. On the 10 June 2015 did Mr Ajay a Trustee, verbally abuse the Claimant in a meeting and intimidate her in a physical manner by standing over her while she sat?
 - h. On the 12 June 2015 was Mr Deo very rude to the Claimant in a meeting room?
 - i. On the 19 June 2015 did Mr Taylor sexually harass the Claimant?
 - j. On the 25 June 2015 did Mr Taylor sexually harass the Claimant?

- k. On the 1 July 2015 did Mr Deo send an email to the Claimant entitled Legal Notice ordering the Claimant and Mr Taylor to produce a written document concerning the recent dismissal of staff. The legal notice also ordered the Claimant to “stay in her office during the meeting” of trustees called by Mr Deo on the 7 July 2015;
 - l. On the 6 July 2015, 17 July 2015, 10 September, 11 September 2015 and the 14 September 2015 did Mr Taylor sexually harass the Claimant?
 - m. On the 3 August 2015 did Mr Truss, a Trustee, fail to act when the Claimant told him of Mr Deo’s discriminatory conduct towards her?
 - n. On the 15 September 2015 did Mr Truss send the Claimant’s partner an email enquiring about her? The Claimant claims that had she been a man they would not have approached the partner with the enquiry.
31. Was the purported conduct related to the protected characteristic of gender?
32. Did the conduct either violate the Claimant’s dignity or create an intimidating, hostile, humiliating, offensive and/or degrading environment for the Claimant?
33. When considering the perception of the Claimant and all the circumstances of the case would it be reasonable for the conduct stipulated at paragraph 30 to have this effect?

Victimisation contrary to section 27 of the Equality Act.

34. Were the acts set down below protected acts:
- a. On the 18 February 2015 did the Claimant make a verbal complaint to Mr Deo about his breast milk comment?
 - b. On the 29 September 2015 did the Claimant put in a written complaint to the trustees raising a grievance alleging discrimination?
 - c. On the 2 November 2015 did the Claimant raise a grievance alleging discrimination in particular the conduct of Mr Taylor and Rebecca Wilson towards her?
35. Did the First Respondent subject the Claimant to the following detriments (see page 22-3):
- a. On the 18 August 2015 did Mr Deo send a resignation letter to the Board of Trustees that he copied to staff containing “spurious and unsubstantiated allegations levied against the Claimant”?
 - b. On the 5 and 16 October 2015 did Ms Nalumansi, Acting Chair of the Board of Trustees place the Claimant on paid leave to carry out an investigation into the concerns raised by the Claimant and others? On the 16 October did Ms Nalumansi write to the Claimant to inform her that she was to remain on paid leave until the investigations had been concluded;
 - c. On the 10 October 2015 did Ms Firth and Ms Hope (staff members) ostracise the Claimant at a sponsored walk?;
 - d. On the 16 October 2015 did Ms Nalumansi and Mr Endecott order the Claimant to attend the office to do the payroll and she was then ostracised when she attended the office?;
 - e. On the 19 October 2015 when the Claimant returned to work after sick leave (that ended on the 5 October) because she

considered that her suspension should not run for more than 14 days, did Ms Firth remove staff from the Claimant's presence and was it then that Mr Taylor "leant over and waved his finger saying "you are not my boss, you are suspended indefinitely"?

- f. On the 20 October 2015 did Mr Taylor remove the staff from the building and call the police when the Claimant returned to work and cause the Claimant to leave the building?
 - g. On the 21 October 2015 did Mr Taylor shout at the Claimant when she telephoned the office, telling her that she was suspended indefinitely and would not be allowed back into the building?
 - h. On the 29 October 2015 did Mr Sanders, Mr Ajay, Ms Nalumansi, Mr Deo, Mr Endecott and Sheena shout at the Claimant when she entered the premises to collect her belongings?
 - i. On the 11 November 2015 did Ms Nalumansi refuse the Claimant's request to take a period of leave in February 2016?
 - j. On or around 8 January 2016 did the Respondent refer to the Claimant as the "former CEO" on CoolTanArts web site?
 - k. On the 11 February 2016 did the Board of Trustees sanction Mr Taylor to throw away or irreparably damage her drawing board
36. If so, was the detriment because of the Claimant raising protected acts?
37. It is accepted that submitting the Claimant's original claim is a protected act.
38. Did the Respondents put the Claimant at a detriment, namely dismissing and disciplining her?
39. If so was the detriment because the Claimant submitted her original claim form?
40. Was the detriment because of the Claimant raising the protected acts as referred to above at paragraph 34?

Wrongful dismissal.

41. Did the Claimant commit a deliberate and wilful contradiction of her own contractual terms?
42. Did the Respondent terminate the Claimant's employment in response to that breach?
43. Is the Claimant owed six months' notice?

Holiday pay.

44. Is the Claimant entitled to holiday pay of 20 days?
45. Is the Claimant entitled to any holiday pay?

Time Point

46. Are any of the claims above out of time?
47. If so would it be just and equitable to extend time?

Remedy.

48. If the dismissal was unfair and the Tribunal awards compensation pursuant to section 118 of the Employment Rights Act 1996.
49. What amount of compensation should be awarded?
50. Has the Claimant mitigated her loss?
51. Should the Claimant's compensatory award be reduced under the principle of Polkey v A E Dayton Services Ltd [1988] AC 344?
52. Did the Claimant contribute to her dismissal?

53. Has any of the alleged treatment by the Respondent caused the Claimant to suffer injury to feelings? If so what is the appropriate quantum of such an award having regard to the Equality Act section 119(4) and the case of *Vento v chief Constable of West Yorkshire* [2003] ICR 318?

Reasonable adjustments for the Tribunal Hearing.

54. The Tribunal discussed the Claimant's need for reasonable adjustments to the hearing. In order to accommodate the physical impairment of compression of the spine, a footstool and high-backed chair with lumbar support was provided for use. The Claimant was also permitted to stand rather than sit as and when required.
55. In order to accommodate any adverse impact the Claimant may suffer due to her mental impairment during the hearing, It was agreed that regular breaks would be taken and the Tribunal would be led by her and breaks would be called when required.
56. In order to accommodate the Claimant's disability of dyslexia, this was discussed and the Claimant had the use of a ruler to assist her and the Claimant would bring with her a yellow screen or similar to put over the papers to assist her to read the documents (if required). The Claimant was also allowed to write down the questions being asked of her in cross examination. She was advised that if a technical term was used which she did not understand or if any question was unclear, she should inform the Tribunal.
57. It was noted that the Claimant had written in to request that Mr Wood, union representative should be able to help her formulate answers given in cross examination; this was discussed with the Claimant and her representative at the start of the hearing. Mr Wood explained that the Claimant sometimes has difficulty finding the right word and will often use incorrect words for her intended meaning. It was suggested that Mr Wood could make a note of each time the Claimant used an incorrect word or phrase or was unable to answer the question properly and he was to make a note of the time this occurred and the question and answer given. He could then use re-examination to put the question again to allow the Claimant to give the correct answer or to evaluate the accuracy of the answer given. Mr Wood would also be allowed to ask the Claimant whether the words used were the correct word in order to provide to the Tribunal an appropriate and accurate answer to the question.
58. The Claimant made an application for documents to be admitted in the bundle in relation to the conduct of the new CEO, Mr McCabe, where it is alleged that he subjected the Claimant to anti-Semitic behaviour. In order to counter this, the Respondent intended to call Mr McCabe in order to rebut the allegations. This matter was discussed as the Claimant had indicated on the first day of the Tribunal hearing (which was a reading day), that for mental health reasons she needed not to be in the same room as Mr McCabe and he was therefore excluded from the Tribunal hearing by agreement.
59. The Claimant was asked whether the claim forms or the agreed list of issues included a complaint of religious discrimination and she conceded

that it was not on either claim form and not on the agreed list of issues but it was included in another claim form which has since been presented. As it was apparent that this matter was not before this Tribunal, it was concluded that the document and the further evidence were not relevant to the issues to be decided by this Tribunal and would not therefore be admitted. Mr McCabe therefore did not need to be called as a witness.

60. On 9 October, the Respondent stated at the end of the hearing on that day that they required Mr McCabe to be in the room the following day. Miss Montaz on behalf of all Respondents stated that this was necessary otherwise she would be “without instructions”. Prior to this application being made, it was agreed that the Claimant would be giving evidence on that day. The Claimant indicated that Mr. McCabe’s presence in the room would not be acceptable to her for the reasons agreed the start of the hearing and she stated that this was another incidence of the Respondent’s unreasonable conduct towards her. She gave reasons why she was extremely uncomfortable in Mr McCabe’s presence and indicated that she did not feel it appropriate for him to be in the room. The parties were asked to consider the matter overnight in order to accommodate the reasonable adjustments made for the Claimant at the start of the hearing. The following day the Tribunal indicated that taking into account the submissions made by the Claimant at the start of the hearing, which had been by agreement, Mr McCabe would not be allowed to attend the hearing. Additionally, Mr Ifill and Ms Nalumansi for the Respondent were at the Tribunal and instructions could be obtained from Mr McCabe in another room during the many breaks that would be taken during the Claimant’s evidence.

Disclosure of Documents

61. It was noted on the first day of the hearing that although there had been one agreed set of documents, the Claimant produced two additional bundles, one entitled the Claimant’s Supplementary Bundle [“the Red Bundle”] and one entitled New Disclosure as of the 22nd and 29th of September 2017 [“the Blue Bundle”]. Despite the Tribunal now having three bundles of documents, the Respondent handed up an additional bundle of documents headed Respondent’s Supplementary Bundle on 6 October at 11:10. Although Peninsula had been acting for the Respondent from an early stage in this matter, it appeared that these documents had not been disclosed by Mr Truss until 2 October 2017. These documents were highly relevant to the issues before the Tribunal. This was entitled the “the Pink Bundle” and comprised 99 pages. All supplementary bundles were admitted and referred to by the Tribunal.
62. On 9 October during the evidence of Mr Ifill, the Tribunal noted that his statement made reference in a number of paragraphs to notes being taken during the disciplinary meetings on the 17th and 20th of May 2015 and included the comments (paragraph 82) “My notes appear at page [] of the bundle”. This document was not in the bundle. The Tribunal requested a copy of this document and it was produced at the end of the day (at 16.49). Mr Ifill also made mention in answers to the Tribunal’s question to having produced a matrix tool for the dismissal panel. This template document was produced by Mr Ifill on the morning of the 10 October at

10.00 marked R2. The Tribunal requested sight of the properties document and after a number of incorrect documents received the properties of the original document. The properties document referred to as R3 reflected that the disciplinary notes were created on the 17 June 2016. The Tribunal also requested sight of the email exchanges that took place prior to the finalisation of the dismissal letter and of the relevant properties document. They were produced on the 10 October 2017 at 11.16 marked R7(1) to (4) showing that the letter had been produced and shared between Ms Nalumasi, Mr Shaw and Mr Ifill; these again were highly relevant to the issues before the Tribunal. No explanation had been given as to why disclosure had not been given at the relevant time, other than Mr Ifill saying that he had been abroad at the time of producing his statement

63. Mr Taylor was subject to a witness order and attended on the 9 October at 1.00 but was not called into the hearing that day. The Tribunal enquired as to whether he had produced a statement and he had not, he was requested to produce a statement which was provided later that day and a new witness order issued for him to return at 2.00 on the 11 October 2017.

The witnesses before the Tribunal were as follows:

For the Respondent, we heard from:

Mr Truss, Former Trustee
Mr Ifill, Consultant
Miss Nalumansi, Trustee
Mr Taylor by witness order.

For the Claimant we heard from the Claimant herself and
Mrs Phillips
Mr A Phillips former Trustee

The Tribunal received the statements from the following who did not give evidence:

Paul Atkinson
David Burnett
John Chacksfield
John Lawton
Anthony Marshall
Alice Jackson
Lucy Johnson
Gillian Murray
Bob Skelly

We attached the appropriate weight to these statements.

Findings of fact

64. The findings of fact which are agreed or on the balance of probability we find to be as follows:
65. The Claimant was the founder of the Respondent organisation. She was Chair of Trustees from 1997 until 2004 and CEO from January 2006

until the date of the dismissal, she reported to the Board. The Respondent organisation is an arts and mental health charity and was originally set up in the Claimant's kitchen.

66. The Tribunal saw the Claimant's contract of employment at pages 119-127 of the bundle. The holiday year was the calendar year and there was a provision at 6.2 requiring the employee to take annual leave when directed and in particular it stated "we may require you to take holiday on specific days as notified to you in particular you will be required to use part of your annual leave entitlement whilst the Association is closed over the Christmas period". At paragraph 6.3 it limited the number of annual leave days that could be carried forward to 5. The section dealing with suspension was at paragraph 9.3 and stated that "we will pay you for a period of no longer than 14 days...". There was a term covering the handling of confidential information at paragraph 14.1 (page 126) which covered information concerning "any confidential information about the business or affairs of the Association or any of its business contacts.."
67. The Tribunal saw the Respondent's Bullying and Harassment Policy at pages 1066-1072 of the bundle. The policy stated at paragraph 3 (page 1066) that the policy is "*not to be used against managers asking staff to carry out reasonable management requests and/or to fulfil their roles in the workplace*". It also stated at paragraph 7 that "*we recognise isolation is a deep rooted cause of mental distress and we will limit the suspension to 14 days in line with our employment contracts*" (page 1067 and 1070 at 2.4). This was also in the disciplinary policy at page 1079 which endorsed that suspension should be for no longer than is "*necessary to investigate the allegations*". On page 1081 of the disciplinary procedure there was a provision to adjourn the disciplinary hearing if there was a need to carry out further investigations. At page 1084 it clarified that if further matters arose at appeal further investigations may be needed. There was no specific mention of extending suspension but the implication being that suspension could be extended for as long as reasonable for investigations to take place.
68. The sanctions under the disciplinary policy included demotion, transfer, a period of suspension without pay, loss of seniority, reduction in pay, loss of future pay increments, loss of overtime warning and dismissal. These were the policies that applied to staff. There was also a document at page 1103 "*Ground Rules for all Cooltan Classes*" to which the Claimant referred at paragraph 42 of her statement. She specifically referred to paragraph 6 which gave the organisation power to exclude from classes a participant who persisted in behaviour or remarks which were sexist, homophobic, racist or aggressive.
69. The Claimant suffered from mental ill-health, dyslexia and had a physical injury to her spine, left arm and neck. The Respondent conceded a matter of days before the hearing that the Claimant was disabled at the relevant time. The Claimant stated in her statement at paragraph 6, that she met Mr Truss in 2008 through the South London and Maudsley Hospital Trust, where she was a service user representative and he was on the Board of Governors. The Claimant also stated at paragraph 7 of her statement, that she met Ms Nalumansi at the Media Trust in 2014, where

the Claimant discussed her mental health issues. The Claimant also drew the Tribunal's attention to the reference that she had made in publicity material to her own mental health issues as a reason for starting the charity. It was the Claimant's case therefore that the Respondents were aware of her mental impairment throughout the relevant period. The Tribunal find as a fact that the Respondents knew that the Claimant suffered a mental impairment at the relevant time and this was apparent from her reason for setting up the charity and her publicity that made open reference to her disability.

