



EMPLOYMENT TRIBUNALS

Claimant: Ms A Aboukoura

Respondent: Bestway Panacea Holdings Limited t/a Wells Pharmacy

Heard at: Cardiff

On: 18, 19, 20, 21, 22 March 2024 and 4 April (all in person); 5 and 8 April (hybrid – Judge attended by video); 8 April (everyone by video); 9 April (Tribunal panel only in Chambers by video).

Before: Employment Judge R Harfield, Ms M Walters, Ms J Kaye

Representation

Claimant: Ms Aboukoura represented herself in March and therefore was represented by Mr Puar (Counsel)

Respondent: Mr Campion (Counsel)

RESERVED JUDGMENT

1. The complaints of direct disability discrimination detriment are not well-founded and are dismissed.
2. The complaints of unfavourable treatment because of something arising in consequence of disability in relation to the comment made to the Claimant on 13 July 2023 that the Claimant was not in control of the situation whether she had a mental health condition or not, and stating that the meeting will not be rescheduled (2(j)(i) and (iii) in the List of Issues) are well-founded, and succeed;
3. The remaining complaints of unfavourable treatment because of something arising in consequence of disability are not well-founded and are dismissed;
4. The complaints of failure to make reasonable adjustments relating to working behind closed doors on 27 March 2023 and conducting the meeting on 13 July 2023 without notice are well-founded and succeed;
5. The remaining complaints of failure to make reasonable adjustments are not well founded and are dismissed;
6. The complaints of victimisation are not well-founded and are dismissed;

7. The complaints of health and safety detriment in relation to the comment made to the Claimant on 13 July 2023 that the Claimant was not in control of the situation whether she had a mental health condition or not, and stating that the meeting will not be rescheduled (2(j)(i) and (iii) in the List of Issues) are well-founded, and succeed;
8. The remaining complaints of health and safety detriment are not well-founded and are dismissed;
9. The successful complaints will be listed for a remedy hearing.

REASONS

1. Introduction

- 1.1 The ET1 Claim Form was presented on 25 August 2023. The Claimant brings complaints of disability discrimination, victimisation and health and safety detriment. The Claimant initially had legal representation through the Pharmacists' Defence Association. The Respondent filed an ET3 Response Form denying the claims. A case management hearing took place on 23 November 2023 where permission was given to rely on amended particulars of claim and the Claimant was directed to file further particulars setting out the assistance she said the Respondent should have given her with the training of staff. The case was listed for final hearing. The Claimant became a litigant in person. A further case management hearing took place on 26 January 2024. The parties were directed to co-operate to file an agreed list of issues or otherwise mark up any dispute through use of tracked changes.
- 1.2 The parties were not able to reach agreement on the list of issues. The draft list of issues came from the pleaded case (the original of which had been professionally pleaded) and the amendments to the List of Issues the Claimant was seeking in reality was an application to amend the claim. Considerable time was spent at the start of the hearing listening and deciding the application to amend. There was also a dispute about additional disclosure. We allowed additional documents. Some of the amendments were permitted and some were refused. Oral reasons were given at the time. A party may request written reasons in writing within 14 days. The Respondent provided an updated list of issues produced as an appendix to this Judgment below.
- 1.3 On days 2, 3 and 4 we heard evidence from the Claimant. On day 4 we also heard evidence from Ms Salama, the Claimant's mother. The Claimant's other two witnesses Mia Hallett and Nicole Bernard [NB] were not able to attend the hearing (or the reconvened hearing), and we took their statements as read on the basis it was for us to decide what weight to give to the evidence. On day 5 we heard from the first of the Respondent's witnesses, Wendy Lee (WL). The Claimant then became unwell over lunch time but agreed to speak to us in relation to case management and, in particular, the relisting of the case. We listed 4 additional days on the earliest possible opportunity in July 2024.
- 1.4 In advance of 4 July the Claimant was seeking a postponement as she wished to instruct Mr Puar for the remainder of the hearing and he was not available. The application was refused on the basis the Claimant should instruct alternate counsel. The Claimant renewed the application saying she was unable to find

alternate direct access counsel. The parties were told the application would be decided at the start of the hearing. In fact Mr Puar became available and the postponement application was not pursued. We then heard from the remaining Respondent's witnesses: Ms Cheng [RC], Mr Ghafor [SGh], Ms Price [FP], Ms Carter [VC] on days 6 and 7. On day 7 EJ Harfield attended by video having tested positive for Covid. By agreement closing submissions were undertaken purely by video on day 8. Both Counsel provided written closing submissions and also supplemented these orally. We took their submissions fully into account but for the sake of brevity do not replicate them in this Judgment. They are, however, referred to at appropriate points below and even where not expressly mentioned we took all submissions into account. The Tribunal deliberated on the remainder of day 8 and then day 9. Judgment was reserved to be delivered in writing and the parties forewarned would not be delivered until mid September at the earliest.

- 1.5 We had a hearing file of 844 pages and additional pages up to 873. References in brackets [] are to pages in that hearing file.
- 1.6 When the Claimant was self-representing/giving evidence she requested by way of adjustment a short break every 30 minutes which was agreed. We did also periodically check in as to her level of fatigue and as already stated adjourned in the March when she was not well enough to continue (the case in any event was due to go part heard as we had in any event run out of time).

2. The legal principles

Direct disability discrimination

2.1 Section 13(1) of the Equality Act provides:

"(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."

2.2 Disability is a protected characteristic. The concept of treating someone "less favourably" inherently requires some form of comparison. Section 23 provides that when comparing cases for the purpose of Section 13: *"there must be no material difference between the circumstances related to each case."*

2.3 Section 13 requires that two matters be established. The first is that there has been treatment of the particular claimant which is less favourable than the treatment that was meted out, or would have been meted out, to a comparator. The second is that the less favourable treatment was because of the protected characteristic.

2.4 In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 the House of Lords said it is often helpful to concentrate on the "reason why" question when considering a complaint of direct discrimination. Why did the alleged discriminator act as he did? What, consciously or unconsciously, was the alleged discriminator's reason? This question is sometimes less legally complex than the task of identifying a comparator whose circumstances are materially the same, for the purposes of section 23, and the answer to it will often determine the claim.

2.5 In other cases it can be helpful to consider the "comparator" question. An actual comparator exists when there is a known, identified individual who does not have the protected characteristic, and there is no material difference between the circumstances

relating to the claimant's case and the comparator's case. A tribunal may also consider how a hypothetical comparator in a similar (i.e. not materially different) position to the claimant, but who does not have the protected characteristic, would have been treated. A tribunal may also take account of the way in which the respondent treated other individuals who may be in more different situations but still have some similarities; often referred to as evidential (rather than statutory) comparators. The purpose is to use such comparators as an evidential tool to see whether an inference of discrimination is justified.

2.6 In order to satisfy the “because of” test, it is not necessary for the protected characteristic to be the whole of the reason, or even the principal reason, for the treatment. In Nagarajan v London Regional Transport [1999] ICR 877 Lord Nicholls said (the case was a race discrimination case but the point applies to any protected characteristic):

“Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others...If racial grounds...had a significant influence on the outcome, discrimination was made out.”

Victimisation

2.7 Section 27 of the Equality Act 2010 provides:

“27 Victimisation (1) A person (A) victimises another person (B) if A subjects B to a detriment because— (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.”

2.8 A protected act involves bringing proceedings under the Equality Act, or giving evidence or information in connection with such proceedings, or doing any other thing for the purposes of or in connection with the Equality Act, or making an allegation (whether or not express) that a person has contravened the Equality Act.

2.9 Whether treatment is a “detriment” is established by asking whether the treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. It is not necessary to establish any physical or economic consequence. The assessment by reference to a reasonable worker means that an *unjustified* sense of grievance will not pass the test.

2.10 There must be a link between the protected act and the detriment; the claimant must be subjected to a detriment *because* the claimant did the protected act. Here the tribunal has to ask itself whether the protected act had a significant influence on the outcome. This does not mean it necessarily has to be the main or principal cause. Again this “reason why” analysis involves an examination of the mental processes, conscious or unconscious of the decision maker in question. It is not a “but for” test.

Unfavourable treatment because of something arising in consequence of disability

2.11 Section 15 of the Equality Act states:

“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.”

2.12 The approach to determining Section 15 claims was summarised by the EAT in Praiser v NHS England and Another [2016] IRLR 170. This includes:

- The first stage is to assess the “because of”. In determining what caused the treatment complained about or what was the reason for it, the focus is on the reason in the mind of A. This is likely to require an examination of the conscious or unconscious thought process of A;
- The “something” that causes the unfavourable treatment need not be the main or sole reason, but must at least have a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it;
- Motives are not relevant;
- The second stage is to determine whether as a matter of fact the “something arising in consequence” was a consequence of the disability;
- The expression “arising in consequence of” can describe a range of causal links between the something that causes unfavourable treatment and the disability;
- This stage of the test is an objective question and does not depend on the thought processes of the alleged discriminator;
- Knowledge is only required of the disability. Knowledge is not required that the “something” leading to the unfavourable treatment is a consequence of the disability;
- It does not matter precisely in which order these questions are addressed.

2.13 In assessing whether something is “unfavourable” treatment there must be a measurement against “*an objective sense of that which is adverse as compared to that which is beneficial*”; Trustees of Swansea University Pension & Assurance Scheme v Williams [2018] UKSC 65.

2.14 The Respondent will successfully defend the claim if it can prove that the unfavourable treatment was a proportionate means of achieving a legitimate aim. This is often termed “objective justification.” The burden of proof is on the employer to establish justification. The supreme court in Ministry of Justice v O’Brien [2013] ICR 449 re-stated the general principles of objective justification that:

- (a) firstly, the treatment must pursue a legitimate aim;
- (b) second, it must be suitable for achieving that objective; and
- (c) third, it must be reasonably necessary to do so.

2.15 The Equality and Human Rights Commission Code of Practice on Employment contains guidance on objective justification, to reflect some of the case law in the field. It terms the first issue as being determination of whether the aim is legal and non-discriminatory and one that represents a real, objective consideration. In Bilka-Kauhaus

GmbH v Weber von Hartz [1987] ICR 110 it was termed: “*correspond to a real need on the part of the undertaking.*”

2.16 In Chief Constable of West Yorkshire Police and anor v Homer [2012] ICR 704, the Supreme Court reiterated that the measure in question has to be both an appropriate means of achieving the legitimate aim, as well as being reasonably necessary in order to do so. Some measures may simply be inappropriate to the legitimate aim in question, or they may be appropriate but go further than is reasonably necessary and so be disproportionate.

2.17 As to the third stage, the EHRC Employment Code notes: “*Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. An employment tribunal may wish to conduct a proper evaluation of the discriminatory effect of the provision, criterion or practice as against the employer’s reasons for applying it, taking into account all the relevant facts.*” We pause here to note that in a section 15 claim, it is of course the treatment that is being justified, not a provision, criterion or practice (the terminology from an indirect discrimination complaint).

2.18 It was said by the EAT in Ali v Drs Torrosian, Lochi, Ebeid & Doshi t/a Bedford Hill Family Practice [2018] UKEAT0029 18 0205 (which was a section 15 case) that:

- Justification of the unfavourable treatment requires there to be an objective balance between the discriminatory effect and the reasonable needs of the employer;
- When determining whether or not a measure is proportionate it will be relevant for the tribunal to consider whether or not any lesser measure might nevertheless have served the employer’s legitimate aim;
- More specifically, the case law acknowledges that it will be for the tribunal to undertake a fair and detailed assessment of the working practices and business considerations involved, and to have regard to the business needs of the employer;
- As to the time at which justification needs to be established, that is when the unfavourable treatment in question is applied;
- When the putative discriminator has not even considered questions of proportionality at that time, it is likely to be more difficult for them to establish justification.

2.19 Whilst justification under section 15 has to be established at the time when the unfavourable treatment was applied, the tribunal when making its objective assessment may take account of subsequent evidence; City of York Council v Grosset [2018] EWCA Civ 1105.

Reasonable Adjustments

2.20 The duty to make reasonable adjustments appears in Section 20 as having three requirements. In this case we are concerned with the first requirement in Section 20(3)¹¹:

“(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.”

2.21 Under section 21 a failure to comply with that requirement is a failure to comply with a duty to make reasonable adjustments and will amount to discrimination. Under

¹¹ It was not brought as a complaint about a physical feature of the premises

Schedule 8 to the Equality Act an employer is not subject to the duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the Claimant has a disability or that the Claimant is likely to be placed at a substantial disadvantage.

2.22 In Environment Agency v Rowan [2008] ICR 218 it was emphasised that an employment tribunal must first identify the “provision, criterion or practice” applied by the Respondent, any non-disabled comparators (where appropriate), and the nature and extent of the substantial disadvantage suffered by the Claimant. Only then is the tribunal in a position to know if any proposed adjustment would be reasonable.

2.23 The words “provision, criterion or practice” [“PCP”] are said to be ordinary English words which are broad and overlapping. They are not to be narrowly construed or unjustifiably limited in application. However, case law has indicated that there are some limits as to what can constitute a PCP. Not all one-off acts will necessarily qualify as a PCP. In particular, there has to be an element of repetition, whether actual or potential. In Ishola v Transport for London [2020] EWCA Civ 112 it was said:

“all three words carry the connotation of a state of affairs... indicating how similar cases are generally treated or how a similar case would be treated if it occurred again.” It was also said that the word “practice” connotes some form of continuum in the sense that it is the way in which things are generally or will be done.

2.24 In Ahmed v Department of Work and Pensions [2022] EAT 107, the EAT said:

“A PCP, simply put, is where the employer has an expectation of the employee, and either the same expectation is made of other employees or there is an element of repetition in the expectation with the particular employee...The identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach and a tribunal should widely construe the statutory definition.”

2.25 Substantial disadvantage is such disadvantage as is more than minor or trivial; Section 212. The purpose of considering how a non-disabled comparator may be treated is to assess whether the disadvantage is linked to the disability i.e. whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have any disability – see Sheikholeslami v University of Edinburgh [2018] UKEAT 00113 17 0510.

2.26 Consulting an employee or arranging for an occupational health or other assessment of their needs is not normally in itself a reasonable adjustment. This is because such steps alone do not normally remove any disadvantage; Tarbuck v Sainsbury’s Supermarkets Ltd [2006] IRLR 663; Project Management Institute v Latif [2007] IRLR 579.

2.27 What adjustments are reasonable will depend on the individual facts of a particular case. Paragraphs 6.23 to 6.29 of the EHRC Code give guidance on what is meant by reasonable steps. Paragraph 6.28 identifies some of the factors which might be taken into account when deciding whether a step is reasonable. They include the size of the employer; the practicality of the proposed step; the cost of making the adjustment; the extent of the employer’s resources; and whether the steps would be effective in preventing the substantial disadvantage.

2.28 In County Durham and Darlington NHS Trust v Dr E Jackson and Health Education England EAT/0068/17/DA the EAT summarised the following additional propositions:

- It is for the disabled person to identify the “provision, criterion or practice” of the Respondent on which s/he relies and to demonstrate the substantial disadvantage to which s/he was put by it;

- It is also for the disabled person to identify at least in broad terms the nature of the adjustment that would have avoided the disadvantage; they need not necessarily in every case identify the step(s) in detail, but the Respondent must be able to understand the broad nature of the adjustment proposed to enable it to engage with the question whether it was reasonable;
- The disabled person does not have to show the proposed step(s) would necessarily have succeeded but the step(s) must have had some prospect of avoiding the disadvantage;
- Once a potential reasonable adjustment is identified the onus is cast on the Respondent to show that it would not been reasonable in the circumstances to have to take the step(s);
- The question whether it was reasonable for the Respondent to have to take the step(s) depends on all relevant circumstances, which will include: the extent to which taking the step would prevent the effect in relation to which the duty is imposed; the extent to which it is practicable to take the step; the financial and other costs which would be incurred in taking the step and the extent to which taking it would disrupt any of its activities; the extent of its financial and other resources; the availability to it of financial or other assistance with respect to taking the step; the nature of its activities and size of its undertaking;
- If the tribunal finds that there has been a breach of the duty; it should identify clearly the “provision, criterion, or practice” the disadvantage suffered as a consequence of the “provision, criterion or practice” and the step(s) the Respondent should have taken.

Burden of Proof under the Equality Act 2010

2.29 The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides:

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

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

2.30 Consequently, it is for a claimant to prove facts from which the tribunal could infer (absent explanation from the respondent) that discrimination has taken place. If such facts have been made out to the tribunal’s satisfaction, applying the balance of probabilities, the second stage is engaged. At the second stage the burden shifts to the respondent to prove, again on the balance of probabilities, that the treatment in question was “in *no sense whatsoever*” because of the prohibited reason / that the protected characteristic was not a ground for the treatment in question. A tribunal would normally expect cogent evidence to discharge that burden of proof.

2.31 In Hewage v Grampian Health Board [2012] IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provisions should apply. That guidance appears in Igen Limited v Wong [2005] ICR 931, as supplemented in Madarassy v Nomura International Plc [2007] ICR 867. Here it is important to note that although the concept of the shifting burden of proof involves that two-stage process, the analysis should only be conducted once the tribunal has heard all the evidence.

2.32 Further, as to what is required to discharge the burden at the first stage; it must be something more than a difference in protected characteristic and a difference in

treatment. It was said that the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. It is not necessarily an error of law for a tribunal to effectively assume the burden has shifted and look to the respondent to provide an explanation for the treatment in question. It was said in Hewage that the burden of proof provision may have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another. But the burden of proof provisions do require careful attention where there is room for doubt as to the facts necessary to establish discrimination; see Field v Steve Pye & Co [2022] EAT 68 and the important guidance there at paragraph 41 onwards.

Time Limits in Discrimination Cases

2.33 The initial time limit for complaints under the Equality Act 2010 is 3 months starting with the date of the act of discrimination complained about. The effect of the early conciliation procedure is that, if the notification to ACAS is made within the initial time limit period, time is extended, at least, by the period of conciliation.

2.34 Under Section 123(3) of the Equality Act conduct extending over a period is to be treated as done at the end of the period. A continuing course of conduct might amount to an act extending over a period; Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96.

2.35 Under Section 123(3) a failure to do something is to be treated as occurring when the person in question decided on it. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on a failure to do something when either P does an act inconsistent with doing it, or if P does not do an inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it. A tribunal may consider a complaint out of time if it considers it just and equitable to do so in the relevant circumstances.

Health and Safety Detriment

2.36 Under Section 44(1) of the Employment Rights Act 1996 an employee has the right not to be subject to any detriment done on the ground that where this is no representative or safety committee, or it is not reasonably practicable to raise the matter by those means, the employee brought to their employer's attention, by reasonable means, circumstances which the employee reasonably believed were harmful or potentially harmful to health and safety.

3. Findings of fact

Introduction and background

3.1 It is not necessary for us to make findings of fact on every point in issue between the parties; only those that are necessary for us to determine the issues in the case. Where there are factual disputes we make our findings by applying the balance of probabilities.

3.2 The Claimant was diagnosed with SLE (Systemic Lupus Erythematosus) in around November 2012. Disability is not in dispute nor is the Respondent's corporate knowledge of disability. What is relevant in this case is individual colleagues' and managers' knowledge of the Claimant's disability or health condition.

3.3 The Claimant has worked for the Respondent since May 2015, initially working Saturdays whilst studying pharmacy at University and providing holiday cover. On

completion of her degree the Claimant was offered a pre-reg pharmacy position. When she qualified in 2017 she was offered a job as a relief pharmacist, which involved working in different Well pharmacies in Cardiff. The Claimant then became Pharmacist Branch Manager at Well Pharmacy 180 City Road Cardiff in March 2019.

3.4 The Claimant attended an occupational health (OH) appointment on 2 January 2018 [143]. The OH advisor said the Claimant reported swelling and pain in her joints particularly affecting her hands and could affect her feet at times and symptoms were aggravated by cold conditions/more severe in the winter months. The Claimant attended a further OH appointment on 19 August 2021 [145], undertaken remotely. The report noted the Claimant had been referred for assessment concerning reoccurring flare ups of the condition which could impact on the Claimant's ability to work at times. The OH advisor noted that no two cases of lupus are exactly alike and in the Claimant's case her hands and fingers could be affected when exposed to cold temperatures, with stress being a trigger also. The OH advisor reported that the Claimant was asymptomatic at the time of assessment but at times of flare up hands and fingers could become affected with painful, swelling and loss of dexterity. It was said that other physical symptoms included fatigue and generally unwell feeling. At the time the Claimant's treatment team described her condition as stable but said it could alter at any time and required continuous monitoring. The OH advisor gave a link to information about lupus for the benefit of those supporting the Claimant. Recommendations made included that stress needed to be monitored and managed. It was suggested a stress risk assessment be conducted. The OH advisor recommended that it be undertaken by a member of the HR team as a stress risk assessment was often more effective when conducted by someone outside of the management chain. It was also recommended that a Wellness Action Plan be constructed for when there were known challenges coming up.

3.5 At some point the Claimant, as an adjustment, moved to working less days per week in the winter months to help her manage her condition.

3.6 On 3 January 2023 RC was promoted to Area Operations Manager (AOM), becoming the Claimant's line manager. RC was responsible for 12 pharmacies in Cardiff and the Vale. She also ran her own relief team to cover, for example, planned holidays in the region. Because of the circumstances in which the previous AOM left RC did not receive any handover from him. RC's manager was SGh, Regional Operations Manager (ROM) who had second line management responsibilities within a wider region covering about 60 pharmacies and 5 areas at the time.

3.7 At that time the Claimant was working with one qualified pharmacy assistant, SA who worked 16 hours a week. The Claimant previously had a full time trainee staff member who left in April 2022. In July 2022 the Claimant had recruited two new trainees, KLJ (who worked full time) and NB (who worked part time). The Claimant had long term performance concerns about SA. She had reported these to SGh in December 2022 [729-731].

