Case No: 2402779/2024
2404951/2024

EMPLOYMENT TRIBUNALS

Claimant: Ms L Young

Respondent: Manchester City Council

Heard at: Manchester Employment Tribunal (partly by CVP)

On: 12, 13, 14, 15, 18 and 19 May 2026
21 and 22 September 2026
23 September 2026 (in chambers)

Before: Employment Judge Dunlop

Representation

Claimant: Mr N Roberts (Counsel)
Respondent: Ms A McColgan KC

JUDGMENT

1. The claimant's complaint of direct discrimination on grounds of religion or belief is upheld in part. Specifically, the respondent discriminated against the claimant by:
   (a) Subjecting her to the detriments set out in paragraphs 6(a) (in relation to Sarah Herdan only), 6(b), 6(c), 6(e), 6(f), 6(h), 6(i) and 6(j) of the List of Issues.
   (b) Subjecting her to the detriment set out in paragraph 8(b) of the List of Issues.
   (c) Dismissing her.

2. The claimant's complaint of direct discrimination is not upheld in respect of the other alleged detriments, namely 6(a) (in relation to Adiba Sultan), 6(d), 6(g) and 8(a).

3. The claimant's complaint of harassment on the grounds of religion or belief is not upheld.

4. The claimant's complaint of failure to make reasonable adjustments is upheld in respect of PCP 2 in the List of Issues. The complaint in respect of PCP1 was not pursued and is therefore dismissed.

5. The claimant's complaint of discrimination arising from disability (s.15) is upheld in part. Specifically, the respondent discriminated against the claimant by:
   (d) Subjecting her to unfavourable treatment as set out in paragraphs 6(e), 6(h), 6(i) and 6(j) of the List of Issues.
   (e) Subjecting her to the unfavourable treatment set out in paragraph 8(b) of the List of Issues.
   (f) Dismissing her.

6. The claimant's complaint of discrimination arising from disability is not upheld in respect of the other alleged detriments pursued as part of this complaint, namely 6(d), 6(g) and 8(a), it is also not upheld in respect of the complaint about reduction of sick pay.

7. The claimant's complaint of harassment on the grounds of disability is upheld in part. Specifically, the respondent's actions in sending the letter identified at 6(h) in the list of issues was harassment on grounds of disability. Issues 6(i), 17 and the letter of dismissal are not found to be acts of harassment.

8. The claimant's complaint of unfair dismissal is upheld.

9. Compensation, if not agreed between the parties, will be determined at a remedy hearing to be held on a date yet to be confirmed.

REASONS

Introduction

1. The claimant, Lorna Young, was formerly employed within the respondent council's Equality, Diversity and Inclusion (EDI) team until she was dismissed from employment on 6 June 2024. The claims are in respect of alleged unfair dismissal, discrimination and harassment arising out of beliefs that she asserts are protected. Those beliefs, broadly, relate to her "gender critical" viewpoint. The claimant is disabled and there are ancillary complaints of disability discrimination.

The Hearing

2. The Tribunal received an agreed bundle in two volumes, the first reaching 2077 pages and the second of 869 pages. In addition, there was a 253-page bundle of witness statements.

3. I had been able to pre-read the majority of the witness statements, including the documents referred to within them, such that we were able to commence evidence on the first day of the hearing after a short housekeeping discussion.

4. Ms Young gave evidence on day 1, day 2 (which was a short sitting day) and on the morning of day 3.

5. The following people gave evidence on behalf of the respondent during the May portion of the hearing:
   (a) Jo Johnston (afternoon of day 3, morning of day 4)
   (b) Hella Dominguez-Monry, HR Specialist (afternoon of day 4)
   (c) Alice Mazeika-Rimmer, HR Business Partner (afternoon of day 4)
   (d) Sarah Narici (morning/afternoon of day 5)
   (e) Sharmila Kar (afternoon of day 5)
   (f) Angela Harrington (day 6)

6. I adjourned the hearing at the end of day 6, due to the non-availability of the respondent's final witness, Jenny Osborne, due to illness. During the first tranche of the hearing there had been further disclosure by the respondent, in a piecemeal fashion, of large numbers of additional documents. I directed that a consolidated bundle of additional disclosure be produced following the adjournment. The resulting bundle was 307 pages long. Many of these documents were clearly relevant to the issues in the case. I find the nature and extent of this late-disclosure deeply concerning, particularly given the status of this respondent as a large local government body, and given the involvement of the respondent's in-house legal team from a relatively early date in the events giving rise to the claims.