70. The Claimant explained to the Tribunal the structure of the charity in the period around September 2015; she stated that it was managed by the Communications Officer Ms Thatcher and the Development Manager Ms Hope with six tutors and visual arts staff. Mr Taylor was the Operations Manager who managed Miss Unrue, Ms Way and Ms Moyes. In January 2015 Mr Ajayi was on the Board of Trustees with Mr Truss and Ms Nalumansi, Mr Phillips (the Claimant's partner), Mr Skelly and four others. Mr Taylor reported directly into the CEO (the Claimant). Mr Deo was the Chair.
71. The Claimant referred at paragraphs 27 of her statement to a staff member Ms Spinster accusing Mr Deo of bullying in 2014. As a result the Claimant arranged a meeting with him and after that date she stated that their relationship deteriorated. The Claimant told the Tribunal that whoever held the position of Chair of the Board of Trustees was "supposed to supervise me" (see paragraph 29 of her statement). The Claimant stated that Mr Deo who was then the Chair of the Board of Trustees was also a user of the service and therefore had a conflict of interest. The Claimant believed that the situation she found herself in was due to her refusal to "do Mr Deo's bidding" and as a result, he set out on a campaign of harassment and victimisation on the grounds of sex and disability together with Mr Ajayi.
72. The Claimant alleged at paragraph 32 of her statement that on two occasions Mr Deo shouted at her that she could not do her job. She claimed that this amounted to harassment because of her sex or sexual harassment (page 19B of the bundle). It was put to the Claimant that this was nothing to do with her sex and the Claimant disagreed because both her own and Mr Taylor's post were funded out of "core funding" and Mr Deo did not make this accusation to Mr Taylor. She also went on to state that Mr Deo picked on her because "I didn't sack Annie [Spinster] because she only published 7 of 9 of his poems". The Tribunal find as a fact that the reason Mr Deo was unpleasant to the Claimant was because he disagreed with her decision not to dismiss a member of staff and there was no evidence to suggest that it was less favourable treatment because of sex or that it amounted to sexual harassment.
73. The Claimant was taken in cross examination to her diary for the events that allegedly occurred on the 15 January 2015, paragraph 32 of her statement and page 1248 of the bundle which stated, "I was meant to [**sic**] Sasha but I feel unsafe around him". She was asked about this entry and she stated that she had misread it to mean that she had not met with him on that date. There was no contemporaneous evidence before the

Tribunal to suggest that Mr Deo had subjected the Claimant to harassment on the 15 January 2015.

74. The Claimant in her statement at paragraph 35 alleged that Mr Deo subjected her to sexual harassment when he asked her why she did not have children. She was taken in cross examination to page 1250 in the bundle where she recorded "Sacha was shouting @ mehe said something about me not having kids". The Claimant said that this was "totally inappropriate and hurtful" and said she was asked in a derogatory way and went to her GP suffering from stress. The Tribunal find as a fact that although relationships had deteriorated between the Claimant and Mr deo, we conclude that this was unwanted conduct related to the Claimant's sex. The Tribunal also accept that the conduct created an intimidating, offensive or degrading environment for the Claimant.
75. The Claimant's evidence was that on the 17 March 2015 Mr Deo publicly humiliated her in a Trustee Meeting (which was comprised of all males – see minutes on page 155-6) by saying "At first your Breast milk feeds the baby now it is poisoning the baby" and he proposed that she take a 3% pay cut (see paragraph 42 of her statement) (see page 19B of the bundle). The Claimant emailed Mr Deo on the 18 March 2015 stating that she found his comment to be "extremely offensive". He subsequently sent a written apology for causing the Claimant any offence at the meeting but denied making the alleged comment. The Tribunal saw the apology at pages 312-3. She did not state in her grievance that she had not received the apology which began with the words 'Dear Michelle'.
76. The Claimant conceded that her grievance regarding Mr Deo's conduct at the meeting, including the alleged comment, was upheld however she stated that Mr Deo should have been excluded. The Tribunal have referred to the policies of the Respondent and the policies that applied to the employees did not include a power to exclude. In any case Mr Deo was a voluntary Trustee and employment policies therefore did not apply to him. The policy that allowed exclusion was only in respect of class participants (see page 1103) and therefore this did not apply to a Board Member in this context. It was also put to the Claimant that Mr Deo apologised but she denied that he did, saying that at first he sent the email apology to everyone else except herself and Ms Nalumansi. The Tribunal saw this email at page 312 and her email to Mr Deo at page 313. Ms Nalumansi who did not attend this meeting confirmed that Mr Deo was subsequently warned about his use of language (see grievance outcome at page 469) and she felt that his email of the 19 March 2015 was "generally apologetic".
77. The Tribunal accept that there was sufficient evidence to suggest that Mr Deo also made the comment about the Claimant not having children, as it was similar in nature to his comment about breast milk. However, it was noted that he apologised for making these comments and by the time the Claimant's grievance had been heard, Mr Deo had resigned. There was no evidence to suggest that it was his purpose to subject the Claimant to a humiliating, degrading or offensive environment, but the Tribunal accept that this comment together with the comment about not having

children had the effect of creating an offensive or degrading environment as it was made in Trustee meetings. The Tribunal however conclude that even though we accept that the Claimant had been subjected to conversations she felt to be degrading and we took into account the nature of Mr Deo's appointment and the fact that he was her line manager in the most senior Trustee on the Board. We also considered the fact that he was a service user with mental health issues. We also factored into our reasoning that the Respondent organisation demanded he apologise and found in the Claimant's favour when considering her grievance on this point. However when considering all the factors we concluded it was reasonable for the Claimant to consider this to be an act of sexual harassment.

78. The Claimant alleged that on the 19 March 2015 (page 19B) Mr Deo shouted at her that she should take a pay cut; the Tribunal noted that reference to this allegation was made in her statement at paragraph 42. The Claimant was taken in cross-examination to page 1253 which was an entry in her diary on the 19 March 2015. It recorded that Mr Deo "complained" and the note referred to a "pay decrease". She accepted that this note made no reference to him shouting. The Claimant stated that this was less favourable treatment due to her gender because the same accusation was not made of Mr Taylor, who is a man. The Tribunal find as a fact that if Mr Deo shouted as alleged, it was shouted equally at both the Claimant and Mr Taylor that they both should receive a pay decrease. There was no evidence of a difference in treatment, this exchange took place at a Trustees meeting and was due to the fact that resources were limited. This suggestion was also made to Mr Taylor. There was no evidence to suggest that this was unwanted to conduct related to sex.

79. In the Claimant's statement at paragraph 71, she referred to an alleged incident with Mr Deo on the 11 June 2015 where Mr Deo was "sexually abusive to her" when she told him that she was afraid of Mr Ajayi in the light of recent events and stated that he must be instructed to leave. Mr Deo eventually agreed that Mr Ajayi should leave. There was a reference to an incident on page 1265 where she stated in her diary that she had to "beg [Mr Deo] over the issue with Tim (Ajayi)". The Claimant produced a report for the Trustees' meeting on the 16 June 2015 (page 209) asking that Mr Ajay be suspended and investigated. At that meeting the Trustees dismissed Mr Ajay for gross misconduct (page 208). The Claimant iterated in cross examination that it was sexually abusive because she had to beg Mr Deo over the issue of Mr Ajayi and she would not have had to beg if she had been a man. There was no corroborative evidence to suggest that the Claimant had to beg Mr Deo because she was a women. It was noted by the Tribunal that the Claimant produced a report for the Trustees meeting and after it was discussed, Mr Ajayi was dismissed. Mr Taylor confirmed in cross examination that he was present during the incident that involved Mr Ajayi on the 10 June and he confirmed that it was an upsetting meeting and Mr Ajayi was very unhappy and shouting passionately and it was his view that he spoke in that manner because he was very upset. It was Mr Taylor's evidence that he was speaking to both himself and the Claimant. He confirmed that he found this to be a very upsetting situation for all concerned. Although there was corroboration that Mr Ajayi was offensive in this meeting, the evidence before the Tribunal

suggested he was addressing both the Claimant and Mr Taylor. There was no evidence to suggest that this was related to the Claimant's sex.

80. On the 1 July 2015 Mr Deo sent the Claimant and Mr Taylor what was described as a Legal Notice copied to Ms Nalumansi, Mr Phillips, Mr Endecott, Mr Skelly and Mr Truss. In this communication he referred to the forthcoming EGM on the 7 July to discuss the removal of Mr Ajayi as a Trustee and to discuss the dismissal of Ms Way. The email required the Claimant to provide a room and refreshments for the meeting and to present a report into the circumstances that led up to the removal of Mr Ajayi and Ms Way. The email also required Mr Taylor to provide a report on the staff issues. He required both Mr Taylor and the Claimant to cancel all engagements. It was noted that this email was written by Mr Deo in his capacity as Chair; the Claimant had confirmed in evidence that he was her 'line manager'. It was noted that the Claimant was requested to "stay in her office during the meeting in (sic) and give additional information if required by the Board of Trustees"; this suggested that the Claimant was to be available during the meeting but not to attend. The Claimant replied to this saying that the Legal Notice was invalid and unreasonable; she made no reference to it being discriminatory.
81. The EGM took place and the Claimant was in attendance and it was suggested from the content of the minutes that the meeting was acrimonious. It was accepted in the minutes that the Legal Notice had no validity. There was no evidence to suggest that had the CEO been a male in the same circumstances (of an organisation losing a large number of key staff), he would have been treated more favourably. We conclude also that had the CEO been a man in an organisation of the same structure as the Respondent, he would also be expected to provide the facilities and refreshments for the meeting. The task could then be delegated as appropriate. Although this was pleaded in the further particulars at page 19C paragraph 11 as being sexual harassment there was no evidence to suggest that the Respondent had created an intimidating, hostile or degrading environment for the Claimant as the CEO because of her sex; it was noted that the Legal Notice applied equally to Mr Taylor and to the Claimant and as Mr Taylor was her line report, she had the option, if she wished, to delegate the task. The Tribunal conclude on the balance of probabilities that Mr Deo did not send this document to the Claimant for a reason related to her sex. We formed this view because it was addressed to the Claimant and Mr Taylor and provided instructions to them both to follow.
82. The Tribunal heard evidence from Mr Truss who said that he met with the Claimant and Mr Deo on the 3 August 2015 to see if the conflict between the two could be healed. The minutes of this discussion were at page 254. It was his recollection that at the meeting the Claimant was "adamant that Sasha was in the wrong...". The Claimant expressed the opinion in the meeting that he should resign and cease to attend the Respondent's premises. Mr Truss told the Tribunal after being taken to page 11 of the Red Bundle where Mr Deo described the Claimant as Boudica and a Goddess that he accepted that Mr Deo was not the ideal character for the role, which is why he was asked to resign. Mr Truss could not recall the Claimant mentioning at this meeting any allegations of

sexual harassment (see his statement at paragraph 18). Mr Truss was not cross examined by the Claimant on his evidence on this point. The Tribunal conclude from the evidence that Mr Truss' intention when calling the meeting was to try to facilitate rebuilding the relationships but without intending that Mr Deo should stay on as Chair. He did subsequently ask Mr Deo to resign. There was no evidence that on the 3 August he "omitted" to act to protect the Claimant from sexual harassment or direct sex discrimination by Mr Deo and no evidence that the Claimant had complained to him that she was being subjected to ongoing sexual harassment and required his assistance. We prefer the evidence of Mr Truss on this point. The Claimant's complaint that she was subjected to direct discrimination and/or sexual harassment is not supported on the facts.