3.8 On 2 February 2023 the Claimant emailed RC and SGh reiterating the concerns she had expressed about SA in December 2022 and saying: *"Since this email, I have not received any support or guidance on how to address this issue. I must highlight that [SA's] performance and conduct issues are the direct cause of my work-related stress and my consultant has noticed my chronic health condition is worsening as a result of this constant stress."*

3.9 On 3 February 2023 the Claimant and RC met. There is a dispute about RC's knowledge of the Claimant's disability and what was said in this meeting. The Claimant

told us in oral evidence that she told RC she had a health condition that can result in flare ups, stress was a trigger and she could suffer from swelling in her hands. She accepts she did not tell RC it was SLE, and she did not ask RC if RC had her earlier OH reports as she says she just assumed RC had them. The Claimant says she asked to complete a new stress risk assessment with RC as a new line manager because she had done so previously with other new line managers. RC told us she could not now recall seeing the Claimant's email of 2 February 2023 about SA where the Claimant referred to a chronic health condition worsening. The reference is embedded in a long email about SA. RC had not been given or told about the earlier OH reports whether by SGh, Employee Relations (ER) or the Claimant. RC said in evidence to us she did not know about any health condition when the Claimant requested the stress risk assessment. RC said the Claimant told her she had done a stress risk assessment in the past with every new line manager. RC said no health condition was disclosed to her and, if it had been, she would have looked into it. RC said she did not look at why she was doing a stress risk assessment; just that one had been requested and so she simply got on with it.

3.10 On balance we find that RC did not twig that the Claimant was saying she had a chronic health condition or a disability. RC was new in post, was very busy and in our judgement simply failed to pick up on the cues. We do not consider RC was deliberately turning a blind eye. We do not consider it likely that the Claimant was as specific with RC in the meeting of 3 February as the Claimant now says, and it may well be given the passage of time the Claimant cannot now be clear as to exactly what she said on 3 February (including when compared, for example, with the subsequent risk assessment meeting.) We consider that that RC did simply take away that the Claimant had done stress risk assessments with previous line managers and was being asked to do one with RC. Quite why ER, when RC raised the stress risk assessment with them, did not look into the Claimant's HR records and note, for example, the previous OH reports and previous adjustments, and notify RC about them as a new line manager we are at a loss to understand given this is management information. We did not hear evidence from anyone in ER. SGh accepted in evidence there was a learning point there. But in any event that was the position from RC's perspective who really had not been equipped by the Respondent to deal with the situation.

3.11 On 10 February 2023 RC emailed ER saying the Claimant had requested a stress risk assessment, and did they have one available. On 10 February 2023 the Claimant emailed SGh [728] chasing a plan to address the situation with SA. On 12 February 2023 RC sent a proposed action plan relating to SA [727], albeit not one the Claimant was content with.

3.12 The Claimant's pharmacy, 180 City Road, is very close to another pharmacy 219 City Road; they are about 2 minutes walk away from each other. They are also fairly close to another pharmacy, Upper Clifton Street. Upper Clifton Street is about a 15 minute walk away. Whilst it is something the Claimant seemed at times to dispute, we do accept that the Claimant's pharmacy, 180 City Road is the quietest pharmacy in that geographical group of three, sometimes referred to as the Roath group or cluster.

3.13 Pharmacies that are geographically close together tend to assist each other, where possible, with staff cover if there are ad hoc, unplanned staff absences. The general practice is that the Pharmacist Branch Manager will firstly look for cover in their own team to see if an existing staff member can, for example, work overtime or change their hours. If that is not possible the expectation is that they will contact local branches to see if they can provide cover. If none is available the Pharmacist Branch Manager can

contact the AOM to see if they can provide support or find another solution. For example, RC would have some relief dispensers who may be able to provide cover if not already covering planned absences.

3.14 The Pharmacist Branch Manager at 219 City Road was AA and at Upper Clifton Street was FUH. AA, FUH and SA are all sisters. In the Roath cluster there was a whats app group comprised of the Claimant, AA, and FUH to help facilitate cover. RC was added to the group. By way of example, [682] shows on 19 January the Claimant asking for cover for Monday 23 January as KLJ had appointment. RC asked AA and FUH if they could provide cover Monday afternoon as the Claimant had no staff to trade, relief dispensers were on annual leave and there were no students available. RC said she was interviewing for more dispensers in her relief team. FUH said she could not provide cover as she only had one member of staff that afternoon. RC said she had cover arranged but later said the student had cancelled [671]. RC asked the Claimant to try AA. AA was ultimately able to provide cover. The group whats apps also show there were general difficulties in February 2023 with staffing levels, when sometimes the managers were able to help with cover and sometimes not.

27 February 2023 cover/ working behind closed doors

3.15 On 14 February 2023 RC sent an email to the area asking for all relief cover requests for annual leave [153]. The Claimant replied to ask for cover from 24 February to 3 March as KLJ was moving house. Also on 14 February 2023 ER sent the stress risk assessment template to RC.

3.16 On 15 February the Claimant emailed SGh and RC saying SA's conduct and performance issues had not improved since July 2021 and she considered it needed to be addressed as soon as possible in order to minimise risk to patient safety [725]. The Claimant wished to commence a disciplinary investigation. She also said: "*may I remind you that this issue is creating extra and unreasonable work pressures which in turn negatively impacts my chronic health condition.*" SGh responded to state that SGh and RC were there to support the Claimant in managing SA.

3.17 On 18 February 2023 RC replied to the Claimant's relief cover request saying at that short notice she had no cover available. RC said in evidence that relief cover for annual leave should be requested with at least 4 weeks' notice and that a manager should not approve annual leave if it would create a staff shortage which impacts on service levels. The Claimant said that more notice should be given for relief cover requests but said KLJ's request was at short notice.

3.18 On 20 February 2023 the Claimant sent a whats app to the Roath group asking for help with afternoon cover the following week [690]. FUH replied to say she could not as she had been running one on one in the afternoons for almost three weeks. AA also said she did not have any staff to spare.

3.19 On 22 February the Claimant emailed RC [152] to say she had no luck getting cover from the local branches and she asked RC again for help with cover, saying KLJ needed the time off to move house. RC replied to ask if the Claimant had asked SA or NB if they could work extra hours or move their shifts as it was very difficult for RC to cover the annual leave at such short notice. On 24 February the Claimant replied to RC to say SA and NB would not be able to cover. The Claimant asked again for help with cover in the afternoons Monday to Friday the following week [151]. At 21:37 on Sunday 26 February RC replied again to say at short notice she had not been able to arrange cover. RC was in a regional meeting on the Monday morning, which happened every

Monday, and where managers were not contactable. RC said she would be unable to phone stores to arrange cover, and said the Claimant would need to ring stores in the wider area to see if they had anyone to spare for the afternoon.

3.20 On 27 February 2023 the Claimant phoned various branches (Upper Clifton, Trowbridge, Pentwyn, Clare Road and Barry) to see if they could send cover for the afternoons but they were not able to help. FUH said she was being sent cover from Barry. At 9:59am the Claimant emailed SGh [150] saying she had phoned the stores but it had not been made clear to her which branches could help. She said she understood it was not enough notice as hoped but because of KLJ's circumstances in moving house there was no other option in terms of granting KLJ's leave. The Claimant asked SGh for help saying she did not have any staff for afternoons that week. SGh was also in the regional meeting.

3.21 At 12:35pm the Claimant sent a whats app to RC saying she had rung a number of stores without success, and she was not sure what to do. She said in the past she had had to stay shut until afternoon cover arrived and she would inform ORPD [667]. At 13:55 RC sent a whats app saying she was trying to phone but could not get through. At around 2pm they spoke. The Claimant says she was told to work "behind closed doors" as no staff cover was available. She says RC told her to shut the branch, and put a sign on the door telling customers to knock so that the Claimant could serve them at the door. The Claimant was not to let anyone into the store but could take prescriptions if the patient was content to pick it up the next day, or could hand over prescriptions that were ready on the shelf. The door was locked and the Claimant would unlock it to serve patients. RC says in her witness statement that the Claimant was "instructed" to work behind closed doors.

3.22 The Respondent operates under a contract with the NHS and part of the contract obliges the services to be open to patients for a certain amount of time. If a branch is closed it has to be reported to the NHS and it can lead to breach notices and fines and ultimately the worst case scenario would be the loss of the contract [149]. RC and SGh's evidence was that at the time they believed that although the store was locked they were still providing pharmacy services and so it would not be a notifiable closure under the NHS contract. Both said in evidence they could not remember who had made the decision to authorise working behind closed doors but that it was done because they thought it would not count as a closure and meant they would not breach the NHS contract. It is likely the decision was made by SGh as that is what RC said in the subsequent grievance investigation [747]. Moreover, SGh said in evidence the idea came from the Covid pandemic when the practice had been adopted on a handful of occasions. SGh also said it was not a direction to work behind closed doors but that the Claimant was asked/advised to do so. He said as a Responsible Pharmacist the decision whether to do so or close ultimately lay with the Claimant. We return to this point in our deliberations below.

3.23 The Claimant said in evidence that when RC told her to work behind closed doors she thought at the time it must have been a common practice, albeit not one she had come across before. The Claimant said in evidence that she had a handful of customers that afternoon, but was not prepared to put a number on what that handful would represent.

3.24 The Claimant also telephoned AA that afternoon. The Claimant sent RC a whats app saying AA had two members of staff, Fima and Harvey, but she understood it could get busy at AA's branch. She told RC she had suggested that AA sent her someone for

an hour to help with dispensing so they did not fall behind, but AA had asked to speak to RC first. RC replied at 14:28 to say she had tried ringing AA but had no answer. The Claimant asked RC if she had tried messaging AA or emailing AA [678]. Ultimately no cover came that day.

3.25 Also on 27 February ER chased up the stress risk assessment with RC. That evening the Claimant emailed SGh saying she considered the way forward with SA was an investigation under the disciplinary procedure [724]. Whilst appreciating the email exchange was about SA, the Claimant did not mention any pain or difficulties in her hands caused by working behind closed doors that day. SGh replied the following morning to say the Claimant should proceed in dealing with SA under the relevant policies with support from RC and the ER helpdesk [724].

3.26 A month later, at 1:09 (so in the early hours of the morning of 27 March) the Claimant emailed SGh saying: *"On Monday (0), I had no afternoon staff cover arranged... As no cover was available, my line manager advised to continue operating behind closed doors. I asked my line manager to get in touch with Roath City Road and Roath Upper Clifton Street if they can help. Although Road City Road had two staff members that afternoon, my line manager said it was ultimately up to the store manager whether they wanted to send anyone to help. I even stressed to my line manager that it was difficult for me to keep unlocking and locking the door due to my health condition... [178]."* The Claimant says the date reference was wrong, but she was referring to 27 February. Later on 27 March the Claimant also wrote in an email to SGh saying: *"I raised my concerns with Rebecca the last times this happened on Monday 27 February, regarding the inconsistencies with how cover is arranged. I also stressed to Rebecca that due to my health condition it is difficult for me to keep locking and unlocking the door if I am to continue working behind closed doors till 6 and this can lead to industrial injury [182]."*

3.27 On 28 February at 08:52 RC messaged the Claimant to say she was still trying to arrange cover. We presume there was cover that day as there is no suggestion the Claimant worked behind closed doors again until 27 March. That evening the Claimant emailed SGh and RC asking for the plan SGh and RC had in place to address SA's performance and conduct [723]. On 1 March RC initially said she did not have cover and asked the Claimant to post in the Roath group whats app but by 9:44 RC confirmed that cover had been arranged for the rest of the week by moving someone from the Butetown pharmacy [660]. That evening RC emailed the Claimant to say the Claimant needed to manage her team's performance and conduct and she could contact RC and the ER helpdesk for support or advice in doing so [723].

3.28 RC said in evidence she could not remember the Claimant saying to her what the Claimant set out in those two subsequent emails to SGh on 27 March 2023. She said that the Claimant never told her that locking and unlocking the doors caused injury. RC also said she could not remember saying to the Claimant that it was up to the store manager of 219 City Road whether to send a staff member to 180 City Road. RC said in evidence that she would probably try to phone 219 City Road to ask them to send someone to 180 City Road and she would be trying the store phone and mobile numbers to try to get an answer. RC said that if 219 City Road had enough staff to keep trading, then she would generally insist someone move to also keep 180 City Road trading. She said there had been other instances where she had got hold of 219 City Road and had moved staff to 180 City Road.

3.29 There is therefore a factual dispute about whether the Claimant had difficulties locking and unlocking the door on 27 February 2023 and whether she found it painful and/or whether she suffered injury. There is also a dispute about whether she told RC anything about this.

3.30 On the balance of probabilities we do not find that the Claimant told RC either on 27 February or shortly thereafter that it was difficult to keep locking and unlocking the door due to her health condition. We have taken into account the Claimant's subsequent emails, but they were a month later and sent after the subsequent risk assessment meeting. Moreover, the Claimant also said to us in oral evidence that she could not actually recall if she had a telephone conversation or a face to face meeting with RC when she said she raised the risks, or exactly when it was. We consider the Claimant may be confusing 27 February with, for example, the subsequent risk assessment meeting. Further it is notable that the Claimant did not raise the locking and unlocking of the door in her immediate emails with SGh or RC or indeed at the risk assessment meeting on 9 March (discussed further below).

3.31 In terms of whether the Claimant actually had difficulties with the door (but did not report it at the time), on balance and whilst we have had full regard to the Respondent's submissions on the point, we find that she did have some difficulties that day. We think it likely that the Claimant did at times struggle with manual dexterity problems. For example, later on in the stress risk assessment meeting, set out below, she raised the issue of bagging prescriptions. The whole flavour of the earlier OH reports is also that the Claimant could have periodic flare ups of her condition affecting the Claimant's hands with swelling, pain and loss of dexterity. The Claimant said herself in evidence that a minor flare up she could self manage, compared to more significant deteriorations and again the whole flavour of the earlier OH advice was about supporting the Claimant with that self-management. We think it likely that the Claimant did have some dexterity issues and that made locking and unlocking the door difficult for her and that difficulty may have included some pain. We do not find she suffered injury that day in terms of abrasions or cuts. The photographs in the bundle allegedly showing abrasions to the fingers were not sent to the Respondent at the time and are dated some time later. Indeed, whilst the Claimant's mother said the contrary in her evidence, the sustaining of injury on 27 February was not the Claimant's case. The Claimant's case being that she had identified the risk of injury not actual injury on 27 February. So on balance we find the Claimant did have difficulties and discomfort with locking and unlocking the door as part of wider manual dexterity issues. But as stated we do not find the Claimant reported that difficulty at the time.

Stress Risk Assessment

3.32 On 2 March the Claimant emailed SGh and RC saying she was receiving confusing messages about addressing SA's performance, having initially been told they should get feedback from another pharmacist and that if there was an investigation the Claimant should not be involved. The Claimant said she was now being told it was for her to handle performance or conduct issues. The Claimant said it was not supportive or helpful and she had not had her stress risk assessment completed [156]. SGh replied to say he understood the stress risk assessment had been booked in, and that his expectation remained that the Claimant should manage her team by issuing an improving performance plan or by taking disciplinary action against SA [156]. RC also updated ER to say she was planning to do the stress risk assessment the following week.

3.33 On 7 March the Claimant was sent an invite for her stress risk assessment to take place on 9 March. The Claimant and RC completed the form together on 9 March [157]. Entries include the Claimant saying she had an increased workload due to staffing issues with a request for assistance with staffing levels and training and support from branches. The Claimant spoke of a wish for an improved relationship with RC. There were two entries about bagging completed prescriptions and whether a colleague could do this where necessary. The Claimant says this related to dexterity issues in her hands. In a box at the bottom of the form for “*further action required e.g. OH referral*” it was written: “*Advance notification of store visits that require Ayah to participate in.*” RC says that this was to allow the Claimant time to prepare, and related specifically to store meetings for operational reasons that would require the Claimant to be taken away from her substantive duties, such as performance reviews. RC says it did not apply to other types of meeting such as unannounced store visits that happened every fortnight as their purpose was to observe the day to day operations of the store, and would not necessarily take the Claimant away from her duties. The Claimant says that RC had a clear understanding of how her health condition could affect her in work and the supportive measures she required. RC disagrees and said in evidence disability was not discussed or disclosed at the risk assessment meeting. RC said she did ask why the Claimant wanted help with bagging and the Claimant just told her that the bagging caused papercuts. The Claimant said she had assumed that her OH report had been passed to RC, and the Claimant’s recollection was she referred to it as being the reason for the stress risk assessment. She said at the meeting she showed RC her hands and said she mentioned dexterity issues with pain bagging prescriptions that included papercuts. The Claimant said that the only way to explain the reference to bagging prescriptions in the risk assessment means she had told RC a flare up was causing it, and she would not have only talked about papercuts in isolation. The Claimant said she told RC her symptoms of a flare up and the main concern was swelling with pain and difficulties in the joints when she got a flare up and the adjustments she was looking for.

3.34 We consider that both RC and the Claimant were struggling to now remember exactly what was said on 9 March. We do not find it likely the Claimant mentioned the earlier OH report because if she did it would have been recorded in the risk assessment or in RC’s email to ER. But if the Claimant thought RC already had access to the OH report, the situation was ripe for confusion. We do not think the Claimant mentioned unlocking and locking the door on 27 February. If she had done it is likely it would have been recorded given the mention of bagging prescriptions. We think it likely the Claimant did mention a health condition and that she could have some dexterity issues with her hands and that there was a specific reference to bagging and papercuts. That accords with the evidence VC later gave in a subsequent investigation that she knew the Claimant had dexterity issues with her hands and that somehow this prevented RC doing unannounced visits. But again we do not think that RC personally gathered the Claimant was saying she had some underlying disability or serious health condition. RC had not been equipped with the OH information either by the Claimant or ER. It does also show a distinct lack of inquisitiveness by RC, but again we do not consider she was deliberately turning a blind eye to things but rather that RC was new in the job, was busy and was just reacting to things she was being told on the face of them and getting on with things, unless someone like ER told her otherwise. As Mr Puar says in his closing submissions, it explains why the reaction to the Claimant’s requests was responded to in the way of considering what “business adjustments” could be made rather than looking at things through the prism of making reasonable adjustments for an employee with a known disability.

3.35 On 10 March RC sent the risk assessment to ER for some guidance on how to action the adjustments requested or notify the Claimant that the request is not something they could implement [170]. RC chased it on 16 March [164].

23 March 2023

3.26 On 23 March 2023 FUH sent a whats app at 15:31 asking the Claimant to help with staffing the next morning as the cover that had been previously arranged had been pulled due to an emergency [692]. The Claimant replied at 18:42 apologising that she could not help, saying as it will mainly be one member of staff and locum, her trainee needed to catch up with training that morning and they were also behind with trays. The Claimant said to please check if any other stores can help with cover. RC sent an immediate reply within the group, but addressed to the Claimant, saying there was a lot of sickness in the Cardiff area at that time and there was no other cover available. RC said: *"you will need to send someone to support."*

3.27 The Claimant complains that RC did not do the same for her when she needed support on 27 February and also that RC should not have done this in the group chat for everyone to see. RC says that she did it because the Claimant had four members of staff in that day: the locum pharmacist, SA in the morning, KLJ in the afternoon and NB from 9:30am to 4:30pm. RC says that when the Claimant did not respond she took the decision to redeploy SA and she messaged SA about it that evening. RC says she would not normally message employees out of hours in that way, but she could see SA was online and SA replied to her immediately. RC says she did not consult with the Claimant because the decision was made outside of working hours and the Claimant was not due to work the day in question and so RC did not consider it appropriate to contact the Claimant outside of working hours to tell the Claimant the decision. RC said in oral evidence that the Claimant at some point asked RC not to contact her outside of working hours, which we found plausible. RC says she did email the store. That email is not in the hearing file but we accept it is likely RC did so, so the store staff would know the arrangements.

3.28 Also on 23 March RC discussed the risk assessment with Ms Warburton in ER and RC was asked to send her views which was followed by an email [169-170]. Amongst other things RC said training was usually done at branch level, that support from other branches was sent to help when it is available but most stores in the area were experiencing sickness at that time, and that bagging was part of the accuracy check and so had to be done by the individual completing the accuracy check. RC asked ER in relation to support in managing SA, whether the Claimant would contact the ER helpdesk or complete a "Recorded Conversation". RC said she had agreed to give advance notice of a store visits if she required the Claimant's participation but would not do so for normal fortnightly visits in case plans changed on the day. RC was told an ER Manager would review it 27 March [169]. RC and SGh also arranged to speak about it [173]. Again, quite remarkably given ER's involvement, no one accessed the Claimant's previous OH reports or told RC about them.

3.29 On 24 March SA was sent to Upper Clifton Street, as arranged by RC. That day SGh emailed RC about arranging a meeting to run through the Claimant's risk assessment and agree outcomes that RC could then meet with the Claimant about, and also talk about the performance improvement process for SA [173].

27 March 2023

3.30 At 1:09am in the morning of 27 March the Claimant emailed SGh [178] setting out her concerns about what she said was RC's unfair treatment of her. She said RC's way of arranging staff cover was one of her main concerns and she referred to 27 February as already detailed above (albeit as already stated with an incorrect date reference). The Claimant referred to the events of 23 and 24 March where she was told to send someone to support, and that SA had then been sent without her knowledge. The Claimant said there was discrepancy and unfairness in how the two situations were handled as she had to suffer and struggle to find cover, whereas on the other occasion RC was adamant to arrange cover. SGh replied to say the Claimant should discuss her concerns directly with RC in the first instance [178].

3.31 That day, 27 March, the Claimant had sudden staff sickness absence and sent a whats app to the Roath cover group at 9:21 am asking for help as she had no staff that afternoon [693]. FUH and AA replied saying they could not help as they were behind with work [693].

3.32 The Claimant says RC read the message at 10:49 but did not respond [842]. At 11:59 the Claimant sent a whats app direct to RC asking for help with cover that afternoon. At 1:51 she asked for an update and whether there was cover available or if she needed to shut [664]. RC says she did not read messages until she got out of the regional meeting about 1pm and we accept it is likely RC did not actively pick up the messages until she was out of the meeting.

3.33 The Claimant then emailed SGh [183] at 2:40pm explaining the situation and saying she had not had news of the plan for cover. She asked if the branch should shut. SGh replied to say to pick it up with RC as he did not have access to staffing plans.

3.34 At 3pm the claimant emailed the Superintendent's Office [198] explaining the situation and she did not have confirmation whether the branch should shut. She asked if that was something they deal with. She did not get a response from them direct that day.

3.35 RC replied to the Claimant by whats app at 3:01pm saying there was no cover available in Cardiff that day, they had extra sickness in the area and bereavements and the Claimant would need to work behind closed doors again like before [664-665]. RC says she also telephoned the Claimant. RC says the decision was made because no cover was available, and it was considered the branch needed to remain open to avoid a breach of the NHS contract.