7. Although the reconvened hearing was planned to be in person, it was subsequently converted to CVP due to building works taking place at Manchester ET. Ms Osborne's evidence was concluded on the morning of 21 September 2026 (day 7). Both Mr Roberts and Ms McColgan took time to finalise their extensive written submissions (Ms McColgan's amounting to 80 pages and Mr Roberts' to 59 pages in addition to his 30-page written opening). In addition, both made brief oral submissions, largely responding to points raised by their opposing number. I told the parties I would reserve the decision and produce a full written Judgment.

Terminology

8. I adopt the following terminology which is based on that set out in Mr Roberts' opening and used (without controversy) throughout the hearing:
   8.1 "Gender critical beliefs": a set of beliefs including the belief that biological sex is real, that it is important, that a person cannot change their biological sex, that sex is not to be conflated with gender identity, and that it is biological sex that determines whether someone is a man or a woman.
   8.2 "Gender identity theory beliefs": a set of beliefs including the belief that that a person's gender identity determines whether they are a woman or a man, and that biological sex is either not real, or at least unimportant compared to gender identity and/or that it can be changed by way of gender identity/medical treatment. Gender identity theory beliefs are encapsulated in the belief that "trans women are women and trans men are men".

8.3 "The trans debate": refers to the dispute conducted between people holding these opposing viewpoints, often online and often (though not always) in forceful and abusive terms.

9. I also note that the social media platform 'Twitter' rebranded to 'X' in July 2023, partway through the events in this case. I refer, as the parties did, to 'Twitter' throughout this Judgment and to posts made on the platform as 'tweets'.

The Issues

10. I was assisted by an agreed List of Issues which was refined by the representatives through the course of the hearing. I have appended the final version of the List of Issues to this Judgment.

Findings of Fact

11. In this case there is relatively little disagreement about the things that happened. In simple terms the disagreement revolves around the reasons for the things that happened, and the lawfulness of the respondent's actions. Unfortunately, to understand the matters which are contested it is also necessary to understand the factual background and context in some depth. For that reason, this section of the Judgment will be lengthy, although relatively little of it was contested. My conclusions about the reasons things happened, and whether or not they should have happened, are for the most part set out in a later section of the Judgment.

The claimant

12. Ms Young is a woman in her fifties; she was brought up as a practising Catholic and has remained one through her life. Her faith is important to her. Sadly, Ms Young has experienced serious physical ill-health throughout her life, she has a number of health conditions which were not directly relevant to her claim. It is material that she was assessed as being a high-risk individual during the covid pandemic and advised to shield at home. She lives alone, and has struggled with social isolation.

13. In terms of health conditions which are directly relevant, the first is Ms Young's eye condition. In fact, Ms Young does not have one diagnosed eye condition, but rather a history of eye problems including retinal holes and tears, ulcers, herpes virus, frequent painful eye infections and episodes of episcleritis and blepharitis, which I will refer to as "her eye condition" for simplicity. The effect of her eye condition varies, but it affects her ability to read and use screens. On a good day she can read or work on a screen for up to around three hours (with breaks), on a bad day she might only manage 30 minutes, or even no time at all, before pain and blurred vision make it very difficult to continue. Ms Young has had surgery to attempt to insert devices called punctal plugs to help with her eye problems. This has helped, but the plugs have subsequently fallen out and had to be re-inserted. The respondent accepts that Ms Young was disabled by reason of her eye condition at all material times.

14. The second health condition which is directly relevant to these proceedings is depression and anxiety, which has been treated, for the purposes of the proceedings, as one cumulative mental health impairment. The respondent has also admitted that this condition amounted to a disability at all material times. I will say more about Ms Young's mental health within the chronological narrative set out below.