83. The Claimant made a number of allegations in her further particulars against Mr Taylor accusing him of exhibiting inappropriate sexualised behaviour in the workplace on 7 occasions (at page 19C of the bundle (in paragraphs 4, 9, 10, 12, 13, 15, 16 and 17 of Schedule 1)). It was put to the Claimant that none of these accusations were referred to in her diary or in her grievances. There was no evidence that she told the Trustees (or Ms. Nalumansi) about Mr Taylor's alleged inappropriate behaviour towards her. However, the Claimant said she told her external mentor. There was no evidence that she escalated her concerns to anyone within the Respondent organisation and they were not included in her lengthy and detailed grievances at the time and there was no reference to any inappropriate behaviour by Mr Taylor in her diary. She told the Tribunal that at the time she was really unwell and she "probably" told her Community Mental Health Team. Due to the serious nature of these complaints and the fact that they were not pursued as part of these proceedings or in cross examination, the Tribunal has not provided details of these allegations in this written decision however we have referred to them as allegations of sexual harassment without going into any detail.
84. Mr Taylor was compelled to attend under a witness order. Orders were made at the start of the hearing for Mr Taylor to produce a brief statement, this was discussed on day two of the hearing after lunch when the parties were informed that in the absence of a statement from Mr Taylor he would be asked whether he stood by the contents of his email of the 4 October 2015 (pages 387-92). A brief statement was produced on the 9 October which confirmed that he stood by the contents of the above email and by the evidence he gave to the disciplinary hearing. He also responded to the Claimant's further particulars (see above at paragraph 63). The documents referred to by Mr Taylor in his late statement were therefore already before the Tribunal,
85. Mr Taylor denied all of the allegations of a sexual nature; no questions were put to him in cross examination about these matters. Although the Claimant stated in her closing submissions at page 12 that it was her view that Mr Taylor's evidence was "unhelpful and muddled", this was not the view of the Tribunal as he appeared to answer a number of questions clearly. The Claimant indicated in closing submissions that it was decided "not to waste time" putting questions to him. As the Claimant decided not to put her case to Mr Taylor, the Tribunal concludes that these claims

were without foundation. The burden of proof will therefore not shift to the Respondent, the Claimant having failed to show facts that supported these allegations

86. Mr Deo resigned on the 16/18 August 2015 (see pages 318-326) and his resignation letter was sent to all staff. The Claimant wrote to the Board for support and suggested that the publication of his resignation letter was a breach of confidence. The Claimant made clear to the Board in her email dated the 20 August 2015 (pages 330-1) that she was very distressed by what had happened and could not stop crying and she said that “I have put 25 years into this and I had an excellent staff team destroyed by a trustees (sic)”. Mr Deo accused the Claimant of bullying and stated that she “went on a spree of sacking people whom she suspected of conspiring against her” (page 323).
87. Ms Wilson suggested that the Claimant ought to be suspended on full pay pending an investigation on the 18 August 2015 (page 328) due to the allegations set out in Mr Deo’s resignation letter which she felt included allegations that “implied” criminal behaviour; she asked for this to be discussed at an extraordinary meeting. It was pointed out in Ms Wilson’s email that suspension would not be a disciplinary sanction and would be in the Claimant’s best interest as it would save her from suffering any unnecessary distress. The EGM was held on the 25 August 2015 (page 279) and the Claimant attended (as did Mr Truss). It was confirmed that the EGM was called to discuss “accusations of bullying, theft from the charity, breach of data protection”. The allegations cited in Mr Deo’s letter were put to the Claimant, all of which were denied. The Claimant was recorded to have left the room to allow the Trustees to discuss the recent resignations of Karen Unrue and Sarah Way who had both referred to bullying at work. The minutes recorded that the Board were unable to reach a decision and decided to discuss the matters at a later date. It was put to Mr Truss in cross examination that the Claimant was tearful at the meeting. He disagreed and said that she was “forceful”.
88. Ms Wilson resigned on the 26 August 2015 (pages 326-7). Mr Taylor resigned on the 18 August 2015 from his role as Operations Director. Mr Truss indicated that he too would resign after the AGM. Ms Nalumansi replied on the 27 August 2015 (page 7 of the pink bundle).
89. The Tribunal saw an email sent by Mr Truss to Ms Nalumansi dated the 26 August 2015 (pages 7-8 of the Pink Bundle); this was sent after they had received Ms Wilson’s resignation. In this email he suggested that they needed a proper investigation into what had transpired and “in particular the bullying issue”. He commented that the “resignation of staff mirrors that which led to my investigation 2 years ago”. Mr Truss then referred to Mr Deo’s letter which he described as “unfortunate and included many uncorroborated claims, but underlying it is a sense of there being something rotten in the State of Denmark” and concluded that there were fundamental matters that needed addressing. He suggested that they needed they someone outside the organisation to carry out the investigation.

90. Ms Nalumansi agreed with Mr Truss and her email response was dated the 27 August 2015 (page 7 of the Pink Bundle); she confirmed that they needed to get to the bottom of matters and she commented that “our inability to take a stand on consistently raised concerns...might compromise our personal and professional integrity”. In her email she referred to the resignation letter of Ms Unrue where she also referred to bullying.
91. After this exchange of emails, Mr Truss contacted Ms Unrue on the 30 August 2015 to ask for the reason for her resignation and for the events that led up to it (page 12 of the pink bundle); her reply was as follows: “I have watched her undermine, harass, threaten and generally bully staff for the last 2 years. I have seen staff reduced to tears, know staff who had to start counselling, and watched staff reluctantly realise they couldn’t take it anymore and leave CoolTan ONLY because of the stress and anxiety caused by [the Claimant’s] treatment of them”. She denied that she left because of Mr Deo as alleged by the Claimant; she stated that this was an “utterly ridiculous claim. It is a lie, and she knows it is a lie”. The Tribunal noted that Ms Unrue’s evidence corroborated the need for an independent investigation.
92. On the 9 September Mr Truss confirmed that Ms Wilson had been convinced to stay as a Trustee by the Board (page 25 Pink Bundle). The Tribunal also saw an email in the blue bundle at page 17 dated the same day; it reflected that he had met Ms Way, Tim Ajay and a former employee (Tom McCabe) and they had agreed to submit their experiences of bullying at the Respondent. He stated that he would “rather have avoided this, we have little choice, as I understand that unless we do those concerned will report us to the Charity Commissioners or worse”. Mr Truss confirmed that the first step would be to present the Claimant with a formal letter, then to suspend her on full pay until the hearing which was to be scheduled for a week later. He stated that he could see no other way “to clear the decks for a fresh start”.
93. On the 11 September 2015, Mr Truss asked Mr Taylor (who had resigned see above at paragraph 89) if he would delay his departure. His reply indicated that he wished to put in a complaint anonymously (but had not yet done so). He indicated that he feared that if the Claimant became aware he had put in a complaint “the bullying will start over again”. He stated that “I literally cannot work another day with Michelle after this date, I would stay if Michelle was not CEO though and I’m confident I could run the company. This being said let’s keep talking and see what takes place”. The Tribunal noted that at this stage Mr Taylor had not put in a complaint and had made it clear he felt that he could perform the Claimant’s role; this communication could not be described as neutral as he stood to gain from her removal from office.
94. The Claimant alleged that Mr Truss discriminated against her because of her sex (see above) because he emailed her partner on the 15 September 2015 and that this was an act of sex discrimination or sexual harassment. The Claimant submitted at paragraph 142 of her statement that by doing so he was discriminating against her on the grounds of sex

and disability. The act alleged is talking to another person (her partner) about her health. The context around this incident is that the Claimant had rung Mr Truss and left a message that she was “suicidal” and going home; she followed up with an email to say she was feeling really unwell and had a current sick note from her GP. Mr Truss on receiving these messages sent an email to the Claimant’s partner Mr Phillips whom he knew well and was also a Trustee. The email stated as follows: “I gather Michelle has gone home ill. I’d be grateful if you would see how she is”. He went on to refer to what had been happening at the Respondent organisation and the reason why “everything needs looking at, not in a destructive way”. He ended the email asking Mr Phillips to explain this to the Claimant and stated that “I am sure that she doesn’t want to hear from me at the moment”. There was no evidence that he acted in this way because of the Claimant’s sex; he was approaching the matter in a sensitive and caring way enquiring after the Claimant’s health and not revealing any confidential information; the Tribunal conclude that the same approach would have been adopted for a comparable male. The Claimant’s diary entry at page 1283 suggested that she asked for Mr Truss to call her back thus indicating that she was content to have communication with him. There was no evidence to suggest that this amounted to less favourable treatment because of disability. No questions were put to the Second Respondent in cross examination about this matter. The Tribunal find as a fact that there was no evidence to suggest that Mr Truss treated the Claimant less favourably because of her sex (or for the avoidance of doubt because of her disability) or that this was an act of sexual harassment.

Confirmation that the Claimant would face disciplinary charges.

95. The Tribunal were taken to an email from Mr Truss to the Claimant dated the 10 September 2015 confirming that after her sick leave “you will be suspended for a week and then we would meet with you on the following Thursday the 24th for the hearing”. He confirmed that they would have to proceed with the disciplinary matter and the reason he gave was that “we not only have Sacha’s letter but now others too”. He acknowledged that this would be upsetting for her but informed her that they had no option “otherwise we will be open to charges” and that this was for the good of Cooltan (page 298). In the light of the serious allegations that had been made against the Claimant, it was reasonable for the Respondent to take the decision to suspend and to escalate the matter to a disciplinary hearing.

96. The Tribunal noted from pages 34-5 of the Pink Bundle that Ms Wilson emailed the Board of Trustees with an update of developments; she did so due to their obligations to the Charity Commissioners to report “such incidents.. and show what steps we have taken to resolve this”. The email also dealt with the issue of legal advice and they talked about paying Peninsula to take over the investigation. The reply from Mr Phillips reflected that this service was something that the Claimant had investigated earlier that year and they still had a quote on file.

The Claimant’s grievance

97. The Claimant raised a lengthy grievance on the 15 September 2015 see pages 305-378. The thrust of the grievance was that the Claimant maintained that the Respondent had failed to “protect her reputation” and give her appropriate support and to maintain positive working relationships and that the Board were not acting in the best interests of the organisation. She stated that this was causing her mental distress. She stated in her grievance that Ms Way called her a bully at work on the 24 June 2015 and Ms Unrue shouted at her on the 27 June 2015 in front of witnesses that she was a bully and “slung her resignation at me” (page 309). The Claimant stated that Mr Deo had been “spreading malicious rumours about her since March 2015” and she had been bullied by “malicious gossip”. It was evident to the Tribunal that the Claimant was aware of the allegations that had been made against her by Mr Deo and others as they were referred to in detail in her grievance and from her grievance admitted that Ms Way and Ms Unrue had called her a bully.
98. The Claimant also referred to the fact that she had been asked to attend a meeting on the 17 September 2015 at an unspecified time by Mr Truss and Ms Nalumansi; the Claimant stated that this was not in line with the Policies and Procedures (page 309). She confirmed that she was aware that “six members of staff have put in complaints” (page 310 paragraph 64). The Claimant emphasised at page 338 that “*the current Board do not have the experience or the right ethos for CoolTan and they are causing irrevocable harm to the organisation. The present Board are in danger of bringing the charity into disrepute and therefore in the best interest of the charity they should step down so a new group of people can be brought in to ensure the charity survives and thrives*”. It was noted at paragraph 18 of her grievance document (page 341) that she indicated that she was taking out a grievance against Mr Taylor but failed to mention in it any of the allegations that appear in the list of sexual allegations in the further particulars presented to the Tribunal. The Tribunal raise an adverse inference from this and conclude that had the Claimant suffered sexual harassment as described, she would have included these details in her grievance.
99. The Claimant was signed off sick on the 21 September 2015 for two months until the 21 November 2015 (see page 379); a comment on the sick note stated that the Claimant was willing to work from home to make essential payments. On the 30 September, she was instead signed off for a week (page 383) until the 5 October 2015, the fit note stating she may be fit for work and encouraging negotiations for workplace changes or working from home to facilitate an early return to work. Another sick note at page 384 dated the same day extended sick leave until the 7 October 2015 to say she was not fit. Neither of these subsequent sick notes were signed by the GP. It was not clear which sick note accurately reflected the state of the Claimant’s health.
100. The Claimant also produced a letter from her Community Mental Health Nurse dated the 1 October 2015 and sent to Ms Nalumansi. The letter stated that the Claimant was fit to return to work with reasonable adjustments, recommending a phased return to work with the possibility of mediation with staff (page 33 of the Red Bundle). It stated that the Claimant was “currently suffering from depression and anxiety with

suicidal thinking and planning”. The Claimant’s email stated that she “needed a speedy returned (sic) to work” The medical notes were therefore contradictory in nature. Ms Nalumasi wrote to the Claimant the same day (page 34 Red Bundle) confirming that she could work from home for the period of the 2-5 October 2015 and a meeting would be held at the offices on the 6 October with a view to initiating her return to work. It would have been apparent from the letter from the Community Mental Health Nurse that the Claimant’s health was fragile and Ms Nalumansi’s suggestion for the Claimant to work from home appeared to meet the request for reasonable adjustments made by the Claimant. Ms Nalumansi accepted in answers to cross examination that it was her intention for the Claimant to work from home.

101. Ms Nalumansi emailed the Claimant on the 2 October 2015 (page 37 of the Red Bundle) suggesting that the Claimant contact Mr Taylor as he felt that the Claimant’s email to him responding to his operational update was accusative in tone (the email was seen in the same bundle at page 38) and he felt undermined, felt distressed and “he may need to see his GP”. The Tribunal noted that in her email to Mr Taylor, the Claimant expressed herself in forceful terms when she disagreed with an operational report that he had sent to her. When she was voicing her disapproval of a possible candidate for a role she expressed herself as follows; “I disapprove of this choice as it is clear that this is provocation as you know too well this is not a good route and a high risk as they do not meet the job spec”. Ms Nalumansi informed the Claimant that “in the end the other staff went home” as well as Mr Taylor. It was evidence from the tone of communications from the Claimant seen above at paragraph 98 and with Mr Taylor, that she had lost faith in those she worked with.
102. Mr Taylor sent the Trustees his statement on the 4 October raising further concerns about the Claimant’s conduct and forwarded a statement from Ms Hope dated the 21 September. Mr Taylor wrote that he had been physically sick thinking about the Claimant’s return to work and said he was scared of her (page 392). He also stated that he had received counselling. At this time, he was Acting CEO. One of the complaints the Claimant made against the Respondent in relation to Mr Taylor (and subsequently against Mr. McCabe) at paragraph 158 of her statement was that “the role of CEO in a people’s led organisation has to be disabled”. It was her view that as Mr Taylor and Mr McCabe were not disabled, they did not qualify. Ms Nalumansi referred to this communication in her statement at paragraph 49 and she referred to the fact that in this letter, Mr Taylor had referred to 18 people leaving (employees and Trustees) the organisation in one year and 10 months, which appeared to be a very high turnover in a small organisation and he felt that this was a concern. Although this appeared to be a high turnover, the Tribunal noted that some posts had been lost due to loss of funding and some had left due to dismissal, however it was a sign of a dysfunctional and fractured workplace with deep underlying problems
103. The Tribunal were taken to an email written by the staff team at pages 54-5 of the Pink Bundle; this was written by the staff when they became aware of the Claimant’s imminent return to work on the 6 October. The email stated that the staff were feeling “very vulnerable and concerned”

and were asking for clarity and support from the Board of Trustees. The email confirmed that as at the date of this email (5 October 2015), Mr Taylor was off sick, Ms Thatcher was due to leave on the 8 October 2015 and Ms Hope had given notice and was due to leave on the 9 October 2015. The organisation appeared to be in a state of crisis and action had to be taken to stem the loss of staff and volunteers and to get to the bottom of the serious allegations of bullying.