3.36 At 3:25 the Claimant emailed SGh updating him that RC had said no cover was available and she would need to work behind closed doors again. She said she raised concerns with RC the last time it happened on 27 February regarding inconsistencies in cover, and that had stressed to RC that due to her health condition it was difficult to keep locking and unlocking the door if she was to continue to work behind closed doors till 6pm and it can lead to industrial injury. She said her concerns were not being taken on board.

3.37 SGh replied (the timing of the email seems out of sync for unknown reasons) copying in RC and saying to speak to ER for an occupational health referral as the Claimant had raised the risk of industrial injury [181-182]. The Claimant replied at 4pm [181] saying an OH referral was not necessary because OH had already established details of her health condition and it was on file. She said she still did not have cover

which was putting her health at risk. The Claimant referred to it being unfair when compared to what happened on 24 March, and that neither 230 City Road or Upper Clifton Street had been asked to support on the group chat. The Claimant asked if the branch should close or whether cover could be arranged. SGh replied [180] that they could not shut the pharmacies as they have an NHS contract and referred the Claimant to RC about cover as he did not know each area's staffing arrangements [180]. The Claimant replied at 16:31 saying no cover was available, asking if 219 City Road or Upper Clifton Street could be contacted to ask them to provide cover until 6pm because when she had contacted them earlier they said they could not help as they were behind with work. The Claimant said she understood Cardiff Bay had shut at one point due to staffing issues. She said the previous month she had been under lots of stress trying to get cover arranged which had a negative impact on her health and she did not wish to aggravate her health condition further [180]

3.38 RC says she tried to contact both stores by telephone. At 16:46 she sent a whats app to the Claimant saying she had not had an answer (or from the Claimant's store either) [665]. RC says she subsequently had contact from AA who said they had a very busy day.

3.39 The Claimant said in evidence she had to unlock and lock the door more than 5 times. It was put to her she had no difficulty doing this and she said it did cause difficulty and a flare up in her condition. She said the flare up was caused both by the manual activity and by stress. She said that up to 4pm on 27 March she had not had a significant deterioration in her health that required a request for a referral to OH. She said there had been a deterioration in her health prior to that time but it had not been a significant deterioration and one she could manage herself. She said that on 27 February she had not expected working behind closed doors to be a continual request. Later on in evidence she said that it was the stress of working behind closed doors and the after events that led to a flare up. The Claimant says she suffered minor injuries of the fingers of her right hand and an exacerbation of a flare up which lasted a couple of weeks. There is a photo at [219] showing minor abrasions to the little finger and ring finger of the right hand albeit dated 10 April 2023 and as already stated we do not find that the Claimant actually sustained abrasions on either 27 February or 27 March. But we do again accept the Claimant experienced discomfort when locking and unlocking the door due to manual dexterity difficulties.

3.40 RC says the situations on 24 March and 27 March were different. She says that on 24 March the Claimant had four colleagues working and also there had been some advance notice of the shortage at Upper Clifton Street meaning it was easier to arrange cover as she could review all the store rotas to make an informed decision. RC says that on 27 March she did not pick the issue up until 1pm due to being in the regional meeting.

3.41 The Superintendent's Office emailed RC and SGh [197] that evening asking if the branch closed early and if so had the health board been notified. SGh said the branch had remained trading behind closed doors and it was a very quiet pharmacy. The response was that there would still need to be a notification. SGh questioned this saying they continued to offer all essential services [195]. The Superintendent's Team replied to say if the doors were locked it was restricted trading and would need to be notified [194]. SGh questioned this again saying prescriptions were taken in and given out, that urgent walk-ins were dispensed and over the counter medicines could have been sold if requested. He said the only restriction was that patients were not allowed into the pharmacy as it would put the pharmacist at risk. The response continued to be that it

required a temporary closure notification [193]. On 28 March SGh forwarded the email chain to RC saying there appeared to be no point in staying open behind closed doors and they would need to find a way to stay fully open if it happened again [192]. This was not passed on to the Claimant at the time.

Risk assessment review

3.42 SGh reviewed the risk assessment on 28 March [173 and 185] sending some recommended business adjustments for ER to review. The Claimant had also emailed SGh saying she had not heard further about her risk assessment [190]. The Claimant complained again about discrepancies in arranging staff cover. She said SA had told her that on 24 March SA had been working with two members of staff in Upper Clifton Street and the Claimant alleged there seemed to be an element of dishonesty in RC saying there was no one available to keep the store trading that day. She asked if her risk assessment could be taken into account going forward where she had asked for greater support. SGh replied to say that RC was reviewing the stress risk assessment with ER to see what reasonable support the business could give and the Claimant should get an outcome in the next 7 days.

3.43 Also on 28 March the Claimant sent a whats app in the Roath group asking for cover that afternoon due to staff sickness and said it may be the case for the rest of the week. AA replied to say she could not help that week as they were snowed under and barely surviving [694]. At 1:49 RC replied to say cover had been arranged and they should be on their way soon and *“next time please drop me a message and I will see if I can come up with a solution.”*

3.44 On 29 March RC confirmed there was cover for the rest of the week [213]. RC sent MT a relief pharmacy assistant as staff cover for the afternoon. That evening MT said in a text to RC [203] the afternoon had been dead with two prescriptions to order and “like 25 prescriptions” to dispense the next day [203]. The Claimant says that was not accurate but it is what MT told RC. Unbeknown to the Claimant RC sent a trainee dispense, MC, instead as cover on 30 March and sent MT to Cardiff Bay. The Claimant found out when she sent MT a whats app in the afternoon of 30 March [791] with Michael replying to explain he had been needed more in Cardiff Bay. On 31 March the Claimant emailed RC asking why MT had been moved and why she was not informed [212-213]. RC replied to say it was not her decision to move the colleagues round, another store needed a more experienced and quicker dispenser, and she had been told that 180 City Road only had around 25 prescriptions to dispense for the day.

3.45 On 31 March there was a meeting to review the risk assessment attended by RC and Richard Saunders (RS) from ER. The Claimant says it was unannounced and in breach of the agreement to give notice and she was not given the updated version in writing in advance. She says it was challenging and stressful as she was taken away from patients and was having a flare up of her condition at the time. The Claimant says it was agreed she would review it at a later date and contact RC if she had any queries. RC says it was said there would be a further meeting. RC says that the Claimant was sent a letter by email on 29 March notifying her of the visit [201-202] but that on arrival the Claimant said she had not received the email. RC says that the meeting was not successful as it was terminated by the Claimant. The updated stress risk assessment given to the Claimant largely said that no business adjustments would be agreed, and the Claimant needed to train her staff to resolve the stress trigger and also manage performance issues in the team, with the grievance process and mediation also potentially available. It said staffing cover would follow the normal process. Reviews with

line manger would move to 3 monthly with the store visits approximately every 2 weeks. It was said the AOM would give advance notice of store visits that require the Claimant to participate in where appropriate [211].

3.46 On 3 April RC sent the Claimant an email summary of 31 March [254]. She asked the Claimant to review the remainder of the risk assessment and said they could discuss reasonable adjustments in the week commencing 10 April. RC said that SA should be taken through a formal performance management process which would be supported by ER.

3.47 Also on 3 April the Claimant had also messaged RC at 11:55 to say that KLJ was still not back in work and she asked for cover to be arranged [665]. RC replied at 1:03pm to say she had just picked it up and asked the Claimant to phone City Road and ask them to send Ellie.

3.48 On 5 April the Claimant messaged RC to say she was feeling sick and a bit dizzy [666] On 6 April she was off work due to sickness absence.

Recruitment

3.49 On 11 April the Claimant emailed RC to say KLJ had handed in her notice as she was moving away with her last day of work being 26 April. RC asked the Claimant to raise a vacancy on careers hub that day so they could fill the vacancy as soon as possible [225]. The Claimant said she understood 219 City Road was also looking for a new staff member and that RC was helping AA with setting up the vacancy and conducting interviews. She said it would be helpful if RC provided support with raising her full time vacancy too, and also there may be applicants for 219 City Road that were an option for her to recruit. RC replied on 12 April to say the Claimant needed to liaise with AA about applicants for the vacancy in her branch, and RC's advice was for the Claimant to raise her own vacancy so the successful candidate would be registered at 180 City Road [224]. RC says she did this because AA was best placed to refer candidates to the Claimant. She says the advice she gave to the Claimant on recruitment was the same advice she gives to everyone and she had likewise asked AA to raise a vacancy when AA's vacancy came up. She says if she were to raise a vacancy it would create unnecessary complications when viewing applicant profiles, completing right to work checks, issuing offer letters, and with reporting hierarchies.

3.50 On 12 April RC messaged the Claimant to say she would see her the next day to go over the stress risk assessment and training plan [220]. The Claimant asked for the amended version. RC said there was not one as they had not completed the discussions. The Claimant said she recalled the discussion had completed. RC said they had only looked at the "demands" section and there were still 8 sections to go through and the agreed business adjustments. The Claimant said she had a lot to catch up on, they were behind with work, and she was off for a week from Friday so asked to reschedule. RC said she would reschedule the risk assessment meeting but they needed to go ahead with the training plan meeting [222]. RC said she would visit the week commencing 24 April to review the remainder of the stress risk assessment. The Claimant said she would not discuss SA's formal performance management as she had not agreed the plans put forward in the meeting on 31 March [253].

3.51 The Claimant did not raise the vacancy before going on annual leave from 14 to 24 April. She was due to return on 25 April.

24/25 April 2023

3.52 On 24 April 219 City Road was short staffed and RC contacted 180 City Road to see if anyone could support and NB agreed to go. RC says she arranged for SG, a new Relief Trainee Pharmacy Assistant to attend 180 City Road. On the afternoon of 24 April RC emailed the main 180 City Road email address saying NB was to go to 219 City Road on 25 April and that RC had recruited a new starter to start in 180 City Road and SG would be reporting at 9am. She set out SG's working hours and asked that an attached guide be worked through. RC says she did not contact the Claimant before making the arrangements as she did not think it was fair to contact the Claimant whilst she was on leave and that the general store emails addresses were also checked more regularly than individual pharmacist's email addresses. She says she made the decision so that both pharmacies could remain open and trading, she accepts the circumstances were not ideal, but that 219 City Road was behind with dispensing. RC also sent a message in the Roath Group whats app to say she had asked NB to go to 219 City Road the next day and the Claimant would have a new starter coming to her [242].

3.53 The Claimant says she did not pick up the whats app or email and that around 9am SA told her that there was a lady in the shop saying it was her first day in work. The Claimant says it was a surprise, she had a pre-arranged meeting with NB that morning, and KLJ had been assigned to complete outstanding trays.

3.54 At 10:18 on 25 April RC emailed the 180 City Road email address, the Claimant and ER to say that 219 City Road need assistance as they were running on 1 store colleague with a locum pharmacist and a pre-reg. She said that as 180 City Road had 4 colleagues in store that day they needed to send someone to 219 City Road that morning to help maintain patient safety. She also said SG needed to follow the new starter guide [231].

3.55 At 11:24 the Claimant emailed RC saying she had raised her own vacancy as had been advised by RC previously, and that RC had not let her know if she would be helping with recruiting. Her vacancy was for a full time qualified pharmacy assistant. The Claimant said that SG was not showing on the careers portal and was not showing on the Claimant's account or registered at 180 City Road, so she had asked SG to leave early. She said she had taken a copy of SG's CV and explained to SG that SG was on hold for the branch. She told RC to get in touch with SG if there was a suitable branch for SG to start in asap, and that SG had mentioned she had applied for a vacancy at Pentwyn.

3.56 At 11:41am SG emailed RC [239] saying she had gone to City Road at 9am and the manager there had said to go to the Albany Surgery store and she had worked there until around 11am when the manager said to go to the City Road store. SG said the Claimant had said she did not know information about SG coming to the store for training so the manager had sent SG home at 11am. She said the manager said she would keep her on hold and after checking her CV would call her for an interview. SG said she was panicking and asked RC for help and support.

3.57 There was a telephone call between RC and the Claimant. The Claimant says it was before her email to RC. RC says it was after she received the email from SG. RC says she telephoned the Claimant who said SG was not on the HRe system for the branch, she knew nothing about her and was not going to have SG in store that day. The Claimant says RC told her that SG had been recruited to replace KLJ and that when the Claimant asked why she had done that, RC stated it was because the Claimant had asked for support with recruitment.

3.58 RC called SG who was quite upset and panicking because she thought she had done something wrong and would lose her job. RC apologised and asked SG if she was willing to go to Upper Clifton Street. RC made arrangements with FUH for SG to go there. She says later that day FUH told her SG was still upset but FUH was trying to reassure SG everything was fine.

3.59 RC emailed the Claimant at 12:04 saying SG was aligned to the relief team so would not show up on the systems for 180 City Road, and that SG would be back in 180 City Road from Thursday onwards to backfill until the Claimant had recruited to fill her vacancy. She said SG needed to work through the induction materials [223].

3.60 The Claimant says that sending SG to her was not supportive or a safe way to operate as SG was completely inexperienced. She says RC was expecting her to train a new relief colleague not assigned to the Claimant's branch and who would eventually move on to work in different branches. She said SG should be trained in a branch with at least one full time trained and experienced staff member so she would not be solely learning from the branch pharmacist who could be busy with patients. She said it would be just the two of them in the afternoons. The Claimant says she was stressed as KLJ was leaving, NB was behind in her training, and SA was her only trained member of staff but worked part time and was still making mistakes. RC says that relief staff have to be trained in a branch, and that all branches needed to assist with this as otherwise the Claimant would take the benefit of trained staff without ever contributing to training. She says the Claimant's branch is a quiet one an ideal branch in which to train new staff.

3.61 That day the Claimant raised a [232] formal grievance about RC, SG, AA and FUH [232]. Within it she said: *"My line manager is fully aware that I suffer from a chronic health condition which can easily be aggravated. For example, I felt so stressful when I was left without staff cover and had to work behind closed doors on 17.2.23 and on 27.3.23 though I stressed to Rebeca on 17.2.23 that I struggled to constantly open and close the door due to my health condition which caused so much pain in my hands."* (The Claimant had the wrong date for the February working behind closed doors).

3.62 That evening RC also confirmed to SA, that SA could move to the relief team from 9 May but the performance plan would remain in place. It meant the Claimant would be losing her only fully trained member of staff (albeit one about whom she had concerns). RC also emailed ER asking for an invite to be sent to the Claimant for 4th May saying that VC would go to the store to go through the remainder of the stress risk assessment as the Claimant had asked that RC not be the person to complete it [237]. ER said that they did not need to formally invite a colleague to a meeting to discuss a stress risk assessment and it could be done via email [236].

3.63 RC says that on or around 26 April she had a further discussion with the Claimant where the Claimant said she was not willing to train anyone and wanted RC to make sure she only sent qualified staff. RC says she suggested that SG could be used to hand out and take in prescriptions but that the Claimant refused to consider it. She describes the Claimant's tone as unprofessional and speaking over her and the call ended with the Claimant saying RC was stressing her out and she needed to end the call. The Claimant denies this. RC says the Claimant expressed no concern for SG. On the evening of 26 April the Claimant emailed RC saying that having SG and her working in the afternoons would not ensure the safety of patients, they were behind with trays and needed to catch up and NB needed to get back on track with her training. She also said the stress that RC had unnecessarily caused her to experienced in work had "purely aggravated" the Claimant's chronic health condition and she had developed a flare up in her hands and a

loss of dexterity in her left hand [243]. The Claimant said to send SG as staff cover was not supportive and she would not be able to train SG. The Claimant said she needed staff cover who was trained and able to help until the Claimant could recruit someone permanently [243].

3.64 On 26 April RC emailed the Claimant to say the risk assessment review would happen with her and VC on 4 May [252]. RC asked ER to send the Claimant an invite but ER say that it was not needed for a meeting about a stress risk assessment outcome [236-247].

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3.65 On Friday 28 April RC sent a message in the group whats app asking FUH to arrange cover for Tuesday afternoon and RC said she could cover the rest of the week. FUH replied to say she would send SG [248]. That evening the Claimant emailed RC saying she was sending a gentle reminder that her circumstances set out in her email of 26 April had not improved and she needed staff cover who were trained and able to work independently without putting extra pressure on the Claimant [261].

3.66 On the evening of Monday 1 May the Claimant emailed RC to say again she had requested staff cover who was trained and able to work independently and: *"Please note it would not be helpful to send [SG] as staff cover where it will be just the two of us in the afternoons. We are still behind with work and normally it is very busy after a bank holiday so I will not have time to train her. Also from a patient safety perspective and without adequate supervision [SG] is more likely to make mistakes and this is very concerning."* [260].

3.67 At 11:40am on 2 May RC emailed the Claimant asking her to liaise with FUH and AA about cover for the afternoon as RC was in meetings that day [260].

3.68 SG was sent as cover and at about 1:30pm the Claimant turned SG away sending her back to Upper Clifton Street.

3.69 At 1:38pm the Claimant sent a message on the Roath cover group asking if anyone can help support with staff cover that afternoon who was trained and able to work independently. She said they were behind, she had a lot to catch up on and she would not have time to train or supervise SG, and that SG was on her way back to Upper Clifton Street. FUH replied to say she did not have anyone else to send [256].

3.70 The Claimant replied to RC's email at 2:39pm saying she did not see RC's email until late that day, and she would have preferred a text so that she could contact AA and FUH sooner. She said: *"[SG] was sent to cover this afternoon however for the reasons I explained to you below I asked her to go back to Upper Clifton Street. Therefore I am currently having to work behind closed doors again until anyone can support me with trained staff cover this afternoon. I have sent a WhatsApp message on the Roath Branch Cover group explaining my situation and so far [FUH] has said she doesn't have anyone else to send me. I hope you can help support as I will not be able to work behind closed doors till the end of the day due to my health condition."*

3.71 At just before 4pm the Claimant sent a further message on the group whats app asking RC if there was any trained staff member that could be sent to help for the next two hours and asking AA if she could help.

3.72 At just after 5pm the Claimant sent an email to RC saying she had spoken with AA by phone, that AA had 3 members of staff but was not willing to send anyone to help

even just for the next hour. She said she also understood that FUH had sent one of her trained staff to help AA that day [259].

3.73 The Claimant and RC spoke by phone, and RC said she would try to speak to AA to see if someone could be sent. At 17:10 RC sent the Claimant a message [778] to say someone from 219 City Road was coming over and RC had tried ringing the store but there was no answer. RC says she tried to call 180 City Road twice but there was no answer. As we understood it Harvey from 219 City Road attended at the end of the day.

3.74 At 5:27pm the Claimant emailed RC [259] saying she hoped RC was able to get in touch with AA to see if someone could be sent to help until 6pm and: *“As you are aware working behind closed doors negatively impacts my health condition. I am really struggling with my hands at the moment as they are inflamed and painful due to having to lock and unlock the door for the past 4 hours. I am upset [AA] was not willing to help me when I rang her around 4pm today as it would have minimised the swelling and pain I am experiencing now.”* That evening the Claimant emailed RC asking her to liaise as a matter of urgency with ER about reviewing the stress risk assessment [252].

3.75 Also that evening AA emailed RC [324] saying she had an awkward conversation with the Claimant that afternoon when the Claimant telephoned asking for any spare staff to help cover. AA said she had told the Claimant she did not have anyone spare and that they were up to their eyeballs in work, with the benches covered in baskets that needed dispensing and checking. She said that RC know they had had a particularly difficult couple of weeks in branch with minimal staff due to sickness and other staffing issues. AA said that the Claimant had continued to keep asking again and again for AA to send someone, and kept asking AA whether she was refusing to help the Claimant. AA said that she had asked the Claimant a few times to liaise with RC to come up with a solution and that the Claimant had first tried to divert the suggestion and later said she had already spoken with RC about it. AA said the Claimant’s manner was quite pushy, did not show regard for AA’s explanations and made AA feel quite uncomfortable. AA said that in the end she just said to the Claimant to speak to RC. She said: *“It actually transpired that [SG] was sent to 180 to cover the branch this afternoon but Ayah sent her away because she is not yet fully trained! I find this astonishing given that [SG] is Ayah’s member of staff, but yet she is quite willing to turn her away and take staff from another branch instead!”*. The Claimant says that she did understand AA’s situation at the time but that AA did not understand hers.

3.76 The Claimant says RC did not do for her what RC did previously when she took NB away from the Claimant’s branch saying it was to maintain patient safety. The Claimant says that if RC had done the same for the Claimant on 2 May, the Claimant would not have had to liaise with FUH and AA causing friction. The Claimant says if an experienced member of staff had been sent to her the Claimant would also not have had to turn SG away or work behind closed doors. The Claimant says that AA had Harvey, Fima and a pre-reg, and in the interests of patient safety FUH should have sent Fima to the Claimant and SG to AA. RC says that she cannot confirm if Fima was sent by FUH as they would have arranged cover between them directly, but it was likely someone was sent as 219 City Road was struggling. She says that the pre-reg would have been a trainee pharmacist on placement to shadow AA. RC says that SG could have helped the Claimant with basic duties without detailed training, and would have meant the Claimant did not need to lock and unlock the door. She says by then SG had done a week’s training at Upper Clifton Street and could do tasks such as taking in and handing out prescriptions and it would not be necessary to undertake detailed or time consuming training with SG to complete those tasks.

3.77 At around 3pm that afternoon RC also emailed AA and the Claimant with a CV for a qualified pharmacy assistant asking them to arrange an interview [275]. AA replied to say she had arranged an interview. The Claimant did not. She said in evidence she did not recall seeing the email. But also said she saw that AA had already replied arranging an interview.

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3.78 On 4 May RC did a store visit. The original plan that VC would attend to do a stress risk assessment meeting did not happen, as we understand it that was because the Claimant's grievance against RC was ongoing. RC says that the Claimant told her she would need additional cover the next week for 9am to 9:30am on the Thursday and Friday. The Claimant also received an invite to attend a grievance meeting on 10 May with WL and Jenny Liddle (JL) from ER [280].