15. Ms Young commenced working for the council in a temporary role in 2005 and moved to a permanent role in 2006. She had had a chequered employment history prior to that date, caused in part by her health difficulties. The sense of permanence and career stability she attained at the council was very important to her. That was all the more so during, and following, covid, when her work provided much of her social contact, albeit remotely.

16. From 2009 to 2014 Ms Young was Chair of the Council's Disabled Employee's Network, alongside her substantive role. This led her to move into the field of Equality, Diversity and Inclusion (EDI), and she was appointed as a Grade 8 Specialist in the EDI team in 2017. Prior to that, she had worked in a number of roles across different Council functions.

17. As an EDI Specialist, Ms Young worked in a team, reporting to Keiran Barnes. She had no direct reports. In September 2021, Ms Young was promoted to the EDI Team Manager role. This was a Grade 10 role, and her first management role. Again, I will say more about this below.

18. Ms Young holds the following beliefs, which are agreed to be protected beliefs within the meaning of the Equality Act 2010 and in line with the **Grainger** criteria:

    (a) Her Catholic faith
    (b) Her gender-critical beliefs, specifically that biological sex is real, that it is important, that a person cannot change their biological sex, that sex is not to be conflated with gender identity, and that it is biological sex that determines whether someone is a man or a woman.
    (c) Her surrogacy beliefs, specifically that surrogacy is wrong and akin to human trafficking (although not disputed, this belief has not proven to be relevant to these proceedings)

19. Additionally, Ms Young holds a belief that gender identity theory is dangerous and has caused serious social harm. Whilst the respondent accepts that Ms Young holds this belief, it does not accept that it is a protected belief under s10 Equality Act 2010. The respondent asserts that Ms Young's anti-gender identity theory belief does not meet the **Grainger** criteria. (I have used the prefix 'anti' when speaking of Ms Young's belief to avoid potential confusion.)

20. As Ms Young explains in her witness statement, she feels she has always held these beliefs, but found no cause to interrogate or articulate them until she moved into her EDI role. As well as working in a role concerned with protected groups and the proper meaning and scope of equality and inclusivity, the timing of her move into this role coincided broadly with a

wider public awareness of trans people in society and a fierce debate, particularly in online forums, between proponents of gender identity theory beliefs and gender critical beliefs.

21. Ms Young's statement included evidence (which was not challenged) about circumstances in her past which she believes gave rise to her holding these beliefs, and them being particularly important to her. I have not set these out in this Judgment because I do not consider that scrutiny of Ms Young's reasons for holding her beliefs is necessary in order for me to determine the issues before me.

The respondent

22. Manchester City Council's status and purpose is self-explanatory. It is worth stating that, of course, "the council" comprises both an elected chamber of volunteer councillors and a much larger group of employed local government officers.

Appointment to Manager Role and formation of EDI Team – September 2021 – February 2022

23. As noted above, Ms Young was appointed as EDI Manager in September 2021. The EDI function comprised one Manager and four Specialists. Each Specialist was to lead on at least one of the Equality Act 2010 protected characteristics, whilst also developing an ability to advise in relation to the other characteristics. The work of the team was inward-facing and involved completing equality impact assessments for work done (or proposed) by other teams within the council and producing reports of various types. Around the time that Ms Young took over as manager, work arising from the council's responsibilities under the Armed Forces Covenant was added to the EDI portfolio and there was to be another team member recruited to specialise in work relating to veterans.

24. Ms Young took up the post in circumstances that were challenging for several reasons:

    (a) This was Ms Young's first managerial role;
    (b) She had a new line manager, Jo Johnston, and they had not worked together previously;
    (c) The team was not stable, there were vacancies for the Armed Forces specialist and two of the EDI specialists;
    (d) Covid restrictions remained in force at that point, and Ms Young was working fully remotely.

25. The only existing Specialist on the team was Sofia Higgins, a colleague with whom Ms Young had, at one stage, been friendly.

26. In November 2021 Sofia Higgins had made a complaint about Ms Young, alleging bullying. Ms Johnston conducted an investigation and concluded that some of Ms Young's behaviours fell below the expectations of a manager, but that the claim of bullying was not substantiated. There was to

be a mediation, and Ms Young was to receive some further support as a new manager. There is no evidence that that ever happened.