The Grievance Process.

104. The Claimant was invited to attend a grievance hearing by a letter dated the 5 October. The meeting was to discuss her written complaints. Ms Nalumansi sent a separate email on the 5 October 2015 (page 40 of the Red Bundle) referring to the new concerns that had come to light which required full investigation. She stated, "it is therefore suggested that you are placed on paid leave in order for full investigations to be carried out regarding your own concerns and those raised by colleagues". Ms Nalumansi wrote to the Claimant on the 6 October 2015 acknowledging her grievances dated the 15 and 25 September 2015 to confirm that her complaints would be dealt with via the grievance procedure. There can have been no confusion after Ms Nalumansi's clarifying email on page 41 of the Red Bundle that the meeting on the 6 October had been intended as a return to work meeting but the arrangements had been superseded by Mr Taylor's complaint and the need to investigate all grievances. Ms Nalumansi confirmed in cross examination that although this was originally meant to be a return to work meeting, they had decided to allow the Claimant to work from home instead as Mr Taylor had gone off sick saying he felt undermined by the Claimant. She stated that she was trying to strike a balance between the Claimant and the staff and trying to keep people updated. At this time the Claimant was therefore on paid leave and had not been formally suspended but the Tribunal accept that the effect of being placed on paid leave was in all but name a suspension. We therefore find as a fact that the Claimant was effectively suspended from the 6 October but there was no evidence to suggest that the Claimant was subjected to a detriment because she had raised grievances against others in the organisation; in this case there were grievances and cross grievances, all of which needed to be investigated. It was also noted by the Tribunal that the Respondent had intended to hold a return to work meeting on the 6 October in the knowledge that the Claimant had submitted two lengthy grievance documents.

105. The Claimant attended a grievance meeting on the 9 October 2015. A reasonable adjustment was made at the meeting to record the discussions, the minutes were at pages 400-432. The Claimant was informed of her right to be accompanied and she was assisted by Mr Chacksfield and Mr Farrell. The Claimant indicated in the minutes that she was unhappy with the process (page 467) but after lengthy discussions the meeting proceeded under protest. The grievance was conducted by Mr Silvey from the organisation "Face2Face", part of Peninsula, there was also a notetaker present. The Claimant confirmed in her statement that Mr Silvey enquired about her disability in the meeting and she confirmed that he had possession of her sick note and the letter from her Community Mental Health Team. It was noted that the Claimant acknowledged in the meeting that she was aware that the allegations

against her were gross misconduct. In the meeting the Claimant was recorded to have said “relationships have broken down well who broke it down?” (page 427) the Tribunal conclude from this comment that the Claimant had acknowledged that there was a breakdown in relationships but appeared to place the blame on others. The Claimant did not indicate in her statement that she found the meeting upsetting. The minutes corroborated that the Claimant had informal conversations with Mr Truss and Ms Nalamansi about the fact that she was to face serious charges and she was aware that one of the allegations was in relation to the contents of Mr Deo’s letter.

106. The grievance outcome report was in the bundle at pages 467-475; of her 47 grievances only two were upheld. The outcome of the grievance against Mr Deo in relation to his comment about “Cooltan is your baby...” and the contents of his resignation letter and the sending of Legal Notices were all found to be inappropriate behaviour. The grievance against Mr Ayjai was also upheld however as he had already been dismissed no further action could be taken, similarly Mr Deo, whom the report notes had been warned by Ms Nalumansi about the use of such language, was no longer a Trustee. The outcome in respect of the Claimant’s complaint that she felt that she should have been ‘spoken to’ about the disciplinary allegation rather than invoke a formal process was that as the allegations were serious an informal approach was not appropriate. Mr Silvey recommended that there should be some form of conciliation or mediation, however this was not pursued by the Respondent. The outcome recorded that the Claimant had raised further grievances.

107. Mr Taylor became the Interim CEO by agreement of the Trustees from October 2015 – July 2016 (page 1055 of the bundle). The Tribunal noted that the Board took into account the views of the staff (who indicated that they were keen to work with him) and of the expectation that the pay for an Operations Director secured through an agency was likely to be in the region of £45,000 minimum. Mr Taylor agreed to take on the role for a salary of £42,000 and was therefore considered to be the best option for the Respondent. The Tribunal note that on his appointment his own role of Operations Director was then vacant. This was filled on an interim basis by Mr McCabe. Mr McCabe later replaced Mr Taylor as CEO. Mr Taylor was not part of the Board in either role.

108. There was a sponsored walk held on the 13 October 2015 and the Claimant attended; she alleged that she was ostracised by two members of staff and that this was an act of victimisation because she raised a grievance alleging discrimination. The Claimant deals with this incident at paragraph 184 of her statement, she stated that she was treated like she had the plague but did not indicate how this action was related to her proceeding with her grievance. The Respondent received a statement from Ms Vine, a relatively new member of staff on the 16 October 2015 at page 437 relating to the Claimant’s behaviour at the Sponsored Walk. The Claimant was alleged to have “ranted” at Ms Firth and Ms Thatcher and others and concern was expressed for the Claimant’s mental health. This complaint also made reference to an incident on the 30 September when the Claimant contacted her on Facebook asking her to call. When she did, she said the Claimant stated how incompetent people were. Ms Vine also

referred to the 8 October when she received a call from the Claimant at home on her private line stating how the Claimant described the Trustees as incompetent and how everyone was conspiring against her. There was no evidence to suggest that the Claimant was ostracised by any member of staff because she had raised or was pursuing a grievance. On the balance of probabilities, the Tribunal find as a fact that the employees were uncomfortable because of conflicts that had arisen in the workplace.

109. On the 15 October 2015 Ms Nalumansi wrote to request that the Claimant authorise payroll (page 60 Pink Bundle). The Claimant responded saying she needed to be in the office to carry this out; in the same email she enquired about her return to work interview. Ms Nalumansi replied saying that these were two separate issues and enquired what time the Claimant would be in the office indicating she could be available between 10 and 2 (page 61-2 Pink bundle).

110. Ms Nalumansi wrote to the Claimant on the 16 October 2015 (page 447) after receiving the complaint from Ms Vine, to confirm that she remained on paid leave until the investigations had concluded. Ms Nalumansi in her statement at paragraph 54 confirmed that the reason the Claimant was required to stay away from the office was due to the duty of care they had to their employees (and they were continuing to receive allegations against the Claimant of bullying and harassment although the Claimant had not been told the specifics of the complaints) and to the Claimant. This letter confirmed that “there had been concerns raised by colleagues concerning you”. The Claimant was informed that she was not to discuss matters with employees or clients and a failure to comply with this request “would be treated as an act of misconduct”. The letter ended by confirming that once the investigative process was completed she would be invited to a return to work meeting where reasonable adjustments needed for her return to work would be discussed. The Tribunal find as a fact that this was an extension of the informal suspension process which commenced on the 6 October. Although there was a reference to investigations, it was unclear whether this was a reference to further investigations under the grievance or the disciplinary process. There was no evidence that this was a detriment because the Claimant had raised two grievances in September, the consistent evidence showed that the Claimant was asked to remain away from work due to the concerns that had been received from colleagues and former colleagues. There was also no evidence that this was a breach of contract as we have found above at paragraph 67 that the disciplinary policy gave the Respondent a discretion to extend the suspension for as long as was necessary. Although the contractual terms included a right to be paid for no longer than 14 days, it was noted that the Respondent paid the Claimant for her entire suspension period.

111. It was agreed that Ms Nalumansi had requested that the Claimant attend the office to do the payroll (para 56-7). It was her evidence that the Claimant was to attend the office on the 17th, however the Claimant’s statement (paragraph 190-191) indicted that the agreement was to meet

on the 16 October. The Claimant said that when she arrived on the 16th, the staff ignored her, and they were destroying her documents. The Claimant's statement at paragraph 190 was that "when I arrived on the 16 October not one member of staff even said hello to me as if they were all made to feel afraid". The impression conveyed in the Claimant's statement appeared to be consistent with the fear and concern alleged in various grievances against the Claimant (for example those expressed by Mr Taylor and the remaining staff referred to above at paragraph 103 who stated that they were vulnerable and concerned). The evidence before the Respondent at the time appeared to support their view that a formal suspension was necessary in the light of all the circumstances. Although the Claimant was asked to do the payroll (including her own wages), this was part of her role as CEO and as signatory to the bank account and was a reasonable request. There was no evidence to suggest that this was a detriment because she had raised a grievance; this was an urgent operational requirement and would have been a requirement, even if she had not raised a grievance and was part of her normal duties. The Tribunal find as a fact that the Claimant was not ostracised by the staff because she had raised a grievance. The Tribunal conclude that the staff were feeling vulnerable and this was the reason they acted as they did.

112. The Claimant then attended the workplace on the 19 October, without prior arrangement to "go back to work" (paragraph 193 of her statement), as she had formed the view that the Respondent had breached her contract by suspending her for more than 14 days. The Tribunal noted that at this date the Claimant was on paid leave. She also told the Tribunal that for her mental well-being she needed the focus of work. She was accompanied by Mrs Phillips. The Tribunal heard from Mrs Phillips, she confirmed that she attended on this day with the Claimant and witnessed the exchange between the Claimant and Mr Taylor; recalling that Mr Taylor 'shouted that she was not allowed in the building [and] was not his boss'. Mrs Phillips also recalled that the Claimant told Mr Taylor that she could not be suspended for more than 14 days. Ms Phillips did not comment on whether the Claimant had refused to leave the building when asked to do so by Mr Taylor and did not comment on the Claimant's manner. The Tribunal accept that the Claimant also found this encounter distressing. Mr Taylor provided evidence on this matter and told the Tribunal that the Claimant refused to leave when requested and therefore he informed her that he and the staff would all be leaving the building. He denied pointing his finger at her but accepted that he told her that she was not his boss. The Tribunal find as a fact that Mr Taylor told the Claimant that she was not his boss and may have said that she was suspended indefinitely. Mr Taylor denied that the reason he said this to her was because the Claimant had raised a grievance. There was no evidence before the Tribunal that Mr Taylor subjected the Claimant to a detriment the Tribunal having concluded on the balance of probabilities that the Claimant had been asked to leave the building and had failed to do so and her presence was causing distress to Mr Taylor and others in the workplace they therefore decided to leave the building rather than remain in the Claimant's presence.

113. The Claimant then attended the workplace on the 20 October 2015. The Claimant deals with this incident at paragraphs 194-8 of her

statement. The Claimant stated that she returned to work as “advised by her union representative and ACAS”. She was accompanied by Mrs Phillips and Mr Cohen, this time. Although the Claimant stated at paragraph 195 that during this incident Mr Taylor wagged his finger at her, we find as a fact that the consistent evidence before the Tribunal was that this occurred on the previous day. The consistent evidence before the Tribunal was that Mr Taylor removed all staff from the building, which he confirmed in cross examination. The police turned up and it was Mr Taylor’s evidence that it was Ms Wilson that called them. The Claimant stated that she was publicly humiliated and harassed. During this incident, the Claimant stated that she spoke with Mr Truss who recalled receiving a call from the Claimant. Mr Truss stated that the Claimant was “shouting that she wanted to go into the building, I told her she couldn’t she was suspended”. Mr Truss also recalled that Ms Wilson telephoned his wife later on that day in tears and shock complaining that the Claimant and two other people she did not know had spoken abusively to her. The event was corroborated and was emotionally charged from the views of all parties. There was no consistent evidence that the events of the day amounted to victimisation because the Claimant had raised a grievance and no evidence she was subjected to a detriment. It was an unpleasant and confrontational event from all parties’ perspectives and was a further escalation of the events of the previous day.

114. The Tribunal saw in the Blue Bundle at page 37 a report written by Ms Wilson dated the 20 October 2015 about the events that had taken place that day. It was noted that Ms Wilson suggested that the Trustees take a vote on whether they felt that the Claimant’s behaviour constituted gross misconduct and was grounds to terminate her contract with immediate effect. This was put to Ms Nalamansi in cross examination and she agreed that the Board had decided that the Claimant’s conduct amounted to gross misconduct. However, she added that “we had to meet to make sure we were as fair as possible; many things had come up and we were trying to adjust to new concerns”. Ms Nalumansi told the Tribunal that the Board decided that the Claimant was guilty of bullying and harassment and they decided this after speaking with Mr Deo and other staff who corroborated this. There was no evidence to suggest that Ms Nalumansi excluded herself from the discussion on any vote taken on this matter. However, we note that at page 39 of the Blue Bundle Mr Truss, while agreeing with the proposals made by Ms Wilson, wished to make sure they were properly protected from any comeback (and he gave the example of being sued). The Tribunal conclude from this evidence that Ms Nalumansi was not independent and should not have heard the disciplinary case against the Claimant having already formed the view that the Claimant had committed an act of gross misconduct before hearing the Claimant’s evidence. It was noted that she referred to the conditions of what she described as the Claimant’s “paid leave” and the Claimant refusing to engage with her or to leave the office. The email referred to the need to contact the non-emergency police for advice and they arrived on the scene to assist. It was this incident that led to the formalisation of the suspension.

115. The Respondent wrote to the Claimant on the 20 October 2015, to formalise the suspension terms (page 452). The letter referred to the incidents on the 19 and 20th and it stated that the Claimant had “allegedly

attended the site and threatened staff". The letter referred to the Respondent's attempts to try and "agree paid leave with [you] amicably to avoid causing upset" however due to the Claimant's "refusal to answer the phone or respond to emails" it was concluded that the Claimant had breached the terms of her paid leave and was therefore suspended. Ms Nalumansi confirmed in answer to cross examination that she checked the Claimant's contract of employment and was aware that the maximum number of days to suspend was 14 but she explained that the Claimant was suspended for considerably longer because the disciplinary proceedings were long, and a number of grievances had been raised. It was confirmed that they took advice from Peninsula about the length of suspension. The Claimant continued to be paid.