3.79 Also on 4 May FUH emailed RC [278] saying she wished to relay the sequence of events that had recently occurred involving the Claimant. She said SG was meant to start in 180 City Road but as she did not appear on the Claimant's HR evolution the Claimant had sent SG home. FUH believed that was done without checking with anyone. FUH recounted speaking with RC at about 11:30am and agreeing to take on SG and train her. She explained that SG was a little distressed. FUH recounted that on 28 April she had agreed to send SG as cover for 8 May (the date was in fact 2 May) and that when SG arrived at 1:25pm the door was locked, the Claimant opened the door and told SG to go back to Upper Clifton Street as the Claimant was busy. FUH said that again SG did not know what was happening, SG had called FUH who told her to go back to Upper Clifton Street. FUH said the Claimant had known SG was coming as cover since the Friday, but allowed SG to walk to 180 City Road only to send her back to Upper Clifton. FUH said it left SG unsure and that the Respondent had come across as highly unprofessional and as mistreating colleagues. FUH said the Claimant had then sent a message asking for trained staff who could work independently, but that if that was the case none of them should be allowed to work with students or trainees. She said the Claimant worked for one of the quietest branches in the area and was in an ideal position to show someone the ropes. She said the Claimant had a high turnover of staff over the years, they had always supported, but she would no longer support the Claimant or subject her staff to the Claimant. FUH said her staff have refused to go and help the Claimant due to her "rude and unprofessional behaviour", that there had been several incidents over the years which had been ignored, that the Claimant was not a team player. FUH alleged that they had failed their new starter in the way she had been treated by the Claimant, and they were failing their colleagues who continued to be on the receiving end of the Claimant's rudeness. She said: "*The general vibe amongst colleagues is that there is something wrong with her she is a bully, is racist and she should not be allowed to continue with the company.*" FUH said she hoped action was going to be taken regarding the SG situation.

3.80 RC forwarded the email to SGh and ER saying she would now have trouble covering the store for the morning slots on the Thursday and Friday the following week [312]. On 5 May SGh advised that the email should be treated as a grievance against the Claimant and investigated as there were alarming allegations in the email, specifically bullying and racism that they could not ignore [311]. NH in ER agreed with that course of action if FUH was content to progress it as such, and on 8 May RC said she would liaise with FUH. Also on 5 May the Claimant emailed RC to ask her to confirm the cover arrangements for the following week [281].

3.81 On 8 May RC sent an email to the Claimant and others about cover for the week commencing 8 May [281]. RC said that at that short notice she had not been able to cover 9am to 9:30am on the Thursday and Friday, and asked the Claimant to liaise with the Roath cluster managers for assistance so the store could trade. RC was on annual leave until 15 May and VC was providing cover. In a handover email to VC [845] RC advised VC that the other managers may resist and so the Claimant may need help getting the cover arranged.

3.82 On 9 May the RC contacted AA and the Claimant to ask for updates on recruitment and said they should aim to have candidates to interview as soon as possible with a view to filling their vacancies by the end of the following week [294]. AA sent a detailed response. The Claimant did not respond.

3.83 On 10 May the Claimant had her grievance meeting with WL [284]. The Claimant attended with a representative. She said she had expressed to RC that she found working behind closed doors difficult due to her medical condition [289], and when asked about it causing pain her hands said: "*Physical task of opening/locking the doors due to my medical condition*" [290].

3.84 Also on 10 May the Claimant sent a message in the whats app group asking FUH for cover for 9-9:30am on 11 May and also for Friday morning saying she did not have anyone as AA was not able to help, and otherwise she could not trade or open until 9:30am [293]. FUH replied to tell the Claimant to liaise with VC about cover in RC's absence. The Claimant emailed VC to ask what to do and whether she should shut until 9:30am. VC asked if NB could do overtime and the Claimant said NB could not guarantee to be there for 9am. VC asked the Claimant to call FUH.

3.85 On 13 May RC set up an interview with an applicant for the role of trainee or qualified pharmacy assistant [297], LO.

3.86 On 15 May RC chased the Claimant for an update on recruitment [303]. The Claimant replied the following morning to say that she had not had any applicants that met the criteria, and she was regularly checking for new applicants. RC asked the Claimant for a further update on recruitment by the end of 18 May and asked whether the Claimant needed any support, saying if the Claimant shared the vacancy on the recruitment portal RC could apply any suitable candidates to the application to help [302]. There was no response.

3.87 RC interviewed LO on 18 May and signposted her to the Claimant's vacancy. LO emailed RC [296] to say the Claimant had turned LO away from branch without giving the opportunity to explain herself. RC told the Claimant she had signposted two candidates to her who had pharmacy experience. RC applied the applications to the Claimant's vacancy and told the Claimant she would forward their CV's the following day [305]. RC then forwarded the CVs on 19 May and said if either was suitable RC could help progress the application without them having to complete a full application again [305]. SGh had been copied in and he commented that one of the applicants, Amy, was a trained dispense and that the Respondent needed to recruit her as trained dispensers did not apply very often. He said if the Claimant did not want Amy she should be recruited to the relief team [325].

3.88 Also on 18 May WL interviewed RC as part of the grievance investigation.

3.89 On 22 May RC emailed ER and SGh and said she had spoken with FUH who was content for her complaint to be processed as a grievance [309]. Also on 22 May the

Claimant emailed RC at 10:11am saying NB had said she would not be in that day and that the Claimant herself had an important appointment at 2pm and would be away for an hour. The Claimant said whenever she tried to liaise with FUH or AA they said they required authorisation from RC so the Claimant asked for cover 12:30 to 3:30pm so that MC could have her lunch and the Claimant could attend an appointment. RC emailed the Claimant saying she had tried to contact the store by phone but was not getting an answer and had been told by RST that the Claimant had closed the store. They spoke by phone and RC followed it up with an email [316] saying they needed more notice for appointments and PRT needed to be made aware of the Claimant's absence from branch. RC said she was in meetings but had emailed 219 City Road and Upper Clifton Street to ask for support. RC said the Claimant's absence from store was unauthorised.

3.90 It also appears that on 22 May SG provided some cover at 180 City Road as the Claimant on 23 May sent RC an email thanking her for the cover the previous afternoon and providing some feedback about SG [808]. The Claimant said SG had not been trained on over the counter date checking and had not been trained on implementing planograms. The Claimant asked RC to ensure staff cover was trained and capable of working independently.

3.91 At 9:13am on 23 May the Claimant messaged RC to say MC was not in work. The Claimant telephoned AA asking for cover to allow the Claimant to open and AA said she needed RC's authorisation first. At 9:29 SGh messaged RC asking her to call 180 City Road saying the Claimant had called RST to say she was closed due to having no colleagues in [320]. At 9:54 RC messaged SGh to say she had tracked MC down and that MC had let the Claimant know she had a doctors appointment at 8am but no one had told RC. RC said the other colleague, NB, was running late with no eta and FUH was sending cover to open the store. At 9:56 RC messaged the Claimant to say: "*as per my telephone conversation with you I was not informed that [MC] had a drs appointment this morning. I have spoken to [FRU] and she is sending [SG] to you until [MC] arrives in store.*" The Claimant replied to say that as explained in her email that morning SG was not trained and experienced to help. RC replied to say that SG being on the premises meant the Claimant would not be on her own and hopefully the Claimant would have NB and MC with her soon to support with the dispensing that needed to be done. RC said she was trying to speak to MC about a likely arrival time [318]. At 10:10 the Claimant said again that SG was not trained and experienced to help even if she had another staff member, and that NB was now in work.

3.92 On 23 May RC also chased the Claimant for an update on recruitment saying from the following week they potentially would no longer have MC to provide support and the only relief members of staff who worked afternoons were trainees. RC reattached two CVs sent previously [321].

3.93 On 24 May RC spoke to Amy who said she had contacted the Claimant and offered to go into 180 City Road for an informal chat but had been told there was no point as she was not suitable and there was no full time vacancy. By this point in time RC was frustrated at the lack of progress in recruitment and had reached the point there may not be sufficient cover for the branch and she emailed SGh and Nicola Hunter (NH) in ER [325]. Having taken their advice RC decided to re-advertise the vacancy herself. On 25 May RC told the Claimant she had done this.

3.94 Also on 24 May AA emailed RC saying she had another phone call with the Claimant the previous morning and that again the Claimant was demanding and

unprofessional in tone when AA asked the Claimant to contact RC about cover. AA said she was finding the conversations very difficult [324].

3.95 On 24 May WL gave SGh some feedback from her grievance investigation. WL had met with SGh at some point. WL said SGhs' reply to the Claimant's email of 27 March did not appear to address the Claimant's concerns seriously, and that copying the reply to RC had also caused further upset.

3.96 The Claimant had also emailed SGh that day [810] saying she had been forced to temporarily shut her branch twice that week, and it was causing her unnecessary stress when it could have been avoided if RC had arranged cover as had been done for other branches. The Claimant said that on 22 May RC had sent an email asking for cover for 1:30 to 3pm when the request was in fact for 12:30 to 3:30pm. The Claimant also said that RC had known about MC rearranging her doctor's appointment. The Claimant said when she was seeking help from AA on the telephone, AA had hung up on her and that the Claimant had later learned that AA had three staff members working there and a locum.

3.97 On 25 May the Claimant emailed RC to ask what trained staff cover had been arranged for the next week [336]. Also on 25 May RC asked the Claimant what criteria she was applying so RC could support her in recruitment. RC said she would post a vacancy onto the Careers Hub for the store to attract more applicants [351].

WL grievance outcome

3.98 By 25 May the grievance response had been drafted by WL and JL [330]. Of the 25 April WL said that RC was acting in the best interests of all parties to ensure they could continue to trade, but WL did acknowledge that sending a new starter to the Claimant without additional staff members to support was not ideal and not something they would usually encourage. WL said on occasions decisions had to be made to support the whole region, and on that occasion it was reasonable for RC to take such action. WL said she would not encourage managers to contact staff when on annual leave unless there were exceptional circumstances, but that the Claimant and RC should agree a way of working regarding any urgent staff changes that impacted the pharmacy whilst the Claimant was away from work.

3.99 In relation to recruitment WL said she could confirm that the vacancy for 219 City Road had been raised by the hiring manager, and that 219 had not been provided with "double cover" when undertaking interviews. WL said RC had taken a consistent approach to recruitment support within all teams. WL also confirmed that she had spoken to SGh about not responding to the Claimant's email of concern, and in having copied in RC. In terms of movement of staff between pharmacies, WL said that RC had stated she would only intervene and authorise moves if the manager was out of the business (for example on 24 March). WL said it was not always appropriate or necessary for line managers to pre-announce pharmacy visits but when RC did a sickness absence return to work meeting on 13 April it would have been beneficial for RC to have contacted the Claimant in advance as it may have prevented the Claimant feeling stressed as she would have been able to allocate tasks in advance. WL said RC would ensure the Claimant was informed ahead of time for any meetings she was required to attend so that she could plan and prepare in advance.

3.100 In relation to working behind closed doors, WL said she had explained to RC that pharmacists should not be working on their own receiving and handing out prescriptions and instead a temporary closure should be applied for a few hours with the sharing of

resources with nearby pharmacies. WL said their usual advice was that the quieter pharmacy should close for a few hours with the pharmacist supporting the nearby pharmacies, with the quieter pharmacy then reopening for a short period of time later in the day (with a colleague from the nearby pharmacy) to ensure patients could collect urgent prescriptions later that day. In relation to SG being sent as cover, WL said she understood that having inexperienced staff may restrict certain activities it does allow the Respondent to continue trading and avoids lone working.

3.101 In relation to the Roath cluster whats app, WL said she had recommended that RC produce a framework for requesting support so that managers requesting support provide a description of the work outstanding, and what additional support is needed so that everyone understood the needs and could consider the best support available. WL also recommended that the stress risk assessment meeting be arranged as a priority. WL said the relationship between the Claimant and RC had become strained and recommended that they undergo mediation to build an effective working relationship going forward. We considered that in general WL's findings and recommendations were very sensible.

3.102 WL also provided oral and written feedback to RC [338].

MC Complaint

3.103 On the evening of 25 May, MC emailed RC saying she understood she was due to work at 180 City Road the next day, but she refused to work there under any circumstances following an incident that day. MC alleged that she had been bullied and her privacy violated. MC said she wanted to make an official complaint about the Claimant.

3.104 The grievance outcome was sent to the Claimant on 26 May [341].

3.105 Also on 26 May RC emailed the Claimant to say she had updated the relief rota as best she could, but there were a few issues in the Area at the time and so she was only able to plan ahead a few days at a time. RC said they did not have a fully qualified relief team in the area and all stores needed to assist and support with the training of new colleagues [336]. RC urged the Claimant to recruit within the next two weeks, and confirmed she had now placed another advertisement that she had shared with the Claimant. The Claimant emailed RC to say she did not see any reason for RC to post another vacancy for her branch and she only intended to interview applicants who she saw as suitable. The Claimant said she could not consider engaging a trainee pharmacist assistant at that time, and the only support she required from RC was to provide trained staff cover until such time the Claimant had recruited. The Claimant did not tell RC what her criteria were [351].

3.106 On 29 May MC provided details of her complaint [347]. She said that on 25 May RC had asked her to go to Butetown as 180 City Road had NB until 6pm, but the Claimant denied MC the right to leave the store. MC alleged the Claimant said that if MC went to Butetown the Claimant would send NB there and MC would be forced to stay at the branch with the Claimant. MC said she had called RC to say she was not being allowed to leave, and that RC had then spoken to the Claimant and arranged for MC to stay. MC alleged that after the phone call the Claimant had come to her and asked if MC had messaged RC asking to leave, and wanting to see the message on MC's phone. MC said she told the Claimant she did not feel comfortable showing her personal phone and messages, and that the Claimant had said she needed to see the message on MC's phone so that the Claimant could take a picture and form a message for HR. MC alleged

that when she refused the Claimant became hostile and disrespectful and complained that RC was not helping her out or was ignoring emails. MC said she was crying and could not work with the Claimant the following day.

3.107 RC put a message on the group whats app apologising for messaging on a bank holiday, and saying there was an emergency situation the next day where 180 City Road would be unable to trade and asked AA to send cover 9am to 9:30am and 1:30pm to 6pm. RC said the rest of the week was covered [348]. AA said she would send cover. On 29 May MC transferred to the Highgate branch [363].

3.108 On 30 May the concerns raised by AA, FUH and MC about the Claimant were allocated to VC to investigate [349].

3.109 Also on 30 May RC emailed the Claimant to say the vacancy had been posted for a trainee or qualified pharmacy assistant, and she shared it with the Claimant. RC said again the Claimant had not explained her criteria saying it was important the vacancy was filled by 9 June as they did not have resources in the area to cover the vacancy at the branch along with sickness and annual leave cover [350]. The Claimant replied to say she was keeping an eye on the vacancy which was still live, and she hoped to recruit as soon as possible someone she saw as suitable. The Claimant said she could not consider a trainee pharmacy assistant and requested RC to minimise the stress and pressure being put on the Claimant regarding recruitment. The Claimant said the vacancy in 219 City Road took 2 months to fill, that SG was supporting Upper Clifton and RC would be appointing a new trained relief colleague so that staff cover was not limited [350].

3.110 The Claimant also had an email exchange with SGh about the previous branch closures saying she had expected SGh to investigate why she was forced to temporarily close twice the previous week [809].

3.111 On 30 May the Claimant commenced a period of sick leave. The vacancy remained open in the meantime.

3.112 On 31 May the Claimant lodged a grievance appeal [355 and 358]. Amongst other grounds of appeal, the Claimant made various allegations of dishonesty against RC such as whether NB had volunteered to work at 219 City Road on 25 April or had been asked by RC; whether 219 City Road had a significant staff shortage; and in whether RC knew MC had a doctor's appointment on the morning of 23 May. The Claimant said she was seeking a conduct investigation against RC. The Claimant also said that her complaint of discrimination had not been addressed [360].

VC grievance investigation

3.113 On 7 June VC interviewed AA and FUH as part of the grievance investigation against the Claimant ([367] and [373]). FUH complained about the Claimant sending SG away on SG's first day and again on 28 April, letting SG walk 10 to 15 minutes only to turn SG away. FUH said she did not personally feel the Claimant was racist, but it was a feeling amongst colleagues and a lot of the colleagues that were having issues were of ethnic origin. FUH alleged that on 26 May when SG was again sent as cover and apologised for being 5 minutes late, the Claimant said she had already arranged for NB to cover, told SG that she did not need her and to go back to where she was supposed to be. FUH said she cannot find a colleague in her branch that wanted to go to 180 City Road due to the Claimant's attitude and behaviour.

3.114 On 8 June 2023 VC interviewed MC [378].

Grievance appeal hearing

3.115 Also on 8 June the Claimant was sent an invite to her own grievance appeal hearing on 13 June [381].

3.116 On 13 June the Claimant attended the grievance appeal hearing held on Teams, attending only by audio. She was accompanied by SS, who was identified as the Claimant's carer. The Claimant raised discrimination in relation to working behind closed doors and the provision of staff cover [759]. According to the notes SS said: *"I don't understand why an Area Manager and Regional Manager allow somebody who has a disability to work behind closed doors given they know the door is very heavy and very conventional door. When Ayah comes home, she is so drained and stressed."* SS said the Claimant's mental and physical wellbeing were affected.

VC further grievance investigations

3.117 On 15 June VC interviewed RC in relation to the grievances brought against the Claimant [387]. RC said that on 25 April she had also tried to call the Claimant 25 times between 9:42 and 10:07 but could not get through. RC said she also had an 8 minute conversation with the Claimant at 9am on 26 April about SG and recruitment. RC said she had asked for AA's account in writing on 2 May as AA had been really upset. RC said that on one occasion on a store visit she had tried to speak to the Claimant about her conduct towards AA and her peers, but the Claimant had refused to go into the comms room saying she had too much to do. RC said she offered to help check trays so they could have some time together, but the Claimant still refused to have a private conversation. RC said that on 25 May she had not been able to move MC that day because of the Claimant's reputation and not being able to move anyone else due to staffing issues in other branches. RC said MC was also a trainee, who had worked 3 months more than SG. RC said she was unable to talk to the Claimant about the situation as the Claimant would not answer the phone, would not reply to a message or voicemail and refused to speak to her if she called the branch. RC said the Claimant's tone was very short when they spoke, that the Claimant would talk over her, and when she did not get her own way would hang up on RC. RC said: *"if in person she will tell me that I am stressing her out which is affecting her condition, I do not know what this condition is as this has never been discussed with me."* RC said that the advice she had had from ER was also not to take action whilst the grievance brought by the Claimant was live, and that had not been concluded until 26 May. RC said she had agreed to mediation but the outcome had been appealed. RC said she had also been unable to speak to the Claimant about the sickness absence or conduct welfare calls and that ER were also involved in this.

3.118 On 16 June Caroline Boyle (CB) interviewed WL in relation to the grievance appeal [763].

3.119 On 19 June the Claimant and RC had a conversation about a phased return to work. RC said she was keen to sit down and run through the outcomes of the stress risk assessment with the Claimant, saying previous meetings had been cancelled by the Claimant due to the impact on her mental health [396]. The Claimant asked for ER to review her stress risk assessment again [395] and said she had never mentioned anything related to "mental health".

3.120 On 26 June VC interviewed SG as part of her grievance investigation [398]. SG said that on her first day the Claimant had said to go to 219 City Road for 1 hour as the Claimant did not know why SG was there. SG said she did some stock in 219 City Road

and then went back to 180 City Road where the Claimant said she was not on the system and to go home. SG said she felt panicked, upset and distressed. SG said on the next occasion the Claimant said she did not know who had sent SG, that the Claimant had no idea who was coming but it should not be SG, and SG was not her cover. She said the Claimant asked for her CV and said she would call SG back. SG said on a third occasion when she went to cover at 1:30pm the Claimant said: "*I don't want you here*" shaking her head. SG said she had also worked there when the Claimant was not there and when the Claimant came back from an appointment SG had left but that the Claimant was on that occasion respectful. SG said the Claimant had sent her away a fourth time when she got there late at 9:05am, and in which time the Claimant had arranged for NB to do overtime. SG said she would be scared to go to 180 City Road again.

3.121 By 29 June VC had confirmation that the notes of her meetings were correct.

Grievance appeal outcome

3.122 On 30 June 2023 the grievance appeal outcome was sent [409]. CB concluded there were no evidence of dishonesty on the part of RC in relation to 25 April or 23 May. In general, the Claimant's grievance appeal was not upheld and CB said that WL's conclusions and recommendations were fair and reasonable. CB encouraged the Claimant to consider mediation with RC. CB also recommended an OH review saying that during the grievance and appeal hearing the Claimant and her carer had mentioned the difficulties the Claimant was experiencing with both her mental and physical health. CB said that a greater understanding of the Claimant's health condition and the types of repetitive tasks that have been causing physical concern (for example – opening and closing doors) would help, and help provide the Claimant and the business with a current view of what reasonable adjustments may be needed to support the Claimant's return to work [412].

Plans for VC investigation meeting with the Claimant and management meeting with JL and SGh

3.123 On 3 July the Claimant returned from sick leave. Also, on 3 July VC sent her grievance investigation files to ER saying she needed to speak to the Claimant to get the Claimant's side of the story and she could not conclude whether it needed to go to disciplinary until she had spoken to the Claimant. VC said from her investigation there seemed to be concurrent worrying themes relating to SG being sent away a number of times; that the Claimant was happy to have MC as a trainee dispenser but not SG; she wanted to understand why and whether there as a personal dislike against SG; and concern about the way the Claimant behaved towards colleagues and peers. VC said she knew there were multiple things happening with the Claimant and so she would be guided by ER as to next steps [422].

3.124 On 4 July RC recorded that a return to work discussion had not been completed as the Claimant wanted a member of ER present but they were unavailable and the Claimant had declined to meet with NH "People Partner" there as note taker [414]. The Claimant also emailed JL saying that Yvette Buitendag and RC had reviewed her risk assessment on 26 June and the Claimant did not feel it was an accurate reflection of the current status of her pharmacy and she asked for a new one to be done by ER. The Claimant said she appreciated JL's support regarding what reasonable adjustments would be put in place to minimise work related stress to reduce the impact on her disability [440].

3.125 On 4 July the Claimant sent ER a complaint alleging gross misconduct/dishonesty by RC [416] on 23 May and 26 June 2023, the later relating to a comment in an updated business adjustments document where it was said two summer students had been placed in the store who had been trained on process. The Claimant also complained that on 30 June RC told her the branch were not behind on workload.