27. Ms Higgins left the council's employment in March 2022.

28. The first newcomer to join the team, was Adiba Sultan in December 2021. She had been an unsuccessful external applicant for the Grade 10 Manager role and was offered a Grade 8 Specialist role within the team instead. Ms Young was obviously not involved in Ms Sultan's recruitment, as she herself had been a candidate in the same exercise, but she was to be Ms Sultan's manager. Ms Sultan was to lead on the portfolios of Race and Women.

29. Alfie Hewitt was recruited to the Armed Forces Specialist Role in January 2022. Sarah Herdan was recruited as a Grade 8 Specialist to lead on the portfolios of Disability and Age in early February 2022. Ms Young was part of the panel for both of those recruitment decisions.

30. Ms Young was managing her team remotely. She never met Sarah Herdan in person, met Alfie Hewitt once and Adiba Sultan twice. Contact would take place through a mixture of virtual team meetings, virtual 1:1 meetings, written 'Chat' in MS Teams, emails and calls. Virtual meetings would happen no more than 2-3 times per week.

31. I am not criticising Ms Young or anyone else for the fact she was working remotely and the circumstances that she found herself in. Nonetheless, it will be apparent that these are difficult circumstances for anyone to take up their first managerial role, and circumstances which potentially lend themselves to misunderstandings and miscommunication.

The Trans Rights Are Human Rights ("TRAHR") motion – February 2022

32. On 2 February 2022 the elected council unanimously passed a motion called "Trans Rights Are Human Rights". The text of the motion included the following material content:

    We believe that trans women are women, trans men are men and non-binary individuals are non-binary…

    ….Decision:

    1. Affirm trans men are men, trans women are women, non-binary people are non-binary and trans rights are human rights…

    5. Conduct an audit of Council services to ensure they are as accessible as possible to trans and non-binary people.

    6. Look into what we can do as a Council as an employer to further support those who identify as trans and non-binary….

33. The political motion was adopted by the respondent's executive arm as an organisational philosophy of the council. The council placed on its website a statement of "Our commitment to being a trans and non-binary inclusive

workplace" (the "Workplace Statement"). The date of the publication of the Workplace Statement was not identified in evidence, but the statement itself is referred to in various documents I will come to describe later. The wording of the statement is:

We are a trans and non-binary inclusive workplace

We have made a commitment to being an inclusive workplace, which means we will always protect and support trans and non-binary people as equal members of staff. And we will enable trans and non-binary people to thrive both in the workplace and in our communities.

We recognise that trans women are women, trans men are men and non-binary individuals are non-binary. This includes adopting an inclusive way of working in how the Council commissions and delivers services that meet the needs of our trans population.

Manchester is a place that celebrates diversity, and we are a place that has always been at the forefront of LGBTQ+ equality.

We believe our different communities can make our city stronger and the Our Manchester strategy has enshrined our commitment to creating a progressive and equitable city.

This means supporting all our residents to thrive as a truly equal and inclusive place to live.

34. The effect of the Motion and the Workplace Statement is that the council, as a corporate body, had adopted a particular view on the question of trans inclusion. Many people, in Manchester and elsewhere, strongly agree with this view. Others, including Ms Young, profoundly disagree with it. There was a flavour to some of the questions asked by Mr Roberts and, separately, to some responses given by Ms Young, which seemed to imply that the council was wrong to adopt that position. Mr Roberts, in his written closing, stated that "[t]he legality of a public body doing so is a matter of major legal dispute". That is not a dispute which it is necessary for me to engage with in order to determine this case, nor do I have any intention of doing so.

35. Standing back, however, it is far from unusual for organisations of various types to adopt a corporate position which others (including their own employees) may profoundly disagree with. That position may be central to the organisation's purpose; a few disparate examples include faith schools, businesses involved in livestock farming and meat processing, political parties, and clinics providing abortions. In rare circumstances, holding (or not holding) a particular protected characteristic, including a particular religion or belief, may be a genuine occupational requirement for a particular role. The EqA permits employers to restrict roles to those holding (or not holding) that protected characteristic in appropriate cases. The ability to do that, however, is strictly curtailed. There is no argument in this case that a genuine occupational requirement applied to Ms Young's role.