116. The Claimant then asked for an EGM to be called the same day and the Trustees gave their permission to attend the building. Ms Nalumansi and Ms. Wilson attended by phone. Mr Scully attended as did "all paid up members". The minutes which appeared at pages 454-5 were not agreed.
117. Although the Claimant stated in the further particulars at page 24 of the bundle that on the 21 October Mr Taylor shouted at her on the phone, there were no details of this incident in her statement. We note the diary entry on page 1288 (diary entry of the 21 October 2015) only referred to the incident on the 20 October. This was put to Mr Taylor in cross examination and he had no recollection of this incident but told the Tribunal that he would not have shouted. He replied in questions asked by the Tribunal that he would not have treated the Claimant differently because she raised a grievance.
118. On the 21 October 2015 the Claimant wrote to the Board and to Mr Silvey to ask that Ms Wilson be suspended from the Board. On the 23 October 2015 (page 460-1) the Claimant wrote to Ms Nalumansi and Mr Truss requesting that Mr Taylor and Ms Wilson be suspended so she could return to work. In this same letter she referred to the incidents that occurred on the 19 and 20 October and identified them as harassment. The Tribunal again noted in the email that the accusations made against Mr Taylor refer to a number of incidents she was complaining about which were alleged to have occurred on the 15 September and the 5, 19 and 20 October which she described as bullying and harassment. There was no mention in this complaint letter of any sexual misconduct.
119. Ms Nalumansi sent the Claimant the outcome of the grievance (at pages 467-475) on the 27 October 2015 (page 466) see above at paragraph 106. The Claimant's grievances against Mr Deo and Mr Ajayi were upheld (see above); the rest were dismissed. It was noted in the grievance outcome that the only allegation against Mr Taylor was a suggestion that his resignation was somehow inappropriate. It was concluded that there was nothing inappropriate in the manner of his resignation.
120. There was a Board meeting on the 27 October 2015 (see pages 464-5) where the post of Company Secretary which had been held by the Claimant was deleted and a minute confirmed that "a new appointment would be made". Mr Truss, who had taken over from Mr Deo on an interim

basis, resigned as Chair and Ms Nalumansi was appointed. There was no reference in these minutes to a vote being taken on whether the Claimant had been found to have committed an act of gross misconduct although the Tribunal saw correspondence in the bundle referring to a vote. The Trustees decided that a statement would be drafted and released explaining the current situation to staff, volunteers, participants and patrons. The statement would include the facts in relation to the ongoing grievance and disciplinary procedures. This was also to be published on social media.

121. On the 29 October 2015, the Claimant again attended the Respondent's premises to collect her belongings. The Claimant claims that she was shouted at (see paragraph 210 of her statement). The surrounding facts were that this visit was prearranged and she attended with a police escort and two friends. The Claimant stated that she was shouted at when speaking to Mr Sanders and he poked fun at her dyslexia by mockingly correcting the Claimant when she misspelt the word SNAKE. When this was put to her in cross examination she explained that when talking to him she had spelled out the word S A N K E referring to the fact that she felt that she was in a pit of snakes, when she incorrectly spelt the word she was corrected. Although the Claimant alleged that she was being mocked for a protected characteristic, the explanation of the whole incident showed that there was antagonistic confrontation on both sides and although this was pleaded as an incident of harassment, it was noted that the Claimant was in the premises to collect belongings and had entered with two supporters and the police and appeared to have initiated the confrontation. It was also noted that the Claimant used the word snake to describe those in the workplace, this would have escalated the tension between the Claimant and her colleagues. Ms Sedani wrote a contemporaneous statement about the incident at pages 481-2; she said the Claimant "laughed and smirked" at her when she told the Claimant she couldn't start taking keys and said there was confidential paperwork in the office (page 481). She also confirmed that during this incident there was distress on both sides and the Claimant referred to being "suicidal since the 15 September 2015 and had attempted to end her life ...", which was why she had not collected her belongings at the arranged date and time. The Tribunal conclude however that correcting the Claimant's spelling was unwanted conduct and related to her dyslexia even taking into account the offensive nature of the exchanges.

122. It was not disputed that the Respondent contacted the Claimant's GP on the 30 October 2015 to report their concerns about the Claimant's well-being and due to the fact that the Claimant had "told her employer that she was suicidal" (page 723 of the bundle). The Tribunal saw at page 70 of the Pink Bundle an email from Ms Wilson to others (Ms Nalumansi) about the incident on the 29 October and it reported that a member of staff called Sheena was concerned for the wellbeing of "participants, staff and also for [the Claimant]". Sheena indicated that she felt duty bound to report this and the GP record at page 147 of the Red Bundle supported this. The Claimant alleged at page 20 paragraph 4 that calling her GP was an act of harassment related to her disability. The Tribunal finds that the Respondent had a genuine reason to make contact with her GP which was a genuine concern for the Claimant's welfare and there was no

reference in the GP records to the Respondent requesting the Claimant's medical records as alleged by the Claimant. This head of claim is not made out on the facts.

123. It was noted that the Claimant raised a number of further grievances dated the 2 November 2015 pages 589—591 and at pages 595. The focus of these grievances was that there was a campaign of harassment with specific reference to the 20 October, no mention being made of the 21 or 29 October. The Claimant made specific reference to harassment by Mr Taylor and Ms Wilson but gave no details of the complaints themselves. The Tribunal conclude from this that the events of the two latter days were not considered by the Claimant to be acts of harassment at the relevant time . The Claimant followed this up with a letter headed "Statement of new grievance" again relating to the incident on the 20 October only.
124. Mr Phillips, the Claimant's partner, raised a grievance dated the 4 November 2015 against Mr Deo (who suffered from a mental health disability) particularly that he had been allowed to continue to use the Respondent's services after he resigned from the Board. He felt that this was a breach of the Claimant's employment rights (page 598-600). He used negative language to characterise the conduct of Mr Deo (untruthful, liar, vindictive, gossip monger, bigoted, toxic). Mr Phillips stated in his grievance that he felt that the continuation of the connection between the Respondent and Mr Deo was "deeply offensive and provocative". Although the Claimant's statement at paragraph 214 stated that this grievance was presented by her, this was not consistent with the wording of the document which showed that it was presented by Mr Phillips and referred to the Claimant in the third person. We therefore find as a fact that this was not a grievance submitted by the Claimant and it was not purported to be submitted on behalf of the Claimant but was a grievance expressing Mr Phillips' personal views of the way in which the Claimant was treated
125. The Claimant instructed solicitors Bircham Dyson Bell to act on her behalf on the 5 November 2015 see pages 608-612. The Tribunal noted that the letter made no reference to the incident on the 29 October and there was no reference to any allegations of sexual harassment against Mr Taylor, the only specific allegations referred to were (again) those on the 19 and 20 October. The letter provided a chronology of facts from the Claimant's perspective and requested that the suspension be lifted. The letter also referred to the disciplinary allegations made against the Claimant and asserted that no details had been provided of the charges against her. The letter claimed that the Claimant's suspension had been in place from the 6 October and therefore the "contractually limited period of suspension should have expired". The letter also emphasised the Claimant's vulnerability as a disabled person. The letter warned that the Respondent was "at serious risk of damaging and costly unfair dismissal, discrimination and victimisation claims being brought against it by our client".
126. The Claimant indicated her intention to appeal the outcome of her grievance by a letter dated the 9 November 2015 (see page 616 of the bundle).

127. Mr Ifill was instructed by the Respondent to “oversee and co-ordinate” what was described as a number of outstanding HR issues. He wrote to the Claimant to introduce himself and to inform her that he was now the point of contact. He dealt with the issue of suspension stating that she had been placed on paid leave until the 20 October and this had been converted to suspension from that date due to the incidents on the 19 and 20 October 2015. The letter went on to state that the Respondent considered the period of suspension to be necessary and proportionate “given the serious nature of the allegations which have been brought to its attention, and further instances of alleged serious misconduct”. The letter acknowledged the Claimant’s intention to appeal the grievance outcome and additional time was given to her to submit the grounds of appeal as a reasonable adjustment. The letter acknowledged that the Claimant had presented claims for sex and disability discrimination in Tribunal and the period of early conciliation was due to expire on the 12 November.
128. At this time there was media attention in relation to the problems at the Respondent charity; an article appeared in Disability News on the 13 November 2015. The Respondent was contacted in connection with the Claimant’s suspension and Mr Ifill emailed the publication in order to make comments on the article and to ask that corrections were made to give what he described as “a more accurate and balanced perspective” (see page 623). In his email he referred to serious allegations being investigated but gave no details of what they were. This article was seen at page 1212-3 and it was noted that Mr Truss was quoted in this article as saying that the Claimant had been accused of bullying and intimidation of staff.
129. Mr Ifill wrote to the Claimant on the 18 November 2015 (see pages 630-3 of the bundle) setting out the details of the alleged disciplinary charges against her; this was copied to her solicitor. The charges were as follows: (1) alleged conduct of a serious nature that undermines the implied duty of trust and confidence between the Respondent and its staff, volunteers and participants; (2) Alleged conduct of a serious nature that undermines the implied duty of trust and confidence with regard to your employment with the Respondent and (3) Alleged conduct of a serious nature that undermines the reputation and integrity of the Respondent potentially putting at risk its services and/or staff and volunteers, clients, participants, and/or significantly undermines public trust and confidence in the Respondent’s reputation. The letter contained details of each allegation.
130. Mr Ifill wrote to the Claimant on the 26 November 2015 to inform her that the grievance appeal would be heard on the 3 December 2015. At the date of this letter the Claimant had not set out the grounds of her appeal and these were requested. The Claimant was informed that there would be a face to face discussion with the Consultant who would “listen carefully to what you have to say regarding your grounds of appeal and ensure that if any further investigations are necessary, a note is made of these to be undertaken by him/her afterwards”. It was made clear that the Consultant would be unable to give a decision at the close of the meeting. As the hearing had already been postponed, no further postponement would be granted. The Claimant replied to this letter on the 1 December

2015 (pages 656-9) dealing with her needs for reasonable adjustments and she questioned Mr Ifill's capacity to conduct the proceedings on the Respondent's behalf; she commented that she was "theoretically his boss". The grievance appeal took place on the 10 December at a neutral venue to accommodate the Claimant's request for a reasonable adjustment.

131. The Claimant provided a summary of her grievance appeal to the Respondent under cover of an email dated the 9 December at page 674 (the document was at pages 675-9). The Claimant provided a 150-page submission and raised a further 63 points of grievance (see page 894). The appeal hearing was recorded at the request of the Claimant (page 688-722). The Claimant was accompanied by four people, her Trade Union representative Mr Wood, Mr Farrell a Professional Friend, Mr Skelly Former Trustee and Mrs Phillips former Trustee.

132. The outcome of the appeal is at pages 733-741 recording the conclusion of Ms Lingard (an independent consultant). The Claimant's grievance appeal was dismissed, and she was advised that the new grievances raised in respect of the issues relating to the dates of the 10, 16, 19 and 20 and 29 October should form a separate grievance process.

133. The Claimant applied to take annual leave via her union representative on the 4 January 2016 (see pages 746-7); Ms Nalumansi replied on the 11 January 2016 (see page 763-3) refusing the Claimant's request to allow her to claim pay for the eight days over Christmas and New Year shutdown instead of this period being treated as annual leave. Ms Nalumansi referred to "an established contractual provision that this period counts towards the annual leave entitlement". The Tribunal have found as a fact above at paragraph 62 that the Claimant's contract required her to take annual leave when the Charity was closed over Christmas' we conclude that the refusal was reasonable and consistent with the contractual term. This letter was put to Ms Nalamansi in cross examination and she confirmed that the Claimant's leave application was refused as they had been confirmed about her non-attendance at hearing and about the comments the Claimant had made on social media. It was explained that if the Claimant was granted leave it would disrupt the process.

134. The Tribunal were taken to page 76 of the Red Bundle which was dated the 8 January 2016 which was a posting on the Respondent's website referring to the Claimant as the "former Chief Executive". However, looking at the posting in its entirety, it is made clear that the Claimant was presently suspended. The Tribunal conclude that on looking at this document, it accurately reflected the state of affairs at the time as it also referred to Mr Taylor as Acting CEO on an Interim basis. There was no evidence that this was published because the Claimant had raised a protected disclosure.

135. Ms Nalumansi wrote to the Claimant on the 12 January 2016 (page 765) referring to what were described as "further serious breaches of confidentiality" including inaccurate and misleading factual accounts of her suspension and "disparaging remarks relating to your suspension on your

Facebook page". It was stated that as a result of these posts they had been contacted by supporters requesting to withdraw funding from the Respondent. Ms Nalumansi stated that "not only is this a deliberate breach of confidentiality, but damages the reputation of the charity, and potentially undermines trust and confidence in [the Respondent]".

The Investigatory Meeting

136. There was an investigatory meeting held on the 12 February 2016 at Waterloo Action Centre a neutral venue, the proceedings were recorded, and the Claimant was assisted by Mr Wood. The hearing was conducted by Mr McCabe from Peninsula who was assisted by Mr Ifill (the designated notetaker). The disciplinary investigation that was first referred to on the 10 September 2015 (see above at paragraph 96) had been halted in order for the grievances to be dealt with first, the grievance process took nearly three months.
137. The minutes were at pages 845-880. The investigation report was at pages 893-907 which was detailed. The conclusions were that although not all the allegations investigated were supported by the evidence, the remaining matters were to proceed to a disciplinary hearing. In respect of the allegation that there had been a breach of the implied duty of trust and confidence due to alleged conduct of a serious nature, this related to a number of resignations of staff and volunteers "*that gave rise to an atmosphere of deteriorating employee relations and unacceptable turnover of staff*". A number of allegations were put to the Claimant in the meeting including concerns surrounding the resignation of Ms Hope in September 2015 and it was concluded that this individual highlighted the inappropriate manner of the Claimant's interactions with staff and volunteers and that these amounted to allegations of bullying and harassment and could expose the Respondent to potential claims. It was also concluded that the resignation of Mr Taylor and others in recent months had reinforced these concerns. The Claimant denied these allegations and believed there was collusion between Ms Unru, Ms Wray, Mr Taylor, Ms Nalumansi, Mr Endecott, Mr Ayaji, Mr Deo and others and she claimed that it was she who had been victimised. This disciplinary allegation was upheld.
138. The second allegation was that the Claimant had undermined the implied duty of trust and confidence by conduct of a serious nature and this was based on a number of instances where it was alleged that the Claimant had failed to carry out the legitimate instructions of the Board of Trustees. There were six allegations under this head. Two allegations were not upheld where the Claimant attended external public events (a) and (b). Allegation (c) was in relation to the Claimant attending the Respondent's premises on the 16 October and during this visit she behaved in a manner that was felt to be inappropriate and generally disruptive. In relation to subsequent visits on the 19, 20 and 29 October, the Claimant's conduct in respect of each attendance at the workplace was found to be evidence of bullying and harassment.
139. The third allegation was that the Claimant's conduct was of a serious nature which undermined the reputation and integrity of the Respondent

potentially putting at risk its assets, services and/or staff and volunteers, clients, participants and/or significantly undermined public trust and confidence in the Respondent's reputation. This referred to the petition circulating under the name of 'Reinstate Michele Baharier now and save CoolTan Arts' on Change.org; this disciplinary allegation was upheld. The allegation also referred to confidential information being shared with news outlets (after the letter of the 20 October was sent to reinforce the terms of suspension) and to several social media campaigns (on Facebook, Tumblr, twitter) and to the Claimant 'attacking' trustees on her twitter feed. These allegations were referred to a disciplinary hearing as was an allegation that she organised a demonstration outside the Respondent's premises on the 1 February 2016.