3.126 On 6 July NH told VC she was ok to go ahead and ask the Claimant questions [421]. VC replied [421] to say she had concerns about travelling for an hour and the Claimant refusing to speak with her. VC said after speaking to SGh that morning she believed there were three ways to handle the situation. She had spoken to SGh because in her conversation with RC she had been told that the Claimant may refuse to meet with VC. The first proposal was to go to the branch alone and if the Claimant refused to speak then: *“my suggestion would be to explain to [the Claimant] that I will be making the outcome of my investigation with or without her testimony – I would prefer to ask my questions and have the fully story, however if she refuses, a decision will be made without her side. If she refuses again I would leave and conclude my investigations with my findings so far.”* The second option was for RC to ask the questions as part of a mediation meeting. The third option as to go with a second pharmacist which would incur a high cost but remove the barrier of the Claimant saying she was too busy to speak. ER’s advice was that options one and three would be fine but to avoid option two. No one recommended to VC that she give the Claimant notice of the meeting.

3.127 Also on 6 July JL emailed the Claimant saying JL understood the Claimant had asked RC and Yvette to review the risk assessment in the Claimant’s absence and issue it in writing. JL said it was beneficial to discuss the risk assessment in person and review and agree if there were any additional adjustments needed. JL said she was concerned the Claimant’s relationship with RC continued to deteriorate, that the Claimant had not yet responded to the request for mediation and JL would welcome the opportunity to discuss any concerns the Claimant had. JL said she would like to arrange a meeting with the Claimant in person, together with SGh, to talk through all the Claimant’s concerns, review the risk assessment and identify how to move forward. JL gave details of a meeting on 18 July at 10am at a location to be confirmed (but would be off site in a neutral confidential location). JL said they would arrange cover in pharmacy for the whole day and the Claimant would not be expected to attend the pharmacy. The Claimant was asked to confirm if she was happy to attend the meeting and JL would then confirm the location [439].

3.128 On 7 July the Claimant replied to JL [438] saying she had made her reasonable adjustment requests clear on 9 March, but she wanted a new risk assessment because of changes to the branch. The Claimant asked if it was possible. In relation to mediation, the Claimant said her concerns about alleged dishonesty should be investigated first under the disciplinary process. The Claimant said in relation to her return to work meeting she had thought RC was referring to NB taking notes not NH. The Claimant said in relation to the meeting that she had communicated in writing all necessary details regarding her stress risk assessment and her concerns about RC’s conduct and she did not have anything more to add or explain further at a meeting.

3.129 Also on 7 July the Claimant emailed SGh saying NB had handed in her notice, citing it was awful at the store with no trained staff. The Claimant said she wanted her concerns about alleged misconduct by RC addressed as soon as possible [425]. SGh said they would do a leaver interview. On 7 July the Claimant emailed CB saying the reference to “mental health” came as a surprise and upset her because her carer had talked about her physical condition and the work-related stress which was aggravated.

The Claimant asked for an explanation saying she had never mentioned mental health difficulties. CB said she did not intend to cause upset, and the sentence was a combined summary of both the original grievance and appeal. The Claimant said again “mental health” had not been mentioned and asked for it to be taken out [435].

3.130 On 11 July JL emailed the Claimant saying, in relation to RC, that the concerns were being investigated by SGh supported by JL. JL said the intention for the proposed meeting on Tuesday was to discuss the findings from the investigation and any next steps required. JL said it was also important given the Claimant’s concerns that they discuss the risk assessment and agree what adjustments could reasonably be made. JL said she would like to proceed with the meeting and asked the Claimant to confirm her attendance [438].

3.131 On 12 July RC sent the Claimant two further CVs and asked her to arrange interviews [427].

13 July 2023

3.132 On 13 July VC attended the Claimant’s branch. The Claimant did not have advance notification. According to VC’s notes at [784] the Claimant asked to call ER as she felt uncomfortable, and VC said that was ok but she would only wait until 10:30am. VC says she told the Claimant if the Claimant still then felt uncomfortable talking to VC they would have a quick conversation about next steps and VC would leave. VC recorded that at 10:16 the Claimant asked her to call ER and VC spoke with Yvette and explained as investigation manager she did not need to give notice under the investigation policy and that VC was happy to continue with the meeting with or without the Claimant’s statement. VC recorded that the Claimant asked to speak to ER again and that at 10:50 the Claimant was refusing to speak to VC, that VC said that was OK and: *“I have advised I will not be returning as it my right as the investigating manager. Have Informed Ayah a decision will be made on my investigation without her input. I would obviously prefer to get her understanding but am happy to continue my investigation. Ayah currently has no idea why I am here as she is refusing to have the conversation.”* VC left the branch at 11am.

3.133 The Claimant’s version is VC told her it was an investigation meeting about emails sent to ER and she told VC she was not able to have a meeting due to her health and requested rescheduling. The Claimant says she also told VC rescheduling was in the interests of patient safety as she had work outstanding. The Claimant says she told VC she had not been given advance notice as set out in her reasonable adjustments in the risk assessment, and that VC was not willing to do that even after a few calls from HR. The Claimant says VC told her she had seen what she needed to see that day to conclude the investigations without the Claimant’s input and said: *“I will not be seeing you again.”* The Claimant alleges VC also said: *“you are not in control of this situation whether you have a mental health condition or not.”* The Claimant alleges VC said the Claimant should not be in work because of her health. The Claimant says she was wrongly accused of having mental health issues.

3.134 At 14:37 the Claimant emailed ER [820] saying she understood VC’s need to complete an investigation meeting, and that she noted prior notice for these meetings is not required. The Claimant said she was not able to proceed for reasons outside of her control. The Claimant said they were behind on work and in the interests of patient safety she asked for the meeting to be rescheduled, and also that the meeting would create unnecessary work related stress and referred to her health condition. The Claimant said VC’s comments could be perceived as discriminatory as VC made

comments such as: *“you are not in control of this situation whether you have a mental health condition or not”* and that the Claimant should not be in work because of her health. The Claimant said VC was attempting to frame her as someone with a mental illness which she had never said. The Claimant said: *“please be assured that I am cooperating and hope this meeting can be rescheduled in order for a thorough investigation to be done with my input included.”*

3.135 In a subsequent grievance investigation undertaken by Kelly Smith (KS), VC denied mentioning the Claimant’s mental health. VC said she said she had explained as the investigating manager she did not need to give the Claimant notice as per investigation guidelines *“and that she was not in control of this situation.”* VC said towards the end of the interaction the Claimant said her medical condition prevented her having an unannounced meeting and that VC had explained again she did not need to give the Claimant notice, and if the Claimant was ok to be in work and have conversations with patients and colleagues alike then the Claimant should be ok to have a conversation with VC. VC said there was no reason for her to bring up mental health with the Claimant. VC said her understanding of the Claimant’s health condition: *“is that she has a dexterity problem in her hands which in turn means Becky cannot go in unannounced.”* KS asked why hand movement would affect a visit with an AOM, and VC said she had no idea. KS asked VC if she was aware of any adjustments in place prior to attending store to speak to the Claimant, and VC said she was not, and just had an email from NH to say she could go and speak to the Claimant when VC was ready. VC said ER did not tell her about any adjustments in relation to speaking to the Claimant and nobody else had either. VC also said before she went to see the Claimant her health condition was not mentioned at any point *“so still unaware of anything other than dexterity at this point”* [476].

3.136 VC said to KS she had told the Claimant she did not have to give notice, that she would prefer for the Claimant to co-operate and talk but she could make a decision without taking the Claimant’s side. She said: *“I did say to her that her dismissive nature, attitude and resilience towards me gave me a clear personal perspective of how she conducts herself in the working environment”* and: *“I did not wait for a reaction, I was done with her. I’d said my piece. She refused to speak to me, told me to wait in the backroom at one point when I had gone into the dispensary and made me wait an hour and a half to speak to her. I was really clear if we weren’t sat down and having the meeting by 11 I was leaving, this conversation was at 10:55 I had nothing to wait for I have stuff to do I’d already lost a morning to her.”* VC said she had been conscious throughout of her tone and had kept her voice low and calm to try to make the Claimant comfortable. VC said after she left she had a call from ER to say JL wanted to invite the Claimant to a formal investigation meeting and asked if VC could go back on 18 July. VC said: *“Bent rules in my mind to accommodate her and support her which I agreed to do.”*

3.137 In relation to the allegation of VC saying: *“you are not in control of this situation whether you have a mental health condition or not”*; what VC admits to having said is close to what the Claimant alleges. But VC denies mentioning the Claimant’s mental health. The Claimant emailed ER the same day with her account of the interaction and has been consistent throughout. On this point we prefer the evidence of the Claimant and find as a matter of fact VC did say what the Claimant alleges. The KS investigation notes at [474 to 478], in our judgement, show hostility on the part of VC towards the Claimant, someone that VC had never met before or had limited interactions with. VC, in our judgement, had already formed the view that the Claimant was going to be difficult

and VC was trying to exact some control and not allow the Claimant to dictate the course of events or refuse to sit down with VC. VC knew because of the stress risk assessment RC could not go in for RC's visits unannounced. VC, in our judgement, thought that was the Claimant being awkward and controlling and was in effect saying to the Claimant the Claimant was not in control because the Claimant could not make VC as investigating officer give notice of the investigation meeting. The Respondent says VC had no reason to mention a mental health condition because VC knew only about dexterity issues and had thought the Claimant may have a condition such as Reynaud's. VC said in evidence she knew the Claimant worked different rotas in the summer and winter. But VC knew the Claimant had had a *stress* risk assessment and indeed at one point had been due to be involved in a meeting about it. She knew an outcome of that was RC could not make unannounced visits. VC did not know the finer detail and therefore thought the Claimant had an unreasonable stance to all this. But in our judgement this all makes it plausible VC did refer to the Claimant potentially having a mental health condition. Indeed on 19 June RC had also referred in an email to the Claimant about the stress risk assessment that meetings had been cancelled due to the impact on the Claimant's "mental health."

3.138 We do not find as a matter of fact that VC said the Claimant should not be in work because of her health. Here we prefer VC's account. What VC said was if the Claimant was ok to be in work and have conversations with patients and colleagues then she should be ok to have a conversation with VC. We do not consider it plausible that VC went on to say the Claimant should not be in work because of the Claimant's health because it was not the focus of the message VC was seeking to communicate. This complaint is not made out as a matter of fact.

3.139 We do find as a matter of fact VC said she would not reschedule the meeting and words to the effect of "I will not be seeing you again." VC was annoyed; she felt the Claimant had wasted her time. In her own words VC admits that she said to the Claimant the Claimant's dismissive nature, attitude and resilience towards VC gave VC a clear personal picture of how the Claimant conducted herself in the working environment and that VC then walked out as she was "done with" the Claimant. VC had (at that point in time) already decided that she was not coming back again.

Run up to 18 July 2023

3.140 On 13 July the Claimant was invited to an investigation meeting with VC at Clare Road on 18 July at 10am [429]. The letter said the original investigation meeting could not go ahead due to unforeseen circumstances and VC wanted to ensure the Claimant had a fair opportunity to contribute to the investigation. The invite said the Claimant did not have the right to be accompanied but if she wished she could be accompanied by a trade union representative or work colleague. The letter said that the outcome of the investigation may result in further action which would be then governed by the Well disciplinary procedure. The Claimant was told if she failed to attend without good reason they may need to make a decision based on the information known at the time. The Claimant was told if she was unable to attend the meeting to make contact as a matter of urgency and was given a mobile number and email address for VC

3.141 The Claimant alleges that on 13 July she saw JL's email of 11 July and drafted a response to confirm her attendance but alleges that what happened that day with VC made her forget about it as she says she suffered a flare up in her condition and so did not reply to JL.

3.142 At 7:36 am on 14 July JL emailed the Claimant saying that to arrange cover and confirm a location for the meeting JL was seeking to arrange, JL would be grateful if the

Claimant would confirm she would be attending. JL gave the Claimant her mobile number [437].

3.143 On 14 July CB sent an amended grievance appeal response removing the reference to the effect on physical and mental health and instead just referring to “overall health.” [433]. CB sent an email to say there had been discussions around stress and that the Claimant’s carer had raised points and the edited minutes said: “*Her wellbeing is dwindling mentally and physically and I am at the end of all this*” but that as the reference was causing the Claimant upset it had been amended to “health” only [434].

3.144 On the morning of 15 July the Claimant travelled to London for the weekend returning on the evening of 17 July.

3.145 On 17 July at 13:02 JL emailed the Claimant saying she had tried a number of times to contact the Claimant to no avail. JL said the meeting on Tuesday was important to address a number of concerns the Claimant had raised, provide an update on investigations and agree what support could be provided moving forward. JL said she was aware the Claimant was due to attend a separate meeting at Clare Road and therefore JL had arranged for her and SGh to attend at 11am. JL said she was politely requesting the Claimant attend that meeting with her and SGh. JL said SGh had arranged full day cover at 180 City Road to allow the Claimant to attend the meetings requested. JL asked the Claimant to confirm her attendance [437].

3.146 The Claimant asserts that because she had emailed ER with concerns about VC she assumed the investigator would be someone other than VC and that on the evening of 17 July she noticed it was with VC and she therefore drafted a formal grievance which she sent first thing the next day.

18 July 2023

3.147 At 8:24 on 18 July the Claimant did email a grievance to ER referring to VC’s unannounced visit on 13 July, and saying that despite explaining to VC why she was unable to attend VC insisted the meeting had to go ahead. The Claimant said she had to contact ER twice to remind them of the reasonable adjustments in place to minimise work related stress. The Claimant also complained about the language used by VC. The Claimant said when she spoke to ER on 13 July they said it was up to the investigator whether they wanted to reschedule the meeting or not. The Claimant said VC had made it clear when leaving she would not, saying: “I will not be seeing you again.” The Claimant said she was put under unnecessary stress and the harassment she received caused a flare up and the physical symptoms affect her day to day activities. The Claimant referred to a breach of the Equality Act. The Claimant said she wanted clarification of the purpose of the investigatory meeting; an impartial investigator who had disability awareness training; reasonable adjustments for the meeting to take place by email; an extension to the right to be accompanied; a specific list of questions in advance; to be given all evidence and allegations 5 days in advance; to have clarification why it is being alleged she had mental health difficulties and for the discrimination to be investigated. The Claimant said she awaited confirmation of when the grievance hearing meeting would be scheduled [445].

3.148 The Claimant did not attend Clare Road for either meeting and simply went to work as normal. There was a locum pharmacist. The Claimant says she attributed his attendance to the investigation meeting and so told him she was booked for a meeting she was not attending and that the locum left without telling anyone. She refutes she sent him away. The Claimant says that the locum returned to say he had been told he

needed to be there. The Claimant says she did not check her work emails as she was prioritising other work and that JL and SGh did not phone her at the branch.

3.149 VC says by 10:15 the Claimant was not there and JL and SGh were also there. VC says she called the branch on loudspeaker, but the Claimant refused to speak to VC and VC hung up. She says JL and SGh were intending to pick up with the Claimant about her attitude towards VC but the Claimant did not turn up for that meeting either. The Claimant says that NB relayed to VC that she was not comfortable speaking with VC.

3.150 Given the Claimant's non-attendance SGh and JL attended the branch. JL's notes are at [446]. They record the Claimant saying she had raised a grievance and her physical chronic health condition was being impacted with swelling in fingers and a mouth ulcer. The notes record the Claimant accepting the letter was issued last Thursday requesting she attend today and she had not responded. They record the Claimant saying she did not feel she had advance notice of the meeting with VC as she was on annual leave, she did read the letter, but did not feel she had to contact anyone whilst on annual leave. They record the Claimant saying her grievance letter did not explicitly say she was not attending but it did say what she expected. She said she did not make contact with anyone to let them know she would not be attending because she did not think she had to as she had raised a grievance and sent it that morning marked as urgent.

3.151 According to the notes the Claimant said she was not aware locum cover had been arranged. She said she had received the invite for the second meeting with JL and SGh but had responded to say she had nothing more to add. It was put to the Claimant JL had sent a reply on 11 July saying they needed to meet and cover would be arranged. The Claimant said she did not know if she had seen that email. JL said a risk assessment was not a one time event and it should be regularly reviewed and updated and that was the purpose of the meeting. The Claimant said it was not clear to her it was a continual process and she thought she had to do a new one. JL said that was why the meeting had been requested. According to the notes the Claimant was asked again about the 11 July invite which said the meeting would be off site with cover in place and that it was confirmed in a follow up email on 14 July, and the Claimant was asked to make contact if she was unable to attend. The Claimant said she was on annual leave on the Friday. SGh said there had been multiple emails and the Claimant said she was not on top of emails and would have declined. She was asked if she had not read any emails on the Tuesday, Wednesday and Thursday and she said she thought she had seen the email but not read it all and she had not specifically declined just not confirmed her attendance. JL said she tried multiple times to contact via email and left a voicemail and the Claimant said she did not receive it.

3.152 Again according to the notes SGh said he understood the Claimant had turned the locum away. The Claimant said she did not send them away but explained she was in that day and so the locum might need to check with someone where he should be. When asked if she clarified why they were there the Claimant said: "*Thought it was to do with today.*" SGh put to the Claimant that she was aware she had meetings, aware she had cover, and asked why she did not think it necessary to contact anyone. He said a lot of people had travelled for the meetings and they had arranged cover. The Claimant said she thought ER and VC would speak. She was asked if she did not feel it was appropriate to contact SGh or JL and the Claimant, according to the notes, said she did not know she had to. She said the meeting on the Thursday had breached the agreement she would get advance notice. According to the notes SGh said the meetings

that day had been confirmed in advance, and asked what they could have done differently. The Claimant said she had put in her grievance what she required. SGh said any concerns did not stop the Claimant coming to the meetings and the Claimant said given her health they had to make adjustments. SGh said he felt that had been considered with the meetings being notified in advance and the sensible thing on Thursday would have been to contact VC or ER to explain her concerns and why she did not feel able to attend. The Claimant said on Thursday her main concern had been her health and she did not think to plan forward, and it did not come to mind as she was stressed.

3.153 According to the notes SGh said they would pause for 10 minutes. The Claimant then refused to return to the meeting. The Claimant says SGh asked her to leave while he collected his thoughts and that SGh then met with the locum. The Claimant says that at 1pm she went to get lunch and felt the flare up of her symptoms was worsening and she had lunch and took painkillers. She says SGh asked her to return and she said she was not feeling well and needed a break. She agrees she said she needed a break of a few hours and she said that because of the stress she was under. The Claimant says SGh then suspended her without evening allowing her to finish her mouthful of food and he was standing when she was sitting. The Claimant says she only had one missed call from JL on 17 July at 11:51 and JL did not text at all or send an email to the Claimant's personal email address. We return below to the question of why SGh decided to suspend the Claimant.

3.154 On 19 July the Claimant was sent a letter confirming her suspension on full pay [450]. The allegations were said to be: failure to follow legitimate management request to attend meetings; Obstructing investigations through failure to attend pre-arranged meetings; Failure to communicate with management; Making decisions which was not in line with our business agreed process. This was done at financial detriment to the business; There are multiple matters that need to be discussed and concluded that we have been unable to resolve during working time; Repeated resistance to progress outstanding matters which is having a negative impact on your health and business operations.

Period of suspension

3.155 On 20 July the Claimant was invited to an investigation meeting to take place on 25 July [452]. The Claimant asked for her desired outcomes in her grievance of 18 July to be considered first so she could continue with the investigation meeting. ER said they would not provide evidence and allegations in advance, but the Claimant could attend by video or audio only and there would be regular breaks. She could also be accompanied as long as it did not delay the meeting. The request to reconsider suspension was refused as it was said there were multiple matters to be discussed and concluded, that they had been unable to resolve. ER said with the Claimant's co-operation they would aim to keep the period of suspension as short as possible [459].

3.156 The Claimant was also invited to a meeting with JL and SGh on 21 July. On 20 July she emailed JL asking to reschedule so she could arrange trade union representation. JL agreed to reschedule asking the Claimant to confirm availability at the earliest opportunity, and saying the concerns the Claimant had raised needed to be completed as soon as possible and it was important they could quickly conclude all matters outstanding so that they could consider a return to work at the appropriate time [460].

3.157 On 21 July the Claimant lodged a grievance relating to her meeting with JL and SGh [454]. She said the meeting with SGh and JL in the branch was not pre-arranged and she was not given advance notice as set out in agreed reasonable adjustments. She said she was told it was not an investigation meeting, but she thought in fact it was and that it breached policy. She said the meeting had run over into her 30 minute unpaid lunch break and that SGh had criticised her for leaving the branch to get lunch and had insisted she carry on with the meeting without allowing her to finish her lunch. She said she told SGh she felt unable to continue as she did not want to aggravate her health further and requested a break that SGh refused. She said he did not let her finish swallowing her food, saying she did not need to speak. She said at one point the door was left open and the treatment was harassment. She said she was also being victimised. She said alternatives to suspension should have been considered. She said the allegations were unfounded and not serious enough to warrant suspension. The Claimant also asked for a fresh stress risk assessment.

3.158 On 24 July ER said to the Claimant if she would like to be accompanied by her carer to the meeting on 25 July then they would support it as a reasonable adjustment for that meeting [469].

3.159 On 24 July VC was interviewed by KS in relation to the Claimant's grievance about VC [474].

3.160 On 25 July the Claimant attended the investigation meeting with KS [479]. The Claimant attended with SS who she described as her carer. KS asked what SS's status as carer was and the Claimant explained she was her mother. KS said ordinarily they would not allow family members to attend but she would allow it that day. KS said the investigation was about complaints made by colleagues and a second part around the Claimant's behaviours on 18 July.

3.161 KS asked the Claimant about her treatment of SG. The Claimant said she did not send people away and that she was struggling to answer the specific questions without being able to prepare. The Claimant was asked about AA's complaints. The Claimant said she found AA bullying towards her. She was asked about MC's complaint and said she explained that they were behind on work and NB was just there to help catch up on trays and that MC had just wanted to leave of MC's own accord. The Claimant said she thought MC's complaint about asking to look at MC's phone related to the separate occasion when MC had rearranged the doctor's appointment and that she had simply asked if she could have a look. The Claimant was asked about her attitude to colleagues and about the individual who came in to ask about a vacancy. She said in relation to SG that SG had no experience and that was where the risk to patient safety was a concern. The Claimant said the issue was not with trainees but where they were on their journey with the Respondent.

3.162 KS also asked about the 18 July. The Claimant said she was in distress how she had been dealt with by VC and it did not come to mind to point out she would not be attending as she was traveling. The Claimant said she did not think to inform ER she would not be attending due to travel and it was her first day back in work. She said it was something she did not think of because of how she was feeling at the time. The Claimant said she was not in the frame of mind to give notice and the stress caused a flare up of her condition which can cause cognitive changes.