36. Generally, absent a genuine occupational requirement, employers are not permitted to exclude the faithless from employment in faith schools, committed vegetarians from employment in abattoirs, and so forth. The extent to which those employees may manifest beliefs contrary to the corporate belief of the employer is discussed further below and, in that context, the fact that an employer has itself adopted a particular stance on an issue is one relevant factor, but that cannot entirely cut across the freedoms that are afforded to individuals by human rights law and under the EqA.

37. For the purposes of this case, therefore, I proceed on the basis that the council was entitled to adopt the corporate view encapsulated by the Motion and the Workplace Statement, and to expect its employees to carry out their work in accordance with the principles espoused in those documents, provided that was not in conflict with their legal duties. It was not, however, entitled to require that its thousands of staff all personally subscribed to that view.

Ms Young's work on issues pertaining to trans people, and the Gender Report

38. Ms Young's work as EDI Manager brought her into closer contact with the council's work pertaining to trans residents than might have been the case in another role. I find that she undertook that work scrupulously, in a way which was always in accordance with (or at least not contrary to) the corporate position. In particular:
    (a) Ms Young always adopted preferred pronouns and spoke respectfully of trans people both when referring to specific individuals and when referring to trans people as a group or population;
    (b) From 2017-2021 Ms Young had been responsible for organising Disability History Month events and had actively recruited a disabled musician, who was also openly trans, to perform at these events, working directly with her in a positive and professional way;
    (c) In spring 2022 Ms Young responded positively to an approach from an organisation called Trans Creative seeking support for "Trans Vegas" a trans arts festival in the city. She described the work done by the organisation in an internal email to Adiba Sultan as being something that "looks good" and noted that "I think we have a gap on trans at the moment".
    (d) In April 2022 she initiated work on preparing the Council's entry for the annual Pride parade, which is a pro-trans-inclusivity event.
    (e) Also in April 2022, she contacted Ms Johnston proposing the Council explored using an organisation called Gendered Intelligence for "training on trans", notwithstanding the fact that the organisation espoused views she did not personally agree with.

39. During 2021, whilst Ms Young was still in her EDI Specialist role, her then manager, Keiran Barnes, had decided that the team should produce a report for the council's scrutiny committee on the topic of sex and gender. This work was handed over to Ms Young when she took on the Manager role. Her evidence, which was not challenged, was that the idea of doing the report had originated with concerns raised by a domestic abuse service

part-funded by the Council as to their ability to continue to provide a service restricted to (biological) women. According to Ms Young, Mr Barnes hoped that the report would stimulate engagement with all stake-holders, including women's groups and trans groups and help to resolve some of the tensions.

40. Ms Young began work on the report as a long-term project, alongside the more day-to-day activities of her role, which predominantly involved completing equality impact assessments for various areas of the council's work. When line management responsibility moved to Jo Johnston, the rationale of the project was agreed to be "*to explore the current dynamics around sex, sexuality and gender identity, and surface those from a neutral perspective, given the political sensitivities*". That rationale was agreed in October 2021, and therefore prior to the adoption of the TRAHR motion.

41. Regarding the reference to 'political sensitivities' and in terms of setting the context, it is worth recording that the EAT decision in the **Forstater v CGD Europe [2022] ICR 1**, holding that gender critical beliefs are protected beliefs under the Equality Act 2010 had been handed down in June 2021, and that the Gender Recognition Reform (Scotland) Bill would subsequently be introduced in the Scottish Parliament in March 2022. The interim report of the Cass Review (into the provision of gender-affirming medical treatment of children and young people) would also be published in March 2022. The report was broadly seen as promoting caution around such treatment and therefore being unsupportive of the positions adopted by many trans people and trans rights activists.