140. The Tribunal noted in this hearing that the Claimant was adamant that she believed that she was right and accepted no responsibility for any distress she may have caused to others. We have referred above to the Claimant's allegation that there was a conspiracy against her and she made it clear in the investigation hearing that she was Mr Taylor's boss and he was her subordinate (page 897 and see above at paragraph 139). The Claimant made no mention in this meeting to any inappropriate behaviour by Mr Taylor apart from bullying and harassment; there was no mention of any sexual harassment by Mr Taylor. The Claimant also indicated that she felt that the Trustees had brought "*this situation on themselves*" and they must take responsibility for their own action. The Claimant appeared to have no insight into the effect her conduct had on those around her, including service users. The Claimant called for Mr Taylor to be suspended. She also asked for Mr McCabe to "be removed as he had no skills". She accused the Board of destroying the charity. A quote from the report captured her view which was "*None of them can do what she does as only 10% of the charities reach the status she has reached which is reflected in the many awards granted to the charity. She has done astronomical things for the charity for which they want the credit*". The Claimant in the meeting expressed her genuine belief that she was blameless and her refusal to accept any responsibility for the breakdown in the relationships both internally and externally.

141. Mr Wood wrote to Ms Nalumansi on the 28 April 2016 (pages 936-937) asking that the Claimant be given further time to read the documents and suggested that Ms Nalumansi had a conflict of interest as she had had central involvement in the case and was a witness. He asked for the disciplinary hearing to be chaired by an independent person.

142. The allegations that were to proceed to a disciplinary hearing were set out in a detailed letter sent to the Claimant and dated the 15 April 2016 (see pages 925-928) with a significant number of appendices including a number of statements taken and letters of complaint; the complete list of appendices was at page 929-30. The Claimant was warned that if any of the allegations were substantiated, the Respondent regarded them as gross misconduct which would entitle them to summarily dismiss. The Claimant was given the option of two dates for the hearing, the 22 or the 25 April 2016.

143. The parties finally agreed on the date of 17 May 2016 (page 938) for the hearing. The Tribunal noted that the Claimant had over 3 weeks to prepare for the hearing, together with the support of her union representative and others. Ms Nalumansi responded to the Claimant on the concerns raised by her representative (page 963) regarding his challenge to her suitability to chair the meeting and her response was that she felt that she was suitable to chair the meeting as she had had no previous involvement in the disciplinary process and was the Chair of Trustees. Ms Nalumansi felt that her involvement was therefore appropriate. She also rejected Mr Woods request that Mr Ifill should have no involvement in the hearing.
144. Mr Wood indicated on the morning of the hearing that the Claimant could not attend the hearing (page 965) as the attendance of Mr Ifill at the hearing “would place [the Claimant] at risk of suffering further serious harm”. The disciplinary hearing took place in her absence and the Tribunal saw a summary record of the meeting at page R1. It was noted that Mr Wood had provided additional documentation to the panel comprising a 17-page response to the allegations (pages 946-962) dated the 13 May 2016 and 94 other documents. Mr Wood described his document as a “full and lengthy response”. It was noted that Mr Wood included in this document responses to the disciplinary investigation report and provided the Claimant’s responses to each allegation including lengthy quotes from the Claimant. The panel took these documents into account in their deliberations.

The Disciplinary Outcome.

145. The dismissal letter dated the 25 May 2016 was lengthy and was nine and a half pages long (see pages 967-976) and provided a detailed summary of the findings and conclusions in respect of each allegation. The disciplinary outcome letter referred to the three previous postponements that had been necessary and the reasonable adjustments that had been agreed with the Claimant’s union representative (more time to prepare) there had also been postponements agreed to accommodate the Claimant’s union representative.
146. Ms Nalumansi confirmed in the letter that all the documents supplied by the Claimant were considered by her. The Tribunal having reviewed Mr Ifill’s evidence at the Hearing including additional documents requested by the Tribunal at R7(1) to (4) and produced on the 10 October 2017, is satisfied that although Mr Ifill played a part in the decision-making process, Ms Nalumansi was the decision maker. Ms Nalumansi confirmed in cross examination that “we agreed the findings and Mr Ifill helped me phrase it”. The Tribunal are satisfied that this accurately represented the conclusions reached by her together with assistance received from Mr Shaw and Mr Ifill as appropriate to their respective roles. Ms Nalumansi confirmed that she was actively engaged in the creation of the letter and asked Mr Shaw for comments.

147. The decision in respect of allegation 1 was set out in detail and it referred to the investigation outcome reached by Mr McCabe and the

Claimant's response to the allegation and the contents of the statements. The panel found on balance that the Claimant's submissions appeared to focus on the credibility of witnesses rather than address the allegations themselves. On balance the disciplinary panel took the view that the evidence supported the allegations regarding conduct of a serious nature that undermined the implied duty of trust and confidence. The allegation was found to be proven.

148. In respect of allegation 2, the disciplinary panel took into account the terms of the suspension letter and the Respondent's disciplinary policy together with the Claimant's response to the allegations. It was found that allegations (a) and (b) were not proven. In respect of allegations (c) and (d), in relation to the conduct of the 20 October, it was concluded that the Claimant behaved in a manner which undermined the implied duty of trust and confidence in that she refused to leave the premises when requested to do so and it was also found that her behaviour was threatening and abusive towards staff in the presence of others with safeguarding concerns being raised. These two sub-allegations were found to be proven but (e) and (f) were not (and the Claimant's conduct was only found to be generally disruptive on the 29 October).
149. In respect of allegation 3, the panel upheld the allegations of (c) to (h) but did not uphold (a) and (b). The Respondent concluded that the Claimant had given her implicit consent to social media feeds and to updates on her own Facebook page. It was concluded that the Claimant had sanctioned the demonstrations that was held outside of the Respondent's premises and based on witness evidence, attended one. It was concluded on the evidence and on the balance of probabilities that the Claimant had acted in contravention of the terms of her suspension (dated the 20 October). This was found to be an act of gross misconduct.
150. When deciding on the sanction, the Respondent confirmed that they took into account the statements made on behalf of the Claimant and her role as CEO and Founder of the Charity. It was concluded that the Claimant should be summarily dismissed. In this letter the Claimant was informed of her right to appeal (page 976) and she was given 10 days to submit her appeal. The outcome letter was delivered by hand on the 25 May 2016. The Tribunal noted that the disciplinary policy (page 1083) required the appeal to be presented "within one week" of the receipt of the outcome letter. It was noted that the Claimant had been given more time to present her appeal.
151. Mr Wood presented an appeal on behalf of the Claimant dated the 31 May 2016 (Red Bundle pages 88-92). It was alleged that the Claimant received inadequate notice of the hearing and was only given one week's notice. Mr Wood claimed that there was a failure to make reasonable adjustments to accommodate her disabilities of dyslexia and mental health impairment. He claimed that the whole process was 'unduly lengthy' and there had been a failure to accommodate her requests for reasonable adjustments and the Respondent attempted to block the Claimant's right to respond and they refused the Claimant's evidence.

152. On the 13 June 2016 the Respondent posted a public announcement (page 981) saying that they would not comment directly on internal matters but acknowledged the work undertaken by the Claimant in forming and developing the charity. This public announcement made no reference to the termination of the Claimant's employment.
153. The appeal hearing was listed for the 22 June 2016. The letter confirming the date was sent on the 13 June 2016 (page 979); the Claimant appealed on four separate grounds (see above at paragraph 151). The Claimant wrote to Mr Truss complaining of what she described as the inhumane treatment she had been subjected to by the Charity that she had founded.
154. The Claimant was offered the 4 July 2016 (not being able to make the previous dates offered) for the appeal hearing (page 995). The Claimant could not attend on this date and was offered the 15 July 2016 (page 1005). The Respondent then received a letter from the Claimant's Mental Health consultant (page 1009) saying that she was not fit to attend the hearing listed for the 15 July 2016; it therefore did not proceed. The Respondent took steps to obtain a medical report to see if the Claimant was fit to attend or if reasonable adjustments were required however a report could not be obtained. The Claimant was given the opportunity to provide written submissions if she was unable to attend.
155. In paragraph 48 of Mr Truss's statement he accused the Claimant of 'playing games' in seeking to move the dates of the appeal; he accepted that he accused the Claimant of delaying tactics (page 1002). The Tribunal saw an email dated the 1 July 2016 where he described the GP appointment that had been arranged for the 22 July as a 'delaying tactic'. The Tribunal took into account the many delays that had occurred, and it was reasonable for Mr Truss to view certain postponements of the appeal hearing as being attempts to delay the process. Mr Wood did not state that the GP appointment was for a disability related reason at the time (page 1002) and did not contend that this was requested as a reasonable adjustment. The Tribunal noted that Mr Wood had emailed Mr Truss on the 29 June 2016 (page 993) advising of the GP appointment but emphasised that there was no material reason to delay the hearing and did not advise that this needed to be postponed due to disability reasons. The Tribunal did not find as a fact that Mr Truss alleged that the Claimant was using her disability as a delaying tactic, he referred to delaying tactics with reference to the many postponements of the appeal but did not state that this was due to a disability related reason.
156. The appeal was to be chaired by Mr Truss but as he was unable to make the subsequent date offered of the 15 July, it was then to be chaired by Mr Board supported by Mr Chilcott an independent HR professional. Neither had any previous involvement in the case. It was noted that the Claimant was allowed to bring a representative with her together with an additional companion. The Claimant was also asked in the letters calling her to an appeal hearing whether any further adjustments were required to assist her.

157. Mr Truss wrote to Mr Wood on the 22 July 2016 (page 1013) indicating that no further delay could be accommodated, and they were prepared to deal with the appeal on the basis of written submissions only; no written submissions were received from the Claimant. No appeal was heard.

Holiday Pay

158. The Claimant took annual leave from the 21 March to the 3 April 2016. The Claimant requested to take holiday on the 18-26 February 2016 but this was refused. Ms Nalumansi declined consent to the February dates as they needed to diarise meetings with her to resolve the outstanding complaints (see page 76 of the bundle dated the 8 January 2016). The Tribunal saw the Claimant's request to take annual leave and/or in the alternative to carry her 2015 leave forward. The Tribunal noted that Mr Ifill responded to the Claimant initially on the 17 December confirming that she could carry forward 5 days (see pages 726-7). Mr Ifill also asked for the Claimant to provide a breakdown of the figures she claimed for TOIL. In reply the Claimant confirmed (see page 727) that she had accrued 20 days annual leave and 115 hours of TOIL but provided no breakdown (although she stated that this information had been provided to Ms Lingard). In Mr Ifill's later email on the 18 December 2015 at pages 730-1 he confirmed that the Board had agreed that she could carry forward her remaining annual leave less that set off against the leave taken during the Christmas closure. Even though the Claimant claimed for leave that was outstanding, she failed to provide any evidence to the Tribunal to support this. The Tribunal saw in her closing submissions that she "reserved the right to amend her particulars..." (see page 41 of her closing submissions) however no further particulars had been provided and no evidence was led in Tribunal. On the facts before the Tribunal it could not be said that the decision to refuse the Claimant's application for leave was a detriment because of her protected acts of raising grievances, the reason the leave was refused was to carry out the disciplinary investigation and hearing and to bring closure to all outstanding matters. On the issue of payment for leave accrued, the Claimant has failed to provide any consistent evidence to support this claim.

159. The Claimant claims that an approach made to her on the 5 July 2016 (page 101 of the Red Bundle) from a person called Rachel was an act of harassment. The Tribunal having seen this email saw that there was nothing in this document that was offensive. It was an email asking the Claimant to provide information for research into a book to mark 25 years of CoolTan Arts. The email was written in considerate language and the Claimant was given the option to respond. She chose not to do so. The Claimant could equally have taken exception had she not been given the opportunity to contribute.

160. We contrast this with the Claimant's allegation that the Respondent did not permit her to sign a memorial book (this was seen in the Claimant's closing submission at page 81 and was dated the 6 January 2016). The Respondent denied this allegation and stated that this was not organised by them. The Tribunal conclude that this and the incident referred to above

did not amount to hostile degrading or offensive treatment of the Claimant because of her disability.