3.163 The Claimant said she did not receive any text or calls from JL. She said she had highlighted she felt she had nothing more to add to the meetings that were intended to review the risk assessment she thought was outdated and she had asked for a new

stress risk assessment. She said there was a response from JL but she did not read it, she was on annual leave and not on top of her emails. KS put to the Claimant that she had sent an email to ER on 13 July and again at 8:24 on 18 July so the Claimant had accessed her emails. The Claimant said she had not opened and read emails sent to her and she had prioritised the investigation meeting trying to understand if she could reschedule that and raise a grievance around it. She said she did not know about the meeting with JL and SGh as she had not opened and read the emails and she was also in distress at the time. The Claimant denied sending the locum away and said she told him she was in on that day so he was not needed. She said she did not see any emails on annual leave so did not know the time or location of her meeting and she enquired with the locum if he should be elsewhere. She said he left on his own accord. She said she thought because she had raised a grievance that highlighted she would not be attending the VC investigation meeting. The Claimant said there was the opportunity for her to make a rational decision but with the grievance, how she had been treated on 13 July, and not feeling 100% from travel it resulted in her not being able to make specific reasonable decisions on the 18 July.

3.164 KS said that as the Claimant had acknowledged that some things could have been done differently they now had the confidence the Claimant would re-engage so they wanted to look at how to reinstate her. It was said if the Claimant was willing to attend a meeting with JL and SGh on Thursday or Friday to go through the risk assessment then they could be confident they were returning the Claimant to a safe working environment and look to return her on the Monday. KS said it was appreciated the Claimant had concerns too, but she needed to engage so they could resolve these as well. The Claimant said she had put in a grievance about SGh and JL and she did not feel comfortable continuing with them and she wanted to do mediation with them. She asked about a referral to OH prior to the risk assessment as she said there was a change in her condition. NT from ER said the OH referral would take about 3 weeks, and proposed a stress risk assessment with a return to work and then review the risk assessment again when the OH recommendations came back. The Claimant said if she could go through the risk assessment line by line she did not necessarily need the OH first.

3.165 There was then a period of toing and froing how to take matters forward. On 26 July NT said there seemed little point doing a mediation with JL as she was simply HR support for the stress risk assessment. NT proposed mediation with RC and SGh on 28 July. The Claimant asked about her concerns raised against RC, and said she wanted the stress risk assessment done by a member of the HR team. She said she wanted to return to work on 31 July [505]. NT said the stress risk assessment had to be done before the return to work, and that SGh had been intended to talk to the Claimant about his investigation in relation to the complaints against RC on 18 July. NT suggested mediation with SGh on 2 August and then further mediation with RC at a later date if necessary. That would allow SGh to complete the risk assessment with HR supporting the meeting. The Claimant said she wanted to return to work first to assess the work environment so she had information to discuss with SGh about her risk assessment. She suggested she return to work on 31 July and then on 2 August they could do mediation and a new risk assessment and go through the concerns raised about RC. On 28 July NT said they were not comfortable with the Claimant returning to work without completing the stress risk assessment which could be revisited down the line. She also said the Claimant could not return to work without a functioning working relationship with any line manager and that had to at least be in place with SGh. The Claimant was asked to confirm she would attend mediation with SGh on 2 August. The Claimant confirmed she would attend [503].

3.166 On 31 July the Claimant asked to return to work on 1 August so that she could prepare for the stress risk assessment, saying she could not identify the stressors without being in work. NT refused but offered to book in a time and date for a further review. She also said she would be the appointed mediator [501]. The Claimant again said she needed to return to work before completing the stress risk assessment and that NT was not an impartial mediator [500]. The Claimant also asked for the right to be accompanied as reasonable adjustment on 2 August.

3.167 NT said it was not in the spirit of mediation to have an unrelated party in the room for a mediation. She said the Claimant could bring a support person to the stress risk assessment meeting but it was not policy to allow family members. The Claimant was told she could bring a work colleague or union representative [499]. NT said the Claimant had had interactions with all three qualified internal mediators and due to annual leave NT had the most availability. The Claimant asked for her carer/mother to accompany her to the stress risk assessment as a reasonable adjustment [498]. She said it had been agreed previously as a supportive measure by ER. The Claimant continued to object to NT being the mediator.

3.168 On 1 August the Claimant said she could meet with SGh to discuss the concerns about RC without mediation on 2 August and she would also do mediation that day if there was a completely impartial mediator. The Claimant said otherwise the mediation should be rescheduled and she should be allowed to return to work. She said the risk assessment could be done on 2 August or 4 August. NT said the other mediators would not be available until the week of 28 August and the Claimant may also still consider the other mediators not to be impartial. NT said again the Claimant's mother could not attend and that she believed previous meeting chairs did not know SS was the Claimant's mother before the meetings. NT suggested a facilitated ways of working conversation with SGh instead of a mediation, but that the Claimant could not return to work without an effective line management relationship in place. The Claimant suggested an external mediator and asked again that her carer/mother be allowed to accompany her [494]. By then the meeting with SGh was due to happen and NT said the email would be discussed at the meeting and the Claimant's attendance was expected as a reasonable line management request.

3.169 The Claimant did attend the meeting with SGh and NT [508]. The Claimant's mother was there but stayed in the kitchen. The Claimant said she did not need formal mediation with SGh as she did not consider their relationship had broken down. The Claimant in oral evidence denied saying that but we consider it is likely she did as she said the same in an earlier email [494]. SGh fed back in relation to the RC concerns saying RC did not know MC had changed the doctor's appointment until the morning and there was no case to answer in regard to that complaint. He said RC had asked MC to reschedule but MC had not told RC that she had, and RC was only aware when MC did not turn up to work. He said there was no message at 8am that he was aware of and that in any event it would not have made a difference to cover. He said it was misunderstanding rather than dishonesty. SGh said the summer students were trained and there was a lot of cover in place from them. He said there was no dishonesty over this or NB's exit but there were trust issues between the Claimant and RC that needed to be resolved through dialogue. The Claimant thanked SGh for investigating.

3.170 The Claimant and SGh then worked on an agreed ways of working document [516] until mediation between the Claimant and RC could take place. There was then a discussion about the stress risk assessment. It was that element that the Claimant wanted her mother to attend and SGh refused. SGh said he understood the Claimant

was seeking to bring her mother with her as a representative and he did not consider it appropriate for the Claimant's mother to be present. The Claimant spoke with her mother in the kitchen and then said she was content to continue. It was agreed the stress risk assessment reviewed on 26 June was still a relevant assessment of risks with the additional point that SGh was able to confirm the appointment of two new colleagues [518]. SGh felt that the meeting went well and was a positive one to allow outstanding issues to be resolved and for everyone to move forward.

3.171 When the Claimant was suspended RC asked SGh what to do about recruitment and he advised RC to just recruit to fill the vacancy. RC offered a role to JC as a qualified pharmacy technician who had responded to the Claimant's advert and LS a qualified NVQ2 pharmacy dispenser who had also applied through the Claimant's advert. JC started employment on 7 August. LS commenced employment on 10 August.

Training of new colleagues

3.172 On 4 August the Claimant asked why the new starters were being trained in other branches for two weeks. SGh replied to say that as the Claimant said she could train them they had now arranged for the new starters to start at 180 City Road the following week [521]. He told the Claimant to reach out to Tracy if at any time it caused excessive stress as they could make alternative arrangements to train offsite.

Conclusion of disciplinary case

3.173 On 4 August KS met with SGh [524]. SGh said of 18 July he heard VC call the branch and a colleague say the Claimant had said she would not be attending. He said VC left and he and JL waited for the Claimant to arrive but when she did not they drove to the branch. SGh said the Claimant said she had seen the invite but due to a holiday was not able to respond and she was recovering from a previous illness. He said JL had challenged the Claimant about contacting her and SGh's personal feeling was that the Claimant had just chosen to ignore and not respond and that in his view that was unacceptable. He said he adjourned and spoke to the locum and that it was clear from that discussion the Claimant knew the meetings were scheduled and the locum had been booked to cover, but she had told the locum she would not be participating and he should contact PRT to decide where he should go instead as he was not required. He said the Claimant would not answer why she had attended work and sent the locum away and why she had not made a courtesy call.

3.174 SGh said to KS he had a discussion with JL and then asked the Claimant to come back in to continue with the scheduled meeting, but was told the Claimant had left on her lunch break. SGh said he waited about 20 minutes and then went to find the Claimant sat in a consultation room. He said he knocked and asked her to return, and she refused saying she needed to finish eating and then that she would need 2 to 3 hours to recover before she could restart because of stress. SGh said he told her that was unacceptable and that she had had an adequate break. SGh said he asked the Claimant to co-operate and she said she was not coming back into that meeting. SGh said he spoke again with JL and ultimately considered the Claimant was being obstructive and not willing to engage and so he made the decision to suspend at that point. He said there were two key drivers: the main one being a number of outstanding issues to deal with that needed resolution and SGh felt they could not move forward and close some of the issues down unless they removed the Claimant. Second, he said in the back of his mind he was concerned the Claimant had repeatedly said she was stressed and he felt there was a duty of care she should not be in work at that stage [526].

3.175 SGh said he went back in to ask to speak to the Claimant again and she said she had told him she would not as she was eating her lunch. He said he explained it was important and he ended up reading the suspension statement to her there. He said the Claimant spent around another hour and a half checking what the notes were and making it more difficult and eventually he escorted her from the premises.

3.176 In our judgement, this account gives the best reflection of why SGh ultimately decided to suspend the Claimant. In particular, that SGh suspended the Claimant because she refused to return to the management meeting with him and JL and there were matters he considered that were essential to talk through with her including the complaints against RC, the outstanding risk assessment and so there was a functioning management chain relationship going forward. It was to exercise control to get the Claimant to co-operate in those line management matters. To a lesser extent it was also so that the Claimant could not say she did not have time to prepare.

3.177 On 7 August 2023 KS met with JL [528]. The Claimant was then sent notice of a disciplinary hearing for 22 August [534] relating to allegations of behaving in an inappropriate manner in communications with colleagues and communications with management on 18 July. That included turning away colleagues due to work in branch, declining the locum support on 18 July and failure to follow reasonable management requests regarding pre-planned meetings. It was rescheduled as the Claimant had a medical appointment.

3.178 The Claimant emailed ER saying she wanted two grievances of 18 August and 2023 August 2023 dealt with. ER said they thought they had addressed the complaints and asked the Claimant to identify what she said was outstanding [537]. On 22 August Professor Choy, Professor of Rheumatology said in a letter: "*Over the last few months she has experienced more symptoms these include mouth ulcers, joint pain and swelling as well as fatigue and brain fog.*" He said they had discussed treatment options including immunosuppressants and had requested blood tests to assess disease activity. Professor Choy said the Claimant had been under a lot of stress at work and stress can cause flares in lupus. He said that as her disease was unstable at the moment she had the option of discussing his letter with her line manager and OH on how to adapt the work pattern to reduce the level of stress. He said any adaptation to the format of the disciplinary hearing to reduce the level of stress would be helpful [541]. The Claimant sent this to ER on 25 August and asked for the hearing to be postponed until after her ongoing medical appointments. The hearing was then moved from 30 August to 29 September.

3.179 On 20 September the Claimant said again she had outstanding grievances and ER replied again to ask the Claimant to identify what she said was outstanding [548]. She says she never had a result to the grievance she raised about VC. On 21 September the Claimant asked for the disciplinary hearing to proceed in written format. ER said there needed to be a discussion at a meeting, and suggested that the Claimant produce a written statement to reduce the stress that may be caused by recalling events and that the hearing could be done on Teams. The Claimant said her consultant had confirmed her disease was unstable at the moment and asked again to proceed in written format. ER said the Claimant could submit a written statement to be considered at the hearing, and they would write to her if a further meeting was needed to ask questions or for further information. ER asked for consent for a referral to OH. The Claimant submitted a further grievance saying she would not be able to focus and respond to questions at a disciplinary hearing.

3.180 On 29 September the Claimant submitted a written statement [557]. She denied the allegations and also said if they did happen it was not her fault as it had been provoked by RC. She said there were mitigating factors in not attending pre-planned meetings and she did not agree it was her fault. She supplied her evidence. She said that when JL sent her email of 11 July there was no reference to the date and location of the meeting and therefore the Claimant had assumed it was on 18 July and 10am. She said when she was invited to the investigation meeting at 10am on 18 July she assumed the meeting with JL and SGh was cancelled or postponed. She said she was also on annual leave from 14 July to 17 July and did not have any emails to her personal email or calls from JL or SGh. The Claimant said on 18 July she did not receive any urgent or high importance emails from JL or a courtesy call to alert her the meeting had been rearranged and so she assumed the VC meeting was in place of the JL and SGh meeting.

3.181 On 3 October the Claimant was invited to a hearing on 10 October as FP said she had questions she required clarification on [580]. The Claimant asked to provide a further written submission. ER said that further clarification was needed on follow up questions and a hearing would allow the Claimant the opportunity to ask questions and present relevant evidence [588]. The Claimant raised a further grievance. The disciplinary hearing proceeded in the Claimant's absence on 10 October [599].

3.182 FP concluded that the Claimant was aware of the email inviting the Claimant to the meeting with JL and SGh and the one for the meeting with VC. FP said there was no attempt to reply to JL's emails of 11 July, 14 July, and 17 July and the Claimant had gone to work on 18 July knowing there were two meetings scheduled that day that the Claimant had no intention to attend, but chose not to communicate it to JL/SGh and VC. FP held that as the Claimant said she had not received any urgent or high importance emails from JL on 18 July that the Claimant had been checking her emails and must have seen those from JL on 11, 14 and 17 July. FP held the Claimant had also overridden the decision of a senior leader in relation to the locum and refused to speak to SGh, a senior leader, when he requested it. FP found the Claimant had also not respected the rules of suspension on 18 July. She said the Claimant had demonstrated obstructive behaviour and had shown no respect for the members of the field team and senior leaders. The Claimant was given a final written warning to remain on file for 12 months.

3.183 On 11 October the Claimant was sent the notice of the final written warning. It was said that conditions were attached for the Claimant to schedule a facilitated conversation with RC to agree ways of working going forward and there be a referral to OH.

3.184 The Claimant appealed the disciplinary sanction and conditions [606]. The Claimant said the last email she read from JL was 11 July that did not confirm any date, time, or venue and she did not realise it was a mandatory meeting. She said she drafted a reply on 13 July but forgot to send it due to what happened on 13 July and was then on annual leave. She said again that she then thought that VC's meeting was in place of JL's proposed meeting. She said that on 18 July she only glanced at her inbox to check for emails marked urgent or high importance. The Claimant said there had been no significant changes since the 2021 OH report and therefore a referral to OH was not required. The Claimant attached an email from the locum [611] who said the staff were confused when he arrived saying they had their pharmacist that day and that the Claimant came out and checked if it was the other City Road store with the locum saying he was definitely booked into 180 City Road. He recalled the Claimant saying it was unlikely as there was not work for two pharmacists and the Claimant had said it was up

to the locum but there was nothing much to do there. The locum said he would try to contact Claire in PST and Claire told him he was booked in and the store had an important meeting with the area manager they were not aware about and he returned at 9:20 to say this. He said the Claimant said she had not been told anything and that she had contacted HR.

3.185 The appeal was dealt with in writing and the Claimant was sent the outcome on 20 November 2023 [625]. The appeal was not upheld other than upholding a complaint that there was a lack of communication on the investigation following the investigation meeting and there was no evidence to suggest the Claimant had demonstrated a lack of respect or chose not to follow the rules of suspension.

4. Discussion and Conclusions

On 26 February 2023 RC required the Claimant to phone other branches to send staff cover

4.1 Applying our findings of fact and the applicable law to the List of Issues our findings are as follows. The complaint about 26 February 2023 is brought as a complaint of direct disability discrimination. Factually this did happen. But we do not find that RC did this because of the Claimant's disability (in the sense of it being a material influence in RC's reasoning). This is a complaint where we can make a clear finding as to the "reason why." We find it happened simply because of the prevailing circumstances at the time, and in particular the lack of other cover resources and RC's presence in the regional meeting on the Monday morning. The Claimant had asked for relief cover for a fairly length period of annual leave at short notice given 4 weeks' notice would normally be given. The Claimant's existing staff could not cover. RC had no relief cover she could send. AA and FUH said they had no cover they could send. RC was due to be in the regional meeting on the Monday morning and so could not make phone calls to the wider area for cover and therefore asked the Claimant to do so. In our judgement RC would have done the same if faced with a non-disabled employee in the same situation, including FUH and AA. The complaint of direct disability discrimination is not well founded and is dismissed.

On 27 February 2023 RC and/or SGh refused, or in any event failed, to make staff available to the Claimant's branch on 27 February 2023 / Working behind closed doors on 27 February 2023

4.2 We do not find that RC refused to help the Claimant or refused to make staff available that RC somehow had; we find RC was trying to help. A staff member was not made available to the Claimant's branch because RC thought she had run out of avenues: RC had no relief cover available; existing branch staff could not work extra hours; AA and FUH had said they could not provide cover; other branches in the wider area could not provide cover. On the actual day of 27 February RC was hampered by being in the regional meeting and travelling. But that RC genuinely thought no cover was available is demonstrated by her discussion with SGh and the decision to instruct the Claimant to work behind closed doors. When the Claimant flagged up that she thought 219 City Road potentially had a third member of staff, we accept that RC was then trying to get hold of AA, as RC's message demonstrates. We consider it likely that if RC had got through to AA she would have insisted that someone come over as happened subsequently on 27 March if (depending on their circumstances) 219 City Road could still safely trade (which ultimately came down to AA as Responsible Pharmacist). We do not find that RC had an attitude of only moving resources away from 180 City Road, and

not vice versa. For example, on 23 January she had asked FUH and AA to send cover to the Claimant.

4.3 SGh as ROM did not have access to staff rotas and did not have oversight or control of who could be sent as cover; he was dealing with the situation as described to him by RC and would pass cover arrangements back to RC as AOM. So it was not that he was refusing or failing to make cover available. Again this is a complaint where we can make a clear finding as to the “reason why.” We do not find that the lack of cover was because of disability; it was because RC in the particular circumstances prevailing at the time did not consider she had any other resources she could send. RC (and to the extent it involved him) SGh would have acted the same if faced with a non-disabled individual (including FUH and AA) if in the same relevant circumstances.

4.4 The situation with SA on 23/24 March 2023 was not the same situation as 27 February 2023. On 23 March RC was not at a regional meeting and had greater capacity to look at things like rotas and she could see the Claimant had 4 members of staff in that day (albeit staggered over the day). On 27 February RC was in the regional meeting and because of that had left it to the Claimant to ring other branches and RC was not contactable. When RC did pick up the ultimate lack of cover, she then explored the options available at that time which was working behind closed doors and then contacting AA to try to get some cover sent. In all the instances RC was reacting to a dynamic situation she was faced with and making choices how to proceed, sometimes somewhat on the fly. The Claimant seeks to pick these actions apart and look at the choice of words used in a particular whats app, or whether there should be an email or whats app to a personal or work email address rather than a group account, and to infer from that some ill intent on the part of RC or infer a difference in treatment she would say was because of disability. But we do not consider that reflects reality. RC, as we have said, was dealing with dynamic situations and with many other responsibilities across her branches and the relief team. We do not see that RC would have hyper analysed quite what words she would use in one whats app compared to another, or which form of media or account she was going to respond to. It is an unrealistic analysis. Moreover, we do not consider that at this time RC actually perceived the Claimant to have a disability to have been consciously or subconsciously motivated by it. The complaint of direct discrimination is not well founded and is dismissed. In terms of discrimination arising from disability it is said that the thing(s) arising in consequence of disability were that the Claimant raised issues as to her limitations resulting from her disability and her need for support with RC on 27 February 2023. It is said that this was a material influence on RC/SGh not providing cover on 27 February 2023. We have not found as a matter of fact the Claimant did so on 27 February 2023 and the complaint of discrimination arising in consequence of disability therefore cannot succeed. The same applies to the health and safety detriment complaint.

4.5 Turning to the complaint of failure to make reasonable adjustments, it is said there was a PCP of requiring branch managers to work behind closed doors if staff availability was such that they would be working alone. The Respondent says the Claimant was given advice and it was not a requirement. The Respondent argues it was the Claimant’s statutory duty as Responsible Pharmacist to secure the safe and effective running of the pharmacy, and that the Claimant would have had the choice to close and would not face disciplinary action for doing so.

4.6 The Claimant was given an instruction or direction by RC to work behind closed doors; it was more than advice. RC uses the word instruction in her own witness statement. It was a direction that RC would give on more than one occasion. The

Claimant was following what her line manager told her to do, and she had been trying to find out what it was her line managers wanted her to do. We consider here that the Respondent is taking an over analytical approach to the question of an application of a PCPs that divorces it from the reality of the situation. It was said by the EAT in Ahmed v Department of Work and Pensions [2022] EAT 107 that: “A PCP, simply put, is where the employer has an expectation of the employee, and either the same expectation is made of other employees or there is an element of repetition in the expectation with the particular employee.” There was that expectation her of the Claimant and there was a PCP applied to the Claimant.

4.7 The Claimant says she was put at a substantial disadvantage because she was required to lock and unlock the doors to attend to patients which she found painful. The Respondent disputes the Claimant found it painful or that they knew or reasonably could be expected to know the Claimant was likely to be placed at that disadvantage.

4.8 The Respondent makes detailed submissions that the Claimant’s allegation as to being caused pain lacks credibility. In our findings of fact we have ultimately concluded that the Claimant did find locking and unlocking the door difficult and that difficulty caused some discomfort. It was more than trivial and we do find she was put to a substantial disadvantage.

4.9 We do not find, however, that on this occasion the Respondent knew or could reasonably be expected to know the Claimant would be placed at that disadvantage. The Claimant accepted in evidence she had never raised any personal difficulties she had with the door related to her disability with the Respondent or that she raised the issue of the proximity of the lock and the door frame with the Respondent. She had not told RC about it either in advance or on the day of 27 February. The OH reports did not raise it as an issue. This particular complaint of failure to make reasonable adjustments is not well founded and is dismissed.