42. As Ms Herdan and Ms Sultan became established in their roles, Ms Young sought to involve them in the preparation of the sex and gender report. By email dated 24 March 2022 she forwarded them previous council reports on the subject, and a government report published that day, which was prepared in the context of consultations around proposals to reform the Gender Recognition Act. In a further email dated 28 March 2022 she set out the rationale for the report (as set out above) and also provided various links and resources for desktop research. This included a 2020 EHRC research paper, the EHRC's response to an open letter from the LGBT Consortium (which Ms Young described as having gone down "very badly" with major LGBT organisations, including in Manchester), the Council's own TRAHR motion and the Interim Report of the Cass review. The email also signposted three groups (Sex Matters, LGB Alliance and Women's Place UK) which Ms Young described as campaigning/grassroots organisations which had "sprung up in the wake of the Gender Recognition Act proposed reforms and consultation a few years ago". The descriptions in respect of each of them made clear that their views were contested and unpopular with many LGBT groups. Ms Young wrote:
"You may find some of their approach and views challenging to your own beliefs but it will give you a good insight into the tensions / dynamics arising from sex and gender debate and as a team we need to understand all of that. We won't be able to describe in detail what all these orgs do and believe but they present the manifestation of the current issues around sex and gender and we can summarise and reference them in a neutral objective way."

43. Ms Young gave oral evidence, which I accept, that in sending this email she knew that both Ms Herdan and Ms Sultan were "more comfortable in the trans-inclusive space than in the gender critical space". As to why she understood that to be the case, she referred to the fact that they had recently attended an all-day conference put on by Pride (which she had supported as their manager) and that Ms Herdan had (in a previous role) had training with the Proud Trust. She sought to make the email balanced but part of its purpose was to signpost the team members to sources explaining the other perspective within the debate. I find that the email was professional and appropriate. Given this context, the fact that it emphasised information and organisations on the gender critical side of the debate (albeit not exclusively) was not inappropriate.

44. Ms Young's perception (which appears to have been well off the mark in light of matters I will set out below) was that Ms Herdan and Ms Sultan appreciated this 'steer'.

45. On 1 April 2022 there was a meeting of the Corporate EDI Leadership Group attended by both Ms Young and Ms Johnston (but not Ms Herdan or Ms Sultan) where the sex and gender report was discussed, along with the tensions between different protected characteristics. Subsequently, an unnamed individual raised with Ms Johnston that Ms Young had made remarks in the meeting which were not overtly discriminatory but were "othering". There has been no evidence as to what those comments actually were.

46. It is clear that Ms Young wanted the sex and gender report to sketch out the arguments for and against the inclusion of trans people in specific contested arenas, such as women's refuges and domestic abuse support services, single-sex changing rooms in the context of council-run sports and leisure facilities and so on. She felt that it was important for the report to grapple with those debates and that the council had an obligation to do so under the Public Sector Equality Duty ("PSED"). There is no evidence that she wanted to privilege a gender critical perspective over a trans-inclusive perspective, nor that she would allow her personal views to prevent her from adopting a professional approach to the report. As I have already described, I find Ms Young was perfectly able to work professionally in this area.

47. Ms Johnston, and others, had a different view on the approach the report should take, no doubt influenced by the Council's recent adoption of the TRAHR motion and perhaps also by an understandable wish to steer away from controversy. They wanted the report to comprise a 'deep dive' into services and facilities the Council was able to offer to trans people within the city. It is likely, I find, that merely by pursuing an argument that the report should acknowledge and engage with a debate on this subject, Ms Young marked herself out as someone who potentially held gender critical views. Similarly, by asking Ms Herdan and Ms Sultan to read and take on board materials reflecting a gender critical perspective, she caused them to infer that she held those beliefs herself. I am satisfied that they, and particularly Ms Herdan, considered merely holding such beliefs to be both offensive and incompatible with work in the EDI field.