161. Ms Nalumansi was taken in cross examination to the statement that appeared in the Red Bundle at page 80 and 105-8 which was the Trustees Report for the year ended the 31 March 2016; the Tribunal saw that the publication date of this document was the 16 December 2016. Ms Nalumansi was taken to the extract that referred to the Claimant as the ex CEO and asked about whether it was proportionate to use funds of £53,000 on this matter. Her reply was that it was proportionate due to the nature of the case. She stated that she was being inundated with emails from the Claimant and others and had hundreds of phone calls and dealings with the police. She stated that she was only a volunteer and she felt she “needed to bring in the professionals”. The Tribunal noted that this notice publicised the disciplinary process and the dismissal. It also referred to the Claimant delaying the appeal process ‘by several months’ by asking for hearings to be postponed or not appearing. It also referred to the Claimant organising protests against the Respondent. This was not expressed entirely in neutral terms. It is noted that in the Claimant’s submissions, reference is made to this announcement and she alleges that the publication of the Report by the Respondent created a hostile environment towards the Claimant and caused her long term reputational damage. There is no mention of this action being related to her protected characteristic and no evidence to suggest that this was harassment related to the Claimant’s disability. The Tribunal also took into account that this was posted long after the Claimant’s dismissal.

162. **The Law**

98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it--

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) relates to the conduct of the employee,
[(ba) ...]
- (c) is that the employee was redundant, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part

or on that of his employer) of a duty or restriction imposed by or under an enactment.

(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)--

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

Section 2 of the Equality Act 2010

The following characteristics are protected characteristics--
disability;
sex;

Section 6 of the Equality Act 2010

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

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

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

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

- (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
- (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

13 Direct discrimination

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

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

15 Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if--
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

20 Duty to make adjustments

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

21 Failure to comply with duty

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

26 Harassment

- (1) A person (A) harasses another (B) if--
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of--

- (i) violating B's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if--

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if--

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
- (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
- (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

Section 136 Equality Act 2010

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

Submissions

Both parties produced written submissions; these were lengthy and detailed and will not be replicated in this decision. However, the submissions were read by the Tribunal and taken into consideration to the extent that they were relevant to the agreed issues and the evidence presented in the hearing when making findings of fact and when reaching our decision.

Decision

The unanimous decision of the Tribunal is as follows:

163. The Tribunal first would like to confirm the issues that were agreed at the start of the hearing. They appear at paragraphs 5-47 above. These issues had been discussed at two previous case management discussions before Judge Hall Smith (9 February 2016) and before Judge Freer (19 December 2016). The issues did not include areas not covered by these claim forms (for example reference was made to religious discrimination which was not referred to in either ET1 see above at paragraph 58). For the avoidance of doubt the agreed list of issues were dated the 21 September 2017 save that disability has now been conceded (see above at paragraph 12). The issues were adopted at the start of the hearing, together with the further particulars which were in the bundle at pages 19A-24. Any complaints that fell outside of these documents have not been taken into account by the Tribunal save where relevant to the background facts of the case or to understanding context.
164. One of the issues before the Tribunal is whether any of the claims are out of time. Although some of the factual issues date back to January 2015, we note that the issues in relation to Mr Deo were ongoing until July 2015. We are therefore content that this shows that there was a continuing course of conduct. The Claimant raised a grievance in respect of these issues and the grievance process was ongoing in December 2015. We therefore conclude on all the facts that the ET1 presented on the 11 December 2015 is in time in respect of all complaints.

Claims against the Second Respondent.

165. The Claimant claims that the Second Respondent subjected her to direct discrimination because of sex and disability and in particular relies on his conduct on the 3 August 2015 by failing to ask Mr Deo to desist with his conduct (see above at paragraphs 14 (direct discrimination) and the same incident at paragraph 30(m) referred to as an act of sexual harassment). Our findings of fact regarding this incident are at paragraph 82 where we noted that no questions were put to the Second Respondent that he failed to ask Mr Deo to desist because of her sex or that his purpose or the effect of his conduct was to subject the Claimant to an intimidating hostile or degrading environment. We accepted the Second Respondent's evidence that this meeting was called to see if the rift between the two could be 'healed' and during this meeting the Claimant was asking for Mr Deo to resign and to cease to attend the Respondent's premises. Mr Truss did ask Mr Deo to resign and Mr Deo did so. We take account of the Claimant not having legal representation at the hearing but conclude on the evidence that the Claimant has failed to show primary facts from which we can conclude that she has been treated less favourably because of sex or that she was subjected to harassment by the Second Respondent in this meeting. The Claimant claims for harassment or direct sex discrimination are not well founded and are dismissed.
166. There is a second allegation against the Second Respondent which is at paragraph 15 and 30(n) of the issues in relation to his conduct on the 15 September 2015, which is described by the Claimant as direct discrimination (sex) and sexual harassment. We refer to our findings of fact in relation to this incident at paragraphs 94 and it is noted in the Claimant's statement that this incident was referred to as an act of sex and

disability discrimination but in the list of issues it was only described as an act of sex discrimination. We have concluded that the Second Respondent's conduct of communicating with the Claimant's partner when he was concerned for her wellbeing was not a detriment. We concluded that the Second Respondent would have acted the same way had the person been a man and he knew their life partner well. There was no evidence to show a difference in treatment. We also conclude that the act complained of was not less favourable treatment or harassment because of disability. No questions were put to the Second Respondent regarding this allegation and we conclude that in the absence of evidence this head of claim is not well founded and is dismissed.

167. There is a further complaint against the Second Respondent which is above at paragraph 25(a) that he purportedly alleged that the Claimant used her disability as a delaying tactic; this is stated to be an act of disability harassment. The Tribunal have found as a fact above at paragraph 155 that Mr Truss accepted that he accused her of delaying tactics, but we have found that his criticism of the Claimant was not due to her disabilities and our reasoning for this is set out above; there was no evidence to suggest that a GP appointment that fell on the date of the appeal was due to any of the Claimant's disabilities and this was not raised as a concern at the time by her union representative. This claim is not well founded on the facts and is dismissed.

Claims against the Third Respondent.

168. The Tribunal now turn to the allegations against the Third Respondent which are above at paragraph 25(b) which was that she issued a public notice regarding the dismissal and this is claimed to be an act of harassment because of disability. The Tribunal noted that the Claimant appeared to make public many of the issues that were the subject of the grievance and disciplinary processes. The Respondent's case therefore was that this was a matter of public knowledge and the publication of the dismissal was necessary. The Tribunal made findings of fact about this above at paragraph 161. We took into account the Claimant's submissions on this point and note that no reference was made to harassment because of her disability. There was no evidence to suggest that the public notice was issued for a reason related to the Claimant's disability; that allegation is not well founded and is dismissed.

169. The Claimant also alleged that the Third Respondent subjected her to victimisation (see above at paragraph 35(b) in relation to actions that she took on the 5 and 16 October 2015. Our findings of fact are above at paragraph 104 and 110 where we conclude that the Third Respondent sent the Claimant on paid leave on the 6 October because they had received a number of grievances from the staff that needed to be investigated alongside the Claimant's grievances. There was no evidence to suggest that the Claimant was asked to go or remain on paid leave because of her protected act, which the Tribunal accepted was her grievance. The second allegation in relation to the 16 October where the Claimant was again asked to remain on paid leave was not found to be because the Claimant had raised grievances alleging discrimination but

due to the receipt of allegations of bullying and harassment against the Claimant which the Third Respondent had a duty to investigate due to the seriousness of the allegations and the detrimental impact it was having on the Respondent (including staff and volunteers). We also refer to our findings of fact at paragraph 127 where it was confirmed to the Claimant on the 11 November 2015 why it continued to be necessary and proportionate to keep the suspension in place. We found no evidence to suggest that the paid leave, which was then converted to suspension, was an act of victimisation because the Claimant raised grievances and then presented an ET1; but was due to the significant number of serious allegations made against the Claimant which needed investigating. We also considered the Claimant's role as CEO and the small size of the Respondent, the Respondent's action of placing the Claimant on paid leave was reasonable and necessary. The Respondent's evidence on this point was preferred to that of the Claimant. The Claimant's claim for victimisation is not well founded and is dismissed.

Unfair Dismissal and direct disability discrimination

170. Turning to the Claimant's claim for unfair dismissal, the Respondent's case is that the Claimant was dismissed for misconduct which is a potentially fair reason to dismiss. There was no evidence to suggest that the decision to call the Claimant to a disciplinary hearing and then to dismiss was because the Claimant suffered from a disability (either dyslexia or a mental impairment). We have concluded that had a hypothetical comparator acted in the same manner as the Claimant who was not disabled, they would have been investigated and called to a disciplinary hearing and they would have faced the same process with the same outcome as the Claimant.

171. There was no evidence however to suggest that the Respondent treated the Claimant less favourably on the grounds of her disability, this claim is not well founded and is dismissed.

172. The Respondent carried out a thorough investigation (see above at paragraph 136 - 140) which included a detailed investigatory meeting with the Claimant and her representative. The investigation meeting was held at a neutral venue, the proceedings were recorded, and the Claimant was assisted by her union representative (see above at paragraph 136). The investigation outcome appeared to be fair and balanced (see above at paragraphs 137-139).

173. The Claimant was warned in the letter calling her to a hearing that any of the charges, if proven, amounted to gross misconduct which could result in her dismissal. The Claimant was given a number of dates to choose for the disciplinary hearing and she was given more time to prepare when she asked for it. The Claimant was unable to attend the hearing due to her fragile health. Although the Claimant alleged that reasonable adjustments were not made to the process, we have found as a fact that the Claimant was given extra time to prepare for the disciplinary hearing. The Tribunal noted that the Respondent allowed the Claimant to be accompanied by two people in the grievance investigatory meeting (see above at paragraph 104) and the Claimant attended with four people at the grievance appeal meeting (see above at paragraph 131). The letters

calling the Claimant to a disciplinary hearing asked whether reasonable adjustments were required and the evidence before the Tribunal reflected that adjustments were made when requested to both the grievance and disciplinary process.

174. While noting the reported impact of delays on the Claimant's mental health, it was noted that many of the delays were caused by the Claimant. The allegations were first communicated to the Claimant on the 10 September 2015 (see above at paragraph 95) but the disciplinary proceedings were halted because the Claimant raised a grievance. By the time the disciplinary process could be restarted, two further serious allegations had arisen which added to the complexity and the depth of the investigation. Although the Claimant argued in her closing submissions that there was no need to delay the disciplinary procedure while the grievances were considered, it was reasonable for the Respondent to proceed as it did in all the circumstances and it was noted that the Claimant did not argue this at the time.
175. Although the Tribunal have found as a fact that the process followed was fair in respect of the investigation and in respect of the time they took to bring the matter to a hearing, we have concluded that the process was flawed in particular respects. Although we found that the Respondent carried out a thorough investigation, the involvement of Ms Nalumasi as decision maker in the disciplinary hearing and in respect of sanction was inappropriate. We reach this conclusion in the light of our findings of fact where she and the Board had concluded in October 2015 that the Claimant should be dismissed for gross misconduct and had predetermined that allegations of bullying and harassment made in Mr Deo's letter were proven (see above at paragraph 114). Even though independent HR support was subsequently obtained and even though this was a small employer with limited resources, the disciplinary hearing could have been chaired by someone who had no previous knowledge of the complaints and who was entirely independent. Even though further allegations were added to the original charge, we conclude that Ms Nalumansi had predetermined the first allegation and we were not satisfied that she entered the process with an open mind. We conclude therefore that the decision to dismiss was procedurally unfair.
176. Even though we have found that the decision maker was not independent, resulting in a procedurally unfair dismissal, we conclude that the dismissal was substantively fair. We also conclude that had the decision maker been independent, they would have reached the same decision to dismiss summarily on the evidence before them. It was a decision that was within the band of reasonable responses, taking into account the size of the organisation and the reputational damage caused to it as a result of the breakdown in relationships at the charity. It was noted that the subsequent events that formed allegations 2 and 3 had caused a further deterioration in the relationship and serious allegations against the Claimant in connection with those events had been found proven in the disciplinary hearing. The evidence reflected an irretrievable breakdown in the relationships at the Charity for which the Claimant was

largely responsible. The Tribunal saw that this was a workplace that had become polarised and deep antagonisms had developed which had widened due to the Claimant's very public campaign to have the Board removed and for her to be reinstated. This evidence was sufficient for the Respondent to form the view that there had been a complete breakdown in the mutual duty of trust and confidence between the parties which could not be healed. We conclude that although the dismissal was procedurally unfair had the process followed been fair, summary termination would have been inevitable.

177. Having found that the dismissal was on the ground of conduct and was substantively fair and within the band of reasonable responses (even though we found it to be procedurally unfair), the Tribunal also conclude that the Respondent was entitled to summarily dismiss, having proved that the Claimant committed an act of gross misconduct in respect of all three charges against her.

178. We now need to deal with the issue of contribution, taking into account all the facts before us and the Claimant's significant contribution to her ultimate dismissal, we conclude that the contribution by the Claimant to her dismissal was 80%.

179. The Claimant's claim for wrongful dismissal is not well founded and is dismissed, the Tribunal having concluded that the Respondent has shown that the Claimant had committed an act of gross misconduct entitling them to summarily dismiss.

Discrimination contrary to section 15 Equality Act

180. The Tribunal now turn to the Claimant's claim that her dismissal was unfavourable treatment because of something arising in consequences of her disability. The Claimant claims that only the dismissal was unfavourable treatment. Although the Claimant in closing submissions at page 25 stated that her communication and behaviour is affected by her disability, she provided no details of the impact that her mental health disability had on her behaviour towards others. The Claimant did not state that the perceived bullying and harassment and other acts committed by her, that the Respondent identified as misconduct (as referred to in the disciplinary allegations and outcome), were linked to her disability. Although the Tribunal saw no evidence to suggest that the behaviour that resulted in her dismissal was a manifestation of her mental health impairment; however, accept that her mental impairment may have adversely impacted on her behaviour or on her interactions with those at the Respondent's premises. We noted that a number of comments were made by Mr Truss and others expressing their concern at times for Claimant's mental health. We therefore accept that the Respondent may have treated the Claimant unfavourably because of conduct arising out of her mental ill health.

181. We then turn to the next part of the test which was whether the treatment was a proportionate means of achieving a legitimate aim. We have concluded that the Respondent viewed dismissal as the only option, taking into account all the evidence and we conclude that this was

proportionate due to the duty of care they owed, not only to the Claimant but to other staff and service users. This was a legitimate response due to the serious deterioration of the relationships in the charity and the adverse impact that this was having on the charity's future survival. The Tribunal accept that dismissal was the only option available in all the circumstances and this was a legitimate route to take in the light of the exodus of staff and service users from the Charity and due to the loss of donors. The Respondent had to take steps to safeguard the health and wellbeing of staff and services users, who were vulnerable, and to bring an end to the damaging conflict. The Respondent took the decision to dismiss in an attempt to try and secure the future of the organisation, dismissal was therefore a proportionate response. This head of claim is not well founded and is dismissed.