RC redeploying SA without consultation on 23 March 2023

4.10 Again here we are able to make a clear findings of fact. RC made the decision to redeploy SA because of a late need to send cover to Upper Clifton Street and because she considered the Claimant’s branch could in the circumstances make a staff member available. RC also made a decision not to bother the Claimant again with further contact that evening, the Claimant having not responded to the earlier message and was not in work that day. These were management and operational decisions made by RC in difficult resourcing circumstances and made at night. They were not because of the Claimant’s disability. RC would have made the same decision if faced with a non-disabled branch manager but otherwise in the same situation as the Claimant. The complaint of direct disability discrimination is not well founded.

4.11 The complaint of discrimination arising from disability is brought on the basis that the Claimant raised issues as to her limitations resulting from disability and a need for support with RC on 27 February and 9 March and this motivated RC to redeploy SA without consultation. We have already found that the Claimant did not raise such issues on 27 February. The 9 March was the stress risk assessment meeting. We do not find that what was said at that meeting motivated (in the sense of being a material influence) RC to decide to move SA on 23 March or to then not further consult with the Claimant about the move. As already found RC simply made judgement calls for operational, management and resourcing reasons. The complaint of discrimination arising in consequence of disability is not well founded. Likewise, it was not because of the Claimant raising health and safety matters.

RC and/ or SGh refused or in any event failed to make staff available to the Claimant's branch on 27 March 2023 / working behind closed doors

4.12 RC or SGh did not refuse to make staff available. RC, when she learned of the problem, did not consider there was staff to send: KLJ was unexpectedly sick; RC was in the monthly management meeting limiting her access to communications; AA and FUH had said they could not provide cover as they were behind; RC had already had other cover difficulties due to sickness and bereavements. Later on in the afternoon RC tried again to see if neighbouring stores could provide some cover but could not get through. She did not deliberately fail to make staff available. SGh did not have staff rota oversight in the same way as RC. Again RC and SGh made a business decision for the Claimant's smaller store to work behind closed doors (that they thought at the time was not a breach of the NHS contractual commitments). It was not a decision made because of the Claimant's disability. The Respondent would have made the same decision if there was a non disabled person in the same circumstances (such circumstances including the resourcing and time available that day, and including the size of the respective stores and belief as to the NHS contractual position). The complaint of direct discrimination is not well founded.

4.13 The complaint of discrimination arising in consequence of disability is brought on the basis that the Claimant raised issues as to her limitations arising from disability and her need for support with RC on 27 February, 9 March and 27 March 2023. It is alleged that materially influenced RC and SGh to fail to make staff available to the Claimant on 27 March 2023. We have not found the Claimant raised issues on 27 February. 9 March was the stress risk assessment meeting. We do not find that what was said there materially influenced RC to not provide cover or to instruct the Claimant to work behind closed doors. The reason why RC did what she did is set out above.

4.14 On 27 March the Claimant did raise with SGh that she was saying she had told RC, due to her health condition, it was difficult to keep locking and unlocking the door and it could lead to industrial injury. The Claimant's first email in the early hours of 27 March was not copied to RC. SGh had simply told the Claimant to raise any concerns with RC in the first instance. We do not find that this motivated SGh to, for example, direct in some way that RC was not to provide cover or for the Claimant to work behind closed doors. It was a separate decision making process made on the basis of resources.

4.15 On the afternoon of 27 March the Claimant then raised again the locking and unlocking of doors and the risk of an industrial injury. SGh copied in RC with a recommendation of a OH referral. We do not find the Claimant's email motivated RC and/or SGh to fail to provide cover; it was not seen that they had any to send. SGh was not displaying ill will to the Claimant; he suggested a OH referral that the Claimant declined. The complaint of discrimination because of something arising in consequence of disability is not well founded. The same analysis applies to the health and safety detriment complaint. We would add that RC suggested in evidence that at some unknown date she had asked to see the Claimant's earlier OH reports and that the Claimant had refused permission until July. The Claimant denied this. On the evidence before us we did not find this made out. The Claimant made reference to her OH reports being on file. Moreover if there had been such a request and it was refused we consider it would have been documented and no such documents have been put before us.

4.16 In terms of the reasonable adjustments complaint, for reasons already given we do find that the Respondent had a PCP of directing branch managers to work behind closed

doors if staff availability was that they would be working alone and it was applied to the Claimant on 27 March. The Respondent raises an additional argument here that the Claimant was not advised to work behind closed doors by RC until 3pm and therefore from 1:30pm to 3pm there can have been no PCP applied by the Respondent. We consider that the reality of the matter was that the Claimant was caught between a rock and a hard place. The Claimant was trying to find out what to do but was without a response from RC (even if RC had a good reason for not being contactable). The Claimant had not received a specific direction that day and so she followed what she had done before. The Claimant was following an expectation; a practice that had been applied to her in the past. We do consider that in the particular factual circumstances of that day, including in the context of what had happened on 27 February, there was an application of the PCP.

4.17 As set out in our findings of fact we do find that the Claimant found the locking and unlocking of the door that day difficult (even to a handful of patients) and it caused discomfort. We do not find it caused injury in the sense of wounds or abrasions. But the difficulty and discomfort was a disadvantage linked to the Claimant's disability due to her manual dexterity issues and it was more than trivial.

4.18 We have not found as a matter of fact that the Claimant had specifically told RC of the difficulty. The Claimant had, however, emailed SGh at 1am that morning saying it was difficult for her to continue unlocking and locking the door due to her health condition. That was before there was the direction to work behind closed doors later that day. In the afternoon of 27 March the Claimant again told SGh it was difficult for her to keep locking and unlocking the door if she was to continue working behind closed doors until 6 and it can lead to an industrial injury. We find that the Respondent knew or reasonably could be expected to know of the substantial disadvantage through the Claimant's emails to SGh.

4.19 We do find there was a failure that day to make a reasonable adjustment to remove or reduce the disadvantage. There was no cover that could reasonably be sent to the Claimant's branch at the time and undertaking a lone worker risk assessment by itself would not solve the problem. The Respondent was also seeking to keep the busier stores trading which we understand. But we do consider that it would have been reasonable in the circumstances to temporarily close the Claimant's branch and make the proper notifications. As WL said in evidence, the expectation would be to close the quieter store and indeed the Claimant could also have been directed to assist at one of the nearby branches (with the potential to, if feasible, later return to her own store with assistance from the other store to dispense any urgent prescriptions). The Respondent seeks to say the decision lay wholly with the Claimant as the Responsible Pharmacist. As already stated we do not find that accords with the reality of the situation; why else would the Claimant be contacting RC and SGh and in turn they be responding? The Claimant was looking to her line managers for direction. This complaint of failure to make reasonable adjustments is well founded and is upheld.

RC refusing to assist with recruitment for the Claimant's branch vacancy from 12 April 2023

4.20 This allegation fails on its facts. RC did not refuse to assist with recruitment; RC did assist. From the Claimant's subjective perspective it was not the help that the Claimant wanted or thought RC should provide but that does not make it a refusal to assist with recruitment. RC made extensive efforts to assist with recruitment including sign posting various potential applicants to the Claimant, encouraging the Claimant to

open her own vacancy, and ultimately recruiting when the Claimant was suspended. RC did not set up the initial vacancy for the Claimant because it was the Claimant's responsibility and it would cause difficulties on the portal. RC treated the Claimant the same as other managers including AA. RC also did not (until the Claimant was suspended) conduct interviews for the Claimant's vacancy; again this is no different to how RC treated other managers including specifically AA. There was no unfavourable or less favourable or detrimental treatment and any that the Claimant perceives was not because of disability or because of the Claimant raising issues related to her disability or health and safety matters. The complaints of direct disability discrimination, discrimination arising in consequence of disability and health and safety detriment are not well founded and are dismissed.

RC requiring the Claimant to send one of her staff members to another branch on 25 April 2023 / Requiring branch managers to be responsible for the training of staff

4.21 In the Claimant's absence on annual leave RC had made arrangements for NB to assist at 219 City Road on 25 April and had sent an email to the branch email address to confirm this, and a message in the group whats app. RC sent SG to the Claimant's branch believing there was colleague support there that morning to start induction and SG could start doing some small tasks, even with NB going to support 219 City Road. RC anticipated that it would also introduce SG to the store bearing in mind KLJ was leaving later that week and the Claimant had not recruited. The Claimant and RC spoke, with the Claimant saying she had a meeting with NB that morning. RC said to send someone else to 219 City Road. The Claimant sent SG before, as set out in the findings of fact, Harvey ultimately sent SG back and the Claimant then sent SG away. It was in our judgement extraordinarily unprofessional behaviour by professional people towards SG that day, until FUH took over SG's care.

4.22 RC made the decision to send a staff member to 219 City Road because it came down to the difficult allocation of resources. 219 City Road was a busy store and needed staff. NB in her witness statement says the locum pharmacist in 180 City Road said she should go to 219 as it was a busier store. The decision was not because of disability. RC would have done the same if there was a non-disabled employee in the Claimant's situation including the size of the stores and the resources available. It was also not done because the Claimant raised issues as to her limitations arising from disability and her need for support or raised health and safety matters on 9 March, 27 March, or 28 March or in a grievance of 25 April or because of the grievance of 25 April. It was simply a resourced based decision. The complaints of direct discrimination, discrimination because of something arising from disability, victimisation and health and safety detriment are not well founded and are dismissed.

4.23 The Claimant also brings a complaint of failure to make reasonable adjustments. The Respondent accepts they applied a PCP of requiring branch managers, including the Claimant, to be responsible for the training of staff. The List of Issues then says the Claimant was required to work with an untrained member of staff on 25 April. The substantial disadvantage is said to be the Claimant found the responsibility stressful and it aggravated her disability.

4.24 We do not find that the Claimant was put to a substantial disadvantage. The Claimant did not find training in itself stressful; she trained amongst others KLJ, NB and her new recruits in August 2023. On 25 April the Claimant was not alone with SG; there were other staff there. The Claimant was not solely responsible for SG's initial

introductory training that day; there were other staff who could do it or assist. We accept RC's evidence that as a smaller, quieter store it was also a good store to train new staff in. In our judgement what upset the Claimant that day was the circumstances in which NB was going to 219 City Road and the Claimant was being sent SG. Requiring the Claimant to be responsible for some initial training of SG that day did not put the Claimant at a substantial disadvantage; she had other staff to assist, and could prioritise who was doing what tasks and the cause of the Claimant's upset was not the requirement in itself to be responsible for some training. The complaint of failure to make reasonable adjustments is not well founded and is dismissed.

RC failed to respond to the Claimant's request for trained staff between 26 April and 2 May 2023

4.25 RC did respond to the Claimant's request. There is no indication there were staff difficulties on 26, 27 or 28 April. 28 April was a Friday and 1 May a bank holiday Monday. On 28 April RC asked FUH to arrange cover for the Tuesday afternoon and RC said she would cover for the rest of the week. FUH said she would send SG. SG had by then had a few days initial training, and also had a pharmacy degree and pharmacy experience in India. The Claimant continued to email RC who on 2 May asked the Claimant to liaise with FUH about cover as RC was then in the manager's meeting (moved to the Tuesday because of the bank holiday). FUH sent SG and the Claimant sent SG back. The Claimant then placed herself working behind closed doors until late on 2 May when RC was able to arrange for Harvey to provide some cover.

4.26 We do not find as a matter of fact that RC failed to respond to the Claimant's request for trained staff. RC did respond; it was just a response that the Claimant did not like. We would not find that there was unfavourable or less favourable or detrimental treatment as the complaint is not made out on its facts. But in any event it was not because of disability, or because of the things said to arise in consequence of disability, or because the Claimant had raised a grievance or health and safety matters. RC was managing her cover resources on a day to day basis, and asking for assistance from the branches where RC was unable to fill the gaps. The complaints of direct disability discrimination, discrimination arising in consequence of disability, health and safety detriment and victimisation are not well founded and are dismissed.

RC required the Claimant to liaise with neighbouring branches to send staff cover on 2 May 2023

4.27 RC did so because she was in the regional meeting on the morning of 2 May and so was otherwise engaged. RC therefore asked the Claimant to liaise directly with FUH. It was not because of the Claimant's disability. RC would have done the same thing in the same situation with a non disabled employee. It was also not because of the things said to arise in consequence of disability or because the Claimant had raised a grievance or because the Claimant raised any health and safety issues. It was because, as before, RC was tied up in the meeting. The complaints of direct discrimination, discrimination because of something arising in consequence of disability, victimisation and health and safety detriment are not well founded and are dismissed.

4.28 The Claimant also brings a complaint of a failure to make reasonable adjustments. Here we do not find the Respondent applied a PCP of requiring managers to work behind closed doors if staff availability was such that they would be working alone. Staff availability was not such that the Claimant would be working alone. Unlike for example the 27 March, the Claimant was sent SG as cover and would not have been working alone. The Claimant was not required to work behind closed doors. The Claimant ended

up in that position because she sent SG away, but that was through the actions of the Claimant. There was no PCP that was applied by the Respondent. There was no expectation of working behind closed doors from SGh and RC. Cover had been provided and indeed RC and SGh by then knew that working behind closed doors was not an option as it still counted as a store closure. The complaint is not well founded and is dismissed.

4.29 The Claimant also brings a complaint of failure to make reasonable adjustments in relation to training. The Respondent accepts they had a PCP of requiring branch managers, including the Claimant, to be responsible for the training of staff. The List of Issues says the Claimant was required to work with an untrained member of staff on 2 May. The substantial disadvantage is said to be the Claimant found the responsibility stressful and it aggravated her disability.

4.30 We would not find that the PCP was applied to the Claimant on this occasion because the Claimant was not responsible for training SG. FUH was training SG not the Claimant.

4.31 But if we are wrong about that, or if it could be said the Claimant did that day need to train SG to do certain activities at 180 City Road, we would not find that the Claimant was put to a substantial disadvantage in comparison to those who do not share her disability. By 2 May SG had been in the business some 5 or 6 days and so was not wholly new and had a pharmacy qualification and experience in India. As WL said in evidence when the Claimant was alone with SG that afternoon the Claimant did not have to engage in complicated training or indeed any training if work circumstances did not permit it. The Claimant could give SG simple tasks to do and make decisions about priorities that afternoon. Fundamentally SG being there meant the store could remain open and the Claimant did not have to lock and unlock the door. Again we do not find that training staff in itself was an issue for the Claimant. The complaint is not well founded and is dismissed.

RC failing to assist with arranging staff cover on 8 May 2023 for 9-9:30am on 11 May and 12 May

4.32 Once she was aware of the problem RC did try to assist with staff over for the 30 minutes on those mornings but she did not have the resources to cover it. RC had been able to arrange cover for all the afternoons [845]. RC therefore asked the Claimant to ask for cover in the Roath group as local cover would be a sensible option for a 30 minute shortfall, and also forewarned VC that the Claimant may need some assistance. We would not find that she failed to assist as RC did take steps to assist.

4.33 But in any event we would not find that what happened was because of disability or because of the things said to arise in consequence of disability or because the Claimant had brought a grievance or raised health and safety issues. Again it just came down to RC juggling the resources available or not available to her; as demonstrated by the fact she was able to arrange cover for the afternoons. The complaints of direct disability discrimination, discrimination arising in consequence of disability, victimisation, and health and safety detriment are not well founded and are dismissed.

VC and/or SGh commencing an investigation from 7 June 2023

4.34 VC commenced the investigation because she was asked to take on the role of investigating officer by ER. ER had been passed the complaints by AA, FUH and MC. SGh had also advised, in particular, that the email from FUH should be treated as a

grievance and investigated as it raised allegations of bullying and racism they could not ignore.

4.35 The investigation was not commenced because of the Claimant's disability or because of the thing said to arise in consequence of disability or because the Claimant had brought a grievance or raised health and safety issues. It happened because AA, FUH and MC had raised complaints or concerns about the Claimant and the Respondent considered they needed to be investigated. The complaints of direct disability discrimination, discrimination arising in consequence of disability, victimisation and health and safety detriment are not well founded and are dismissed.

VC's comments on 13 July, specifically: "you are not in control of this situation whether you have a mental health condition or not"; That the Claimant should not be in work because of her health; Stating that she would not reschedule the meeting and that "I will not be seeing you again"

4.36 We have found as a matter of fact VC did say "you are not in control of this situation whether you have a mental health condition or not." VC said it because the Claimant was saying she should be given notice of the meeting in accordance with her stress risk assessment which in turn arose in consequence of the Claimant's disability. VC said in evidence the stress risk assessment was not mentioned but we do not consider that plausible and in any event VC was aware of it. VC did not consider that measure of giving notice to be reasonable. But it was a measure that had been agreed by RC in the stress risk assessment of 9 March with the need for the stress risk assessment and for measures to be taken to reduce stress triggers arising out of the Claimant's disability and the OH recommendations.

4.37 We do not find that VC said this to the Claimant because of disability. VC did not see the Claimant as a disabled person. But we do find it was unfavourable treatment because of something arising in consequence of disability, namely the agreement to give notice of meetings that required the Claimant's participation (that VC did not agree with or did not think she needed to apply), which arose out of the Claimant's stress risk assessment and the need to identify stress triggers and the means to reduce them, which in turn arose out of the Claimant's OH report and her disability. The Respondent asserts a justification defence arguing VC's comments were a proportionate means of achieving legitimate aims of encouraging the Claimant to participate in the investigation meeting to enable the Respondent to reach a considered position; to better understand the Claimant's objections to participating in the investigation meeting; to ascertain whether additional support could be provided to facilitate participation in the investigation meeting; to explain to the Claimant the implications of her refusing to participate in the investigation meeting.

4.38 We do not find that VC's comment was a proportionate means of achieving any such legitimate aim. Whilst we understand VC's stance that she did not consider an investigation meeting under the Respondent's policy required notification, and noting as the Respondent observes the ACAS Code does not require notice of investigatory meetings; it does not mean that notice cannot be given where appropriate in the circumstances. There is a discretion. Here there was a stress risk assessment where it had been agreed the Claimant would be given advance notice of meetings that required her participation. WL also said the same thing in her grievance outcome. No doubt RC and the Claimant did not specifically have in mind disciplinary investigation meetings but the point lying behind it was, in our judgement a wider one, that unannounced visits that required the Claimant's participation could be a source of stress. VC knew that had

come out of the Claimant's stress risk assessment. We accept the Claimant would be worried about attending an investigation meeting in any circumstances and an investigation meeting would always be a source of stress, but we accept that the lack of notice added to her worry; and she had the added stress of being concerned about completing work such as medication trays as she did not know she would be called away to meet with VC. The purpose of the stress risk assessment measures, as recommended by OH was to reduce stress triggers where it could reasonably be done. The Claimant could have been encouraged to participate in the investigation meeting by the giving of notice and by arranging cover which would have reduced some of the effect on the Claimant. The giving of notice in itself would have removed the Claimant's objection to participating in the investigation meeting on that ground. VC's comment was not a means of ascertaining what additional support could be provided to facilitate participation. The implications of not participating could be explained to the Claimant without making that comment; indeed giving notice would have narrowed the field of the reasons the Claimant could have to object to participating. The comment was not justified. The complaint of discrimination arising in consequence of disability is upheld.

4.39 We do not find that the comment was made in response to the Claimant's grievance of 25 April that VC knew little about. The victimisation complaint is not well founded.

4.40 We have not found as a matter of fact that VC said the Claimant should not be in work because of her health. The complaints of direct discrimination, unfavourable treatment because of something arising in consequence of disability, victimisation and health and safety detriment are therefore not well founded and are dismissed in respect of that particular complaint.

4.41 We have found VC said she would not reschedule the meeting and words to the effect of "I will not be seeing you again." VC was annoyed and thought the Claimant was messing her around and had wasted her time. VC did not make the comment because of disability or as victimisation for a protected act such as the grievance. But we do find it was unfavourable treatment because of something arising in consequence of disability. Again, it was materially influenced by the Claimant saying she needed to have notice of such a meeting arising out of measures set out in her stress risk assessment. That arose in consequence of disability as the stress risk assessment and measures set out in that stress risk assessment came from the OH recommendations as a means to identify stress triggers that again arose out of the Claimant's disability.

4.42 We do not find that VC's comment was a proportionate means of achieving a legitimate aim. VC was speaking in anger and on her own admission was saying she had already formed a view as to the Claimant's behaviour in the workplace and was going to go off and complete the investigation without the Claimant's input. As the Claimant's subsequent email to ER showed, the Claimant was concerned that the investigation was going to proceed without her input. VC's statement was not a means by which to encourage the Claimant to participate; VC had said she had had enough and was off. It was not said to better understand the Claimant's objections to participating in the investigation meeting or whether additional support could be provided. In a sense it was said to explain the implications of refusing to participating in the investigation meeting, but it was not a proportionate means of achieving that aim. It was said in anger, with an indication that the Claimant's character and behaviour had already been judged, the Claimant would have no more chances and the investigation would proceed without the Claimant (and with the Claimant's character and behaviour already having been judged). It would be more proportionate to re-arrange the meeting giving the Claimant

notice, to tell the Claimant that at that point it was ultimately up to the Claimant whether to participate or not and, if not, that she risked the investigation reaching recommendations that did not take account of her version of events. It would be more proportionate to do that without making statements to suggest the Claimant's character and behaviour had already been judged. The complaint of discrimination arising in consequence of disability is well founded and succeeds.

4.43 In the Claimant's stress risk assessment meeting we find that she did bring to her employer's attention circumstances that she reasonably believed were potentially harmful to her health in terms of matters that may potentially trigger stress and risk exacerbating her disability, including unannounced visits that required her participation. She brought them to the Respondent's attention by reasonable means as it is reasonable to raise them at a stress risk assessment meeting. It was not argued that there was a representative or safety committee at which they should be raised, and indeed it would be odd to raise a personalised issue in that way. So we would find it was not reasonably practicable to raise the matter by those means if indeed they existed. We find that VC's comments that the Claimant was not in control of the situation even if she did have a mental health condition, and that VC would not reschedule the meeting and would not be seeing the Claimant again, subjected the Claimant to a detriment. It was reasonable to feel upset and worried by the comments. The comments were done on the ground that the Claimant had brought to the Respondent's attention circumstances she reasonably believed were harmful to her health. VC was dismissing the Claimant's assertion that the stress risk assessment meant she should be given notice. The health and safety detriment complaints in that regard succeed and are closely allied to the unfavourable treatment because of something arising in consequence of disability complaints in terms of analysis.

Conducting meetings without notice

4.44 The Claimant also brings a complaint of failure to make reasonable adjustments relating to 13 July. It is said the Respondent applied a PCP that investigation and/or management meetings should be conducted without notice.