Disability Harassment

182. Turning to the Claimant's allegation above at paragraph 26(b) that occurred on the 9 September 2015 where the Claimant alleged that Mr Taylor said, "It is your spelling that hold us all up..."; this evidence was in the Claimant's statement at paragraph 127. The Claimant contends that this is an act of disability harassment. The Tribunal noted that in Mr Taylor's statement he denied making this comment (see paragraph 4) and referred to the fact that his daughter suffered from severe dyslexia. No questions were put to Mr Taylor about this allegation. The Tribunal therefore conclude on the balance of probabilities that there was insufficient evidence to support this allegation and it is therefore dismissed.
183. Turning to the allegation referred to above in relation to the incident on the 29 October 2015 which is referred to above at paragraph 121; the Tribunal have concluded that although there was distress on all sides it was unwanted conduct related to the Claimant's dyslexia and we also concluded that it created a hostile, degrading or humiliating environment for the Claimant. We then turned to Section 26(4) of the Equality Act to decide whether the conduct should be treated as having that effect and we accept it was reasonable for the Claimant to perceive the comment as being humiliating or degrading. The Tribunal took into account all the circumstances of the case and we note that although the Claimant's actions were inflammatory in this incident, on balance we conclude that it was reasonable for the Claimant to conclude that this was an act of harassment.
184. The Tribunal then considered the incident on the 30 October 2015 and we refer to our findings of fact on this incident above at paragraph 122. We found as a fact that this was not made out of the facts as there was no evidence to suggest that the Respondent requested copies of the Claimant's medical notes. This head of claim is not well founded and is dismissed.
185. The Tribunal turn to the claims for disability harassment above and specifically at paragraphs 25(c), (d) and (e). The Tribunal saw that the Claimant objected to Mr Ifill's involvement in the disciplinary process but there was no evidence that his continued involvement was related in any way due to her disability. The Tribunal note that he was an independent

professional and had no previous contact with the Claimant. There was no evidence to suggest that his input or his conduct amounted to intimidating, hostile or degrading treatment because of the Claimant's disability. We conclude it was reasonable for the Respondent to continue to involve him in the disciplinary process for the reasons given by the Third Respondent at paragraph 161 as she was only a volunteer and was being inundated with emails and phone calls.

186. In dealing with the fact or the length of suspension, we conclude on all the facts that it was necessary in all the circumstances and did not create an intimidating, hostile or degrading environment for the Claimant, even though the Claimant found her exclusion from the workplace distressing, it was not harassment. In relation to the Claimant's claim that the Respondent "refused to engage" with her in relation to her collecting her belongings, there was no evidence to suggest that this was the case. We saw email exchanges in the bundle where this was discussed, and the Claimant attended the office on more than one occasion to collect her belongings, which we have referred to above at paragraph 121. Paragraph 25(e) of the issues is therefore not borne out on the facts.

187. The Tribunal have made findings of fact about issues 25(f) and (g) above at paragraph 159-160 and we have considered all the evidence and have concluded that the contact made by Rachel in connection with research for a book was considerate and polite in tone and could not amount to degrading or hostile treatment of the Claimant. In relation to signing a memorial book, there was no evidence that this was an act committed by the Respondent and no evidence to suggest that it was related to a protected characteristic. We therefore conclude that these incidents do not amount to harassment.

188. Although the Claimant contends that the issue above at paragraph 26(a), which is an incident that was alleged to have taken place on the 2 July 2015 with Mr Deo, there was no evidence of this incident before the Tribunal. This allegation is not supported by facts before the Tribunal and is dismissed.

Sexual Harassment

189. Turning to the Claimant's complaints of sexual harassment, the Tribunal decided to refer to the allegations against Mr Taylor in the list of issues in a generic manner and as we have found as a fact that these allegations were without substantiation. We have found as a fact that the Claimant failed to refer to any allegations of inappropriate sexual conduct in the workplace in any of her grievances or in the letter sent by solicitors on her behalf (see above at paragraph 125). We conclude therefore that in the absence of any contemporaneous evidence of sexual harassment by Mr Taylor and the Claimant's failure to advance any evidence of her claim by putting any questions to Mr Taylor, in Tribunal these allegations at paragraphs 30(d)(i)(j)(l), are not well founded and are dismissed.

190. The Tribunal then turned to the allegations set out above at paragraphs 30(a) to (c) and (e) to (g) and to our findings of fact above at paragraphs

72-81. We have concluded on all the evidence and on the balance of probabilities that allegations (c) and (e) are well founded (see above at paragraph 77). The rest of the allegations are not well founded and are dismissed for the reasons set out in our findings of fact. The Tribunal also dismiss the allegations set out above at paragraph 30(h) and this was not supported by any evidence.

191. The Tribunal then turn to the Claimant's allegation at paragraph 30(k) and our findings of fact referred to above at paragraphs 80-81. We have found as a fact that there was no evidence to suggest that the Legal Notice sent by Mr Deo was an act of sexual harassment. This head of claim is not well founded and is dismissed.

The Claimant's claim for failure to make reasonable adjustments.

192. The Tribunal must first look at whether the Respondent applied a PCP and the Claimant refers above at paragraph 19 to the disciplinary procedure. We have seen no evidence to suggest that those suffering from dyslexia or a mental health impairment were placed at a substantial disadvantage by the application of this policy. The Tribunal have found as a fact that the Claimant's representative asked that the Claimant be given further time to read documents and the Claimant was given a total of three weeks to prepare for the disciplinary hearing, this was a reasonable adjustment that overcame any substantial disadvantage suffered. Although the policy set down timescales which required the appeal to be presented within one week, the Claimant was given 10 days to submit her appeal. The procedure had built in flexibility in relation to timescales and we found as a fact that the Claimant was allowed a number of postponements on request throughout the process. We have also found as a fact that reasonable adjustments were made to allow the Claimant to be accompanied by more than one person and the proceedings were recorded and it was noted that the investigatory meeting was held at a neutral venue. The Claimant has failed to show that the Respondent's disciplinary policy, or the application of it, placed those with dyslexia or with mental health problems at a disadvantage generally or that she was placed at a particular disadvantage. The Respondent was therefore under no obligation to make the reasonable adjustments. The disadvantages listed in paragraph 21 fall away and are dismissed.

193. Turning to the next discrete point pursued by the Claimant above in the issues at paragraph 22(c) where she alleged that the PCP was suspending her beyond the two week period in her contract. Firstly, we have a found as a fact that there was a term in the Claimant's contract (see above at paragraph 67) that limited suspension to a period of no longer than 14 days. However, there was also a term in the disciplinary procedure that allowed for greater discretion when suspending (see above paragraph 67) allowing for suspension to be extended as was necessary to allow for an investigation to take place. There was no evidence that the Respondent applied a neutral PCP of suspending the Claimant for longer than two weeks. The cap of two week was only in the Claimant's contract and provision did not appear in the policy.

194. In our findings of fact we have also concluded that although the Claimant was put on paid leave and an adjustment was made to allow her to work for home (see paragraph 100), this was in all but name a suspension. The Tribunal concluded that this was reasonable due to the serious allegations that had been made by the staff. The paid leave was then converted to a formal suspension on the 20 October pursuant to the provision in the disciplinary policy (see above at paragraph 115) due to the Claimant's conduct. There was no evidence that at the time the Respondent formalised the suspension under the disciplinary policy, that the Claimant was placed at a substantial disadvantage compared to those who were not disabled.
195. The Respondent's reason for extending the Claimant's suspension beyond two weeks was reasonable taking into account the vulnerabilities of the staff and volunteers in the Respondent's premises. The Tribunal conclude on all the facts that it was not a reasonable adjustment to return the Claimant to work. The Respondent had to balance the Claimant's needs against others within the workplace who also suffered from mental health vulnerabilities, the Respondent owed those on the premises a duty of care and it would not have been reasonable to elevate the Claimant's needs over that of other vulnerable and disabled people. It was noted that the Claimant already had in place support networks via the Community Mental Health team, her GP and others. The issue at paragraph 22(c) is not well founded and is dismissed.
196. Although the Claimant claims that the Respondent had in place a PCP of not providing pastoral care, this could not amount to a PCP. There was no evidence that the Respondent applied a PCP in those terms to the staff generally or to the Claimant specifically and no evidence that those with a disability were placed at a substantial disadvantage or that the Claimant specifically was placed at a substantial disadvantage. This claim is not well founded and is dismissed. The Tribunal also conclude that an EGM meeting held on the 25 August 2015, which the Claimant attended (see above at paragraph 87) was not a general provision applied to the staff it was a meeting specifically arranged with the Claimant. A meeting cannot be a PCP as it does not have the feature of a neutral policy that has general application. It was not a provision, criterion or practice applied to all staff, which placed those with the same disability at a disadvantage and which placed the Claimant at that disadvantage. In the absence of any evidence that supports this claim, we conclude that it is not well founded and is dismissed.

Victimisation

197. Although the Claimant states that she made a protected disclosure on the 18 February 2015, the Tribunal saw no evidence that a complaint of discrimination was made at that time. We note that this was not referred to in her statement or her closing submissions and there was no evidence of this in bundle. We accept however that the Claimant's grievances amount to protected disclosures as does the ET1. The question for us is whether the Respondent placed the Claimant at a disadvantage because the Claimant made one or more protected disclosure.

198. In relation to the first detriment the Tribunal have concluded that the Respondent could not have subjected her to a detriment on the 18 August 2015 as alleged at paragraph 35(a) as this predated any protected disclosure. This head of claim is therefore not well founded and is dismissed.
199. In relation to the decision to place the Claimant on paid leave on the 5 and 16 October, we refer to our above findings of fact at paragraph 104 and 110. We have concluded that the Claimant was not subjected to a detriment because she had raised a grievance; it was due to the need to conduct an investigation. This claim is therefore not well founded and is dismissed.
200. The next detriment relied on is in relation to the conduct of Ms Hope and Ms. Firth on a sponsored walk on the 10 October; our findings are above at paragraph 108 above and we have concluded that the walk took on the 13 October. We have concluded that the Claimant, who attended with friends, was not ostracised at this event because she had raised a grievance. This head of claim is not well founded on the facts and is dismissed.
201. The next detriment is referred to above at paragraph 109 and 111; that being that the Claimant was instructed to do the payroll and when she attended the office, she alleged that she was ostracised (see above at paragraph 35(d)). We have concluded on the facts that the Claimant was on paid leave at this time and the Respondent was entitled to request that she perform this function as part of her contractual duties. We have also concluded that the events of the 16 October 2015 had been distressing for all concerned but there was no evidence to suggest that this conduct was because the Claimant raised a grievance. This head of claim is not well founded and is dismissed.
202. The Tribunal now turn to allegation 35(e) above and our findings of fact above at paragraph 113 where we found no link between the Claimant raising a grievance and the altercation with Mr Taylor. We found that the Claimant attended the office while on suspension and refused to leave the office when requested to do so by the Acting CEO. There was no credible evidence to suggest that this was an act of victimisation because the Claimant had raised a grievance. This head of claim is not well founded and is dismissed.
203. Turning to paragraph 35(f) above in the list of issues and our findings of fact above at paragraph 114; we have concluded on all the facts that there was no evidence to suggest that what occurred on the 20 October was an act of victimisation because the Claimant had raised a grievance. This head of claim is not well founded and is dismissed.
204. The Tribunal next turn to the issue above at paragraph 35(g) and our findings of fact at paragraph 117 where we have concluded that there was no evidence to support the Claimant's allegation that this was an act of victimisation. This head of claim is not well founded and is dismissed.

205. In relation to the Claimant's claim above in the issues at paragraph 35(h) and our findings of fact at paragraphs 121, we conclude that there was an altercation on the 29 October 2015, there was no evidence to suggest that this was an act of victimisation. There was insufficient evidence to suggest that she was shouted at by the people identified above so this allegation is not supported on the facts. Although we have concluded that this indent amounted at an act of harassment because of disability, there was no evidence to suggest that this was an act of victimisation because of a protected act.
206. Turning to paragraph 35(i) of the agreed list of issues, we have found as a fact that the Claimant's leave request was refused for good grounds, there was no evidence to suggest that this was a detriment because she had done a protected act. We refer to our findings of fact above at paragraph 158. The reason that the Claimant application to taken annual leave was refused was due to the ongoing disciplinary procedures.
207. We turn to the Claimant's claim above at paragraph 35(j) and our findings of fact at paragraph 134 where we found as a fact that the reason that this was published on the Respondent's website was to clarify the state of affairs that existed at the time; there was no evidence to suggest that this was an act of victimisation because of a protected act.
208. Turning to paragraph 35(k) of the list of issues, we have seen no credible evidence to support this allegation. The Claimant refers to this in her closing submissions (within Appendix 5) where she states that "the Claimant read on the internet about a group who went to CoolTan to throw out rubbish.." There was no evidence before the Tribunal to suggest that the trustees sanctioned this or that Mr Taylor was involved. This allegation was not supported by any facts and we therefore conclude that it is not well founded and is dismissed.

Listing for a Remedy Hearing.

209. The Tribunal will now need to list this matter for a remedy hearing, however the parties are encouraged to see if this matter can be resolved without the need for a further Tribunal Hearing. The parties are given 28 days to see if terms can be agreed. If they cannot, the parties are ordered to provide to the Tribunal within 42 days of the promulgation date of this decision, dates to avoid for a one-day hearing, providing dates for a six month period. The Tribunal will then list for a hearing taking account of these dates. The parties are also to agree dates for the disclosure of documents relevant to the remedy hearing and appropriate directions for the preparation of a hearing bundle. The tribunal orders that the Claimant is to serve on the Respondent, an updated schedule of loss within 42 days of the promulgation of this decision, which is to be updated 7 days before the hearing. The parties are to exchange statements 14 days before the hearing.

Date: 12 September 2018