4.45 There was no management meeting on the 13 July 2023 which is the pleaded date of the allegation. But in any event in relation to the management meeting with JL and SGh on 18 July the Claimant was given notice of it. She complains that JL and SGh then attended her branch without notice but that was because the Claimant had not attended at Clare Road or made any contact with them about it; she had notice of the management meeting itself.

4.46 Turning to the investigation meeting on 13 July, the Respondent accepts that it did conduct investigation meetings without notice but denies this PCP was applied to the Claimant on 13 July on the basis that the meeting was not conducted as the Claimant refused to participate to the extent VC could not even explain why she was there, and VC did not force the Claimant to have the meeting. It is said the meeting did not start.

4.47 We consider that is an over analytical approach to the complaint. VC attended at the branch and attempted to hold the investigation meeting with the Claimant and in the process of doing so was applying to the Claimant the practice of holding investigation meetings without notice to the extent there were various discussions about it and two phone calls with ER.

4.48 It is said the Claimant was put at a substantial disadvantage in that she found the investigation meeting stressful and her disability is exacerbated by stress. We accept

that the attendance for the investigation meeting without notice did cause the Claimant stress over and above the stress that would inherently be caused by an investigation meeting in itself, and that additional stress risks exacerbating her disability. On the facts as found it was not the case that VC simply politely left the branch. The reference in the stress risk assessment to unannounced pharmacy visits by the AOM was a reference to visits monitoring the branch as a whole and its functioning and were not about holding meetings that required participation away from duties. The Respondent knew or reasonably could be expected to know of the disadvantage. It had been agreed at the stress risk assessment the Claimant would have advance notice of meetings where she was required to participate as a means to help her manage stress. VC knew RC could not go in unannounced under the stress risk assessment terms. Whilst VC had not been directed by ER to give notice, it should have been reasonably evident to the Respondent with its corporate knowledge that this kind of meeting was likely to cause stress and was one where the Claimant should be given notice to try to help her to effectively participate. SGh acknowledged in evidence that with the benefit of hindsight it would have been reasonable to give the Claimant notice. VC did not agree.

4.49 We find the Respondent did fail to take reasonable steps to avoid the disadvantage. It was reasonable to give the Claimant reasonable notice of the meeting bearing in mind the agreement reached in the stress risk assessment. As the Claimant observes others were also given notification of meetings: for example WL gave some notice to SGh and RC because she needed to arrange a meeting time and date with them. By itself such a measure would have reduced some of the additional stress on the Claimant. We would accept it may not have been reasonable to give the Claimant full notification of the allegations in advance; some of them were serious and we accept there can at that early investigation stage be a risk of an individual taking steps to contact witnesses and the like. But we do consider, and here we relied on the Tribunal's industrial experience in this regard, that it would have been reasonable to give the Claimant a broad outline in the sense of being told, for example, that there were complaints about her relationship with colleagues, the way she interacted with others and that they wanted to find out some facts about that. It would have given the Claimant some grounding. Accepting that in any circumstances the Claimant would inevitably find an investigation meeting stressful these measures would have helped give the best prospect of effective participation by the Claimant and reduce the prospect of additional stress being caused over and above that inherently involved in an investigation process. That the Respondent ultimately did not continue with the meeting on 13 July and re-scheduled it to 18 July does not, in our judgement, mean the Respondent took reasonable steps to avoid the disadvantage. The Claimant had been caused additional stress by what happened on that day including the lack of notice and then the way VC spoke to the Claimant about giving notice.

The Claimant's suspension on 18 July 2023

4.50 On our findings of fact SGh suspended the Claimant because she refused to return to the meeting and there were matters he considered that were essential to talk through with her including the complaints against RC, the outstanding risk assessment and so there was a functioning management chain relationship going forward. It was to exercise control to get the Claimant to co-operate and a smaller part of that was to give the Claimant time to prepare. SGh accepted in evidence that he had been told of the Claimant's diagnosis about 9 years earlier but that he had not thought of it in 2023 until it was mentioned at the face to face meeting with the Claimant on 18 July. We do not find that SGh suspended the Claimant because she was a Claimant was a disabled person;

we find SGh would have acted in the same way if faced with a non-disabled employee in the same situation as the Claimant.

4.51 In our judgement, SGh also did not suspend the Claimant because of what she said to RC on the 27 February, 9 March, 27 March, 28 March, 26 April, 28 April, 1 May, 2 May, or 13 July, or because the Claimant raised limitations and a need for support in a grievance of 25 April or 18 July or an Acas notification of 16 July. It was also not because of the Claimant raising equivalent health and safety matters. SGh also did not do it by way of victimisation for any protected act done by the Claimant. He did it for the reasons we have already identified. The complaints of direct discrimination, victimisation and trade union detriment are not well founded and are dismissed.

4.52 SGh also did not suspend the Claimant because of the Claimant's conduct on 18 July 2023 in failing to attend the meeting with VC; SGh had already spoken to the Claimant about that and had not been intending to suspend the Claimant; the disciplinary investigation process that VC had already been undertaking was going to have to develop separately ultimately whether or not the Claimant ultimately participated. What drove SGh to the suspension was the Claimant's refusal to discuss with SGh and JL the management matters they wanted to discuss and resolve with her and were trying to call her back into a meeting to discuss and which the Claimant, in our judgement, flatly refused to do. The Claimant's own conduct towards SGh and JL that day is not pleaded as one of the matters said to be arising in consequence of disability. The complaint of unfavourable treatment because of something arising in consequence of disability is not well founded and is dismissed.

Any grievances pursued by any colleague of the Claimant which prompted the investigation commenced on 7 June and the Claimant's suspension on 18 July 2023

4.53 We do not consider that the Claimant had shown a prima facie case that the complaints by AA, FUH and MC was made because of the Claimant's disability. There is nothing to say that they knew or why they would be motivated by disability to do so, rather than being motivated by the relationship breakdowns their complaints were evidencing. As the Respondent says, there is no good evidence that these colleagues knew the Claimant was disabled. The Claimant's evidence was that they may have been aware that she had a health condition but it was not that they knew the impact on the Claimant in terms of day to day functioning and it is inherently unlikely the Claimant shared such detail with them as she is a private individual.

4.54 Likewise there is not a prima facie case that AA, FUH and MC raised complaints to victimise the Claimant for bringing her grievance of 25 April 2023. Mr Puar referred to these as being "counter complaints" but in our judgement there is no evidence that they intended them to be some form of counter to the Claimant's grievance or that they knew about it. On the face of it they were reactions to specific incidents involving the Claimant such as the Claimant's phone calls with AA, the treatment of SG which causes FUH to in our judgement understandably complain, and the incident with MC. Indeed the Claimant's grievance did not even refer to MC. WL had also not spoken to AA, FUH and MC in her investigation.

4.55 We also do not find the Claimant has shown a prima facie case that the complaints by AA, FUH and MC happened because the Claimant raised issues as to her limitations resulting from her disability and her need for support with RC on 27 February, 9 March, 27 March, 28 March, 26 April, 28 April, 1 May, or 2 May or in her grievance of 25 April 2023. There is nothing to show that the colleague complaints were borne of the Claimant

asking for support via RC rather than being the way in which the Claimant was directly interacting with AA, MC and SG. The complaints of direct discrimination, discrimination arising in consequence of disability, victimisation and health and safety detriment are not well founded and are dismissed.

Not permitting Employees to be Accompanied by their Relative

4.56 There is a dispute as to whether the Respondent applied a PCP of not allowing employees to be accompanied by a relative at management meetings and/or investigation meetings. The Claimant says this was applied to her when she was not permitted to be accompanied by her mother to the meeting on 2 August 2023. That was a management meeting not an investigation meeting.

4.57 We considered that there probably was a PCP that was applied to the Claimant; she was told that in general relatives would not be allowed to attend these kinds of meetings. It was likely to be applied to her again or others in similar circumstances.

4.58 The Claimant says the PCP was to her substantial disadvantage because she found such meetings stressful and stress aggravated her disability compared to individuals who do not share her disability. We do not find that the Claimant was put to a substantial disadvantage; the Claimant attended and in our judgement the meeting went well. The Claimant said she did not require mediation with SGh as the relationship had not been harmed. She was able to hear from SGh as to her complaints about RC and discuss those with him and agree future ways of working with SGh. The part where the Claimant wanted her mother to attend was the stress risk assessment. The Claimant had undertaken stress risk assessments before with RC and other managers without needing to be accompanied. The Claimant was, in our judgement, able to successfully review her stress risk assessment with SGh, and as already stated, agree with him ways of working and plan for her return to work. It was a successful exchange and agreement that day between the Claimant and SGh. There is no evidence it stopped the Claimant participating to the best of her ability. It was a management meeting amongst professionals about a return to work and ways of working where feasible to reduce stressors. The Claimant is a professional individual. The meeting did not require the attendance of her mother/ a carer. The complaint is not well founded and is dismissed.

SGh directing that the Claimant's two new staff would be trained initially in another branch on 2 August 2023

4.59 SGh had initially arranged this as he was trying to be supportive to the Claimant on her return to work and there were processes in place via "Tracey" where training off site could be arranged. When the Claimant said she wanted to train the new staff in branch SGh readily changed the plan to accommodate that. We do not consider that this amounts to unfavourable/less favourable/detrimental treatment. A reasonable employee standing in the Claimant's shoes would not consider it as such. The complaints of direct discrimination, discrimination arising in consequence of disability, victimisation and health and safety detriment are not well founded and are dismissed.

The Claimant's final written warning issued on 11 October 2023 which will be retained on her file for a period of 12 months from that date

4.60 By the time of closing submissions this complaint was not pursued and the complaints of direct discrimination, victimisation, discrimination because of something arising in consequence of disability, and health and safety detriment in relation to this are therefore dismissed.

Summary of findings and time limits

4.61 We have found there was a failure to make reasonable adjustments on 27 March 2023 when the Claimant was required to work behind closed doors, and V a failure to make reasonable adjustments on 13 July relating to calling the Claimant to an investigation meeting without notice. We have also found that some of VC's comments on 13 July were discrimination because of something arising in consequence of disability and health and safety detriment. All of these complaints were all presented in time as the Claimant entered Acas early conciliation on 16 June. Early conciliation ended on 28 July and the ET1 was presented on 25 August 2023. These particular complaints are therefore well founded and upheld.

5. Next steps

5.1 The successful complaints will be listed for a remedy hearing if the parties are unable to agree terms. Employment Judge Harfield will issue separate remedy case management orders. The Claimant's schedule of loss seeks an uplift for alleged failure to comply with the Acas Code. The Tribunal have not made any findings in this regard as it was not addressed with us at the liability hearing and to the extent it is relevant it will need to be addressed at the remedy hearing (along with all other relevant remedy issues).

Appendix – List of Issues

Disability Discrimination

1. The Respondent accepts that the Claimant was disabled by virtue of suffering with systemic lupus erythematosus ("SLE"). The Respondent accepts that it had knowledge that the Claimant was disabled at the material times.

Direct Disability Discrimination (s.13 EqA)

2. Did the following acts or omissions take place as described by the Claimant:

a) Rebecca Cheng, Area Operations Manager, and/or Sam Ghafar, Regional Manager, refusing or in any event failing to make staff available to the Claimant's branch on 27 February 2023 and 27 March 2023 [38.1];

b) Ms Cheng requiring the Claimant to phone other branches to send staff cover on 26 February 2023 [6]

c) Ms Cheng refusing to assist with recruitment for the Claimant's branch vacancy from 12 April 2023 [38.2];

d) Ms Cheng redeploying the Claimant's staff member, Sadiah without consultation with the Claimant on 23 March 2023 [38.3];

e) Ms Cheng requiring the Claimant to send one of her staff members to another branch on 25 April 2023 [38.3];

f) Ms Cheng failing to respond to the Claimant's request for trained staff between 26 April 2023 and 2 May 2023 [38.4];

g) Ms Cheng requiring the Claimant to liaise with neighbouring branches to send staff cover on 2 May 2023 [23]

h) Ms Cheng failing to assist with arranging staff cover on 8 May 2023 for 9:00 – 9:30 on 11 May 2023 and 12 May 2023 [38.4];

- i) Vicky Carter, Area Operations Manager, and/or Mr Ghafar commencing an investigation from 07 June 2023 [38.5];
- j) Ms Carter's comments to the Claimant on 13 July 2023 [38.5], specifically:
- i. "you are not in control of this situation whether you have a mental health condition or not" [26];
 - ii. that the Claimant should not be in work because of her health [26];
 - iii. stating that she would not reschedule the meeting and that "I will not be seeing you again" [26].
- k) The Claimant's suspension on 18 July 2023 [38.5];
- l) Any grievances pursued by any colleague of the Claimant which prompted the investigation commenced on 07 June 2023 and the Claimant's suspension on 18 July 2023 [38.6]; and
- m) Mr Ghafar directing that the Claimant's two new staff would be trained initially in another branch, on 2 August 2023 [38.7].
- n) The Claimant's final written warning issued on 11 October 2023 which will be retained on her file for a period of 12 months from that date [38.8]

3. If any of the acts or omissions at paragraph 2 did take place, did the Respondent treat the Claimant less favourably than they treated Ahsia Amed, Pharmacy Branch Manager, and Farrat Ahmed, Pharmacy Branch Manager, or, alternatively, would have treated a hypothetical comparator. If so, was any less favourable treatment because of the Claimant's disability.

Discrimination Arising from Disability (s.15 EqA)

4. Did the acts or omissions set out at paragraph 2 (excluding 2(b) which was allowed as an amendment on 19 March 2023 as only a claim of direct disability discrimination) of this list of issues, and / [or the Respondent issuing the Claimant with a final warning on 11 October 2023], take place as described by the Claimant?
5. If so, did this amount to unfavourable treatment?
6. Did the following matters arise in consequence of the Claimant's disability:
- a. The Claimant raising issues as to her limitations resulting from her disability and her need for support in relation to the same, in particular:
 - i. with Ms Cheng on 27 February 2023 [7], 9 March 2023 [8], 27 March 2023 [10-11], and 28 March 2023 [13], 26 April 2023 [21], 28 April 2023 [21], 1 May 2023 [22], 2 May 2023 [23], and 13 July 2023 [26];
 - ii. by her grievance on 25 April 2023 [20];
 - iii. by her ACAS notification on 16 June 2023 [25]; and / or
 - iv. by her second grievance on 18 July 2023 [27]; and / or
 - b. the Claimant's conduct on 18 July 2023 in failing to attend a meeting with Ms Carter [37.2]
7. If so, did the Respondent treat the Claimant unfavourably because of something arising in consequence of the Claimant's disability?

8. To the extent that the Tribunal finds that the above events took place, can the Respondent show that the treatment of the Claimant was a proportionate means of achieving a legitimate aim? The legitimate aims relied upon by the Respondent are:

In respect of refusing / failing to make staff available to the 180 City Road branch and requiring the Claimant to liaise with neighbouring branches to send staff cover [Paragraph 2(a), 2(c), 2(f), 2(g) and 2(h) of the List of Issues]:

a) To ensure that decisions and actions regarding resourcing arrangements for staff cover are taken at the appropriate level and applied consistently.

In respect of sending staff from the 180 City Road branch to other branches and requiring the Claimant to liaise with neighbouring branches to send staff cover [Paragraphs 2(d), 2(e) and 2(g) of the List of Issues]:

b) To ensure that the Respondent's branches in the area (and more generally) are adequately staffed;

c) To ensure patient safety is maintained at those branches by appropriate resourcing; and/or

d) To ensure the Respondent's branches have sufficient staff to remain operational.

In respect of the grievance investigation undertaken by Vicky Carter [Paragraph 2(i) of the List of Issues]:

e) To provide employees with the opportunity and a formal procedure for raising matters of concern;

f) To ensure that the Respondent's grievance policy is applied fairly and consistently; and/or

g) To ensure that grievances are fully and fairly investigated.

In respect of the comments alleged to have been made by Vicky Carter [Paragraph 2(j) of the List of Issues]:

h) To encourage the Claimant to participate in the investigation meeting to enable the Respondent to reach a considered position;

i) To better understand the Claimant's objections to participating in the investigation meeting;

j) To ascertain whether additional support could be provided to facilitate participation in the investigation meeting; and/or

k) To explain to the Claimant the implications of her refusing to participate in the investigation meeting;

In respect of the Claimant's suspension on 18 July 2023 [Paragraph 2(k) of the List of Issues]:

l) To permit a fair investigation into the Claimant's conduct to take place; and/or

m) To ensure that the Respondent's disciplinary policy was applied fairly and consistently;

In respect of the grievances raised regarding the Claimant [Paragraph 2(l) of the List of Issues]:

- n) To encourage transparency; and/or
- o) To encourage employees to raise issues of concern for investigation;

In respect of Mr Ghafar's direction that two new staff would be training initially at another branch [Paragraph 2(m) of the List of Issues]:

- p) To ensure appropriate training was provided and received;

In respect of the final written warning [Paragraph 2(n) of the List of Issues]:

- q) To ensure misconduct by its employees is addressed; and/or
- r) To ensure the Respondent takes a fair and consistent approach to conduct issues across the business.

Failure to Make Reasonable Adjustments (s.20 EqA)

Working Behind Closed Doors

9. Did the Respondent apply a provision, criterion or practice ("PCP") of requiring branch managers to work behind closed doors if staff availability was such that they would be working alone? The Claimant contends that she was required to work behind closed doors on 27 February 2023, 27 March 2023, and 2 May 2023 [33].

10. Did that PCP put the Claimant at a substantial disadvantage in comparison to persons who were not disabled? The Claimant contends that she was put at a substantial disadvantage because she was required to lock and unlock the doors to attend to patients, which she found painful [33.1].

11. Did the Respondent know, or could it reasonable have been expected to know, that the Claimant was likely to be placed at that disadvantage? [33.2]

12. If so, did the Respondent fail to take such steps as were reasonable to avoid the disadvantage? The Claimant contends that it would have been reasonable for the Respondent to:

- a) maintain staffing levels so that the Claimant would not be required to work behind closed doors;
- b) identify another branch that would go understaffed and work behind closed doors; and/or
- c) allow the Claimant to close the branch in the event that she would have to work alone, at least until (a) could be achieved [33.3].
- d) Ensure that, should the Claimant be required to work alone, the safety of such an arrangement is demonstrated by initially completing a lone worker risk assessment [33.3]

Training Staff

13. It is admitted that the Respondent applied a PCP of requiring branch managers, including the Claimant to be responsible for the training of staff. The Claimant contends that she was required to work with an untrained staff member on 25 April 2023 and 2 May 2023 [34].

14. Did that PCP put the Claimant at a substantial disadvantage in comparison to persons who were not disabled? The Claimant contends that she was put at a disadvantage because she found this responsibility stressful and it aggravated her disability [34.1].

15. If so, did the Respondent know, or could it reasonable have been expected to know, that the Claimant was likely to be placed at that disadvantage? [34.2]

16. If so, did the Respondent fail to take such steps as were reasonable to avoid the disadvantage? The Claimant asserts that it would have been reasonable for the Respondent to:

a) assist the Claimant with the training of staff;

b) recruit staff who were already trained [34.3];

c) substitute an untrained staff member with one who already knows company policy and procedure; or,

d) not request that newly appointed and inexperienced staff members are sent to the Claimant's branch as staff cover.

Not Permitting Employees to be Accompanied by their Relative

17. Did the Respondent apply a PCP of not allowing employees to be accompanied by a relative at management meetings, and/or investigation meetings? The Claimant contends that she was not permitted to be accompanied by her mother to a meeting with the Respondent on 2 August 2023 [35].

18. Did that PCP put the Claimant at a substantial disadvantage in comparison to persons who were not disabled? The Claimant contends that she was put at a disadvantage because she found such meetings stressful and that stress aggravated her disability [35.1].

19. If so, did the Respondent know, or could it reasonable have been expected to know, that the Claimant was likely to be placed at that disadvantage? [35.2]

20. If so, did the Respondent fail to take such steps as were reasonable to avoid the disadvantage? The Claimant asserts that it would have been reasonable for the Respondent to allow the Claimant to be accompanied at the meeting on 2 August 2023 [35.3].

Conducting Meetings without Notice

21. Did the Respondent apply the PCP that investigation and/or management meetings should be conducted without notice? The Claimant contends this was applied to her on 13 July 2023 [36].

22. Did that PCP put the Claimant at a substantial disadvantage in comparison to persons who were not disabled? The Claimant contends that she was put at a disadvantage in that she found the investigation meeting stressful and that her disability is exacerbated by stress [36.1].

23. If so, did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at that disadvantage [36.2]?

24. If so, did the Respondent fail to take such steps as were reasonable to avoid the disadvantage? The Claimant asserts that it would have been reasonable for the Respondent to:

- a) conduct management and/or investigation meetings following the giving of reasonable notice to the Claimant [36.3];
- b) provide the Claimant with an advance outline of allegations under investigation. The Claimant contends that they were previously addressed and investigated as part of the grievance outcome on 26 May 2023.

Victimisation (s.27 EqA)

25. The Respondent admits that the following were protected acts:

- a) the Claimant's grievance of 25 April 2023 [20];
- b) the Early Conciliation notification on 16 June 2023 [25]; and,
- c) the Claimant's grievance on 18 July 2023 [27].

26. Did the conduct alleged by the Claimant at paragraphs 2(e)-(n) above take place as described by the Claimant? [38.4-38.7]

27. If so, did the conduct amount to a detriment?

28. If so, was the conduct because of one or more of the protected acts?

Health and Safety Detriment (s.44 Employment Rights Act 1996 ("ERA"))

29. Did the Claimant bring to the Respondent's attention, by reasonable means, circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health and safety, on the occasions particularised at paragraph 6, above, and in addition on 26 April 2023 and 1 May 2023 in relation to the safety risk presented by a new starter working with the Claimant alone in branch [21-22, 44].

30. If so, to the extent they took place, did the conduct set out at paragraph 2 (excluding 2(b) which was allowed as an amendment on 19 March 2023 as only a claim of disability discrimination) amount to detrimental treatment?

31. If so, was the detrimental treatment on the grounds of the health and safety action particularised at paragraph 29 above?

Remedy

32. If the Tribunal upholds any of the allegations of discrimination, victimisation and/or detriment took place, to what compensation is the Claimant entitled under s.124 EqA / s.44ERA?

Employment Judge R Harfield

21 October 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 22 October 2024

FOR EMPLOYMENT TRIBUNALS Mr N Roche

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