Sarah Herdan's initial complaint – April 2022

48. On 7 April 2022, Ms Herdan raised a verbal complaint about Ms Young to Ms Johnston. No written record of this conversation has been disclosed, seemingly because none was made. It seems surprising that a manager receiving such a complaint would not make a note of what was said, either during the conversation or very shortly afterwards. Ms Johnston's evidence was that the subject of the complaint was "that the direction of the Sex and Gender Report was discriminatory". The work that Ms Herdan had been asked to do on the report to that point was merely background research. The report was not even approaching discussion of conclusions or recommendations. I am drawn to conclude, particularly against the backdrop of later events, that Ms Herdan considered it discriminatory to even 'engage in the debate' when it came to gender critical viewpoints. Ms Herdan told Ms Johnston that she was considering leaving the Council. She did not want to formalise her complaint as she felt that that would put her in a vulnerable position as Ms Young was her line manager. There is no evidence that Ms Herdan raised concerns about the way she had been managed by Ms Young, or, indeed, about anything other than the direction of the Sex and Gender Report.

49. The following morning, Ms Johnston emailed Ms Herdan in the following terms:

    I just wanted to follow up on our conversation yesterday and to say thank you for trusting me enough to bring this to me. What you did took a huge amount of courage, and you should be really proud for raising this. I want to assure you again that Manchester City Council is an inclusive council and i will definitely support you to make sure you feel valued and that this is a place you want to be. This is the link to the Full Council motion on Trans rights I mentioned yesterday (it starts at 23 minutes) which was carried unanimously and sets out our official position. I will be striving to make this a reality throughout our workplace and in the services we deliver and I really hope you will be with me on this journey.

    I've also sent out the 360 feedback I mentioned and I'm happy to help you to frame some feedback which will protect you and your well-being but will also give me an avenue to address some of the issues you've raised.

    I've put this in writing so you can hold me to account for everything I'm saying, without disclosing too much that might compromise the confidence of our conversation. I will be addressing these issues over the coming weeks but if there is anything else I can do to support you in the interim, please just let me know.

50. As can be seen, there was no acknowledgment in this email of the fact that gender critical beliefs are protected beliefs under the Equality Act, nor to this being a difficult or contested subject. The email is fully supportive of Ms Herdan and, in its promise of unqualified support, lacking in objectivity and undermining to Ms Young.

51. The same day (or possibly the following day) Ms Sultan also raised a verbal concern to Ms Johnston about Ms Young. Again, there is no record of what was said. Ms Johnston's evidence is that Ms Sultan felt micro-managed, disempowered and de-skilled. She also disclosed that she was looking for another job.

52. On 8 April Ms Johnston had an informal conversation with Ms Young about the TRAHR motion and a more formal conversation, also involving a Council solicitor, about the direction of the report. Ms Johnston gave evidence that she had never asked Ms Young about her personal views, but that Ms Young had assured her, more than once and of her own volition, that she did not hold gender critical views. Ms Johnston did not give evidence as to when these conversations occurred, but it may well have been around this time. Ms Johnston confirmed that she had not reassured Ms Young that it would be okay if she did hold such views and said that her reason for not giving any such reassurance was that she saw no need to, given Ms Young's own assurance that she did not. In my judgment the fact that conversations along those lines took place is indicative of an intolerance of perceived "wrong thinking" within the respondent organisation (or at least this part of it) and a resultant culture of self-policing.

53. On 11 April 2022, unaware of the complaints, Ms Young emailed both Mr Herdan and Ms Sultan signposting them to further background information for the purposes of researching the report. The content of the email is, in my judgment, balanced, as Ms Young intended the report to be. Ms Young suggests, for example, using Stonewall resources for "trans and gender identity definitions" (Stonewall being an LGBTQ+ charity which is known for adopting a gender identity standpoint) and refers her colleagues to the TRAHR Motion, including the video of the council debate at which the motion was passed. The email also asked Ms Herdan and Ms Sultan to finish reading the Cass review (referring to the interim review) and transgender inclusion guidance from Sport England as well as referring to some statutory materials and emerging case law. On the same day, Ms Young also sent an email to all service leads within the council, requesting information about how their service was delivering for trans residents, for inclusion in the report. This was copied to Ms Johnston, Mr Herdan and Ms Sultan. Separately, Ms Young emailed Ms Johnston directly sending a link to a statement made by the EHRC in relation to the **Forstater** EAT decision the previous summer and noting that the case had set a precedent that gender critical beliefs were protected under the Equality Act.

54. It is clear that the tensions around the direction of the report were apparent to all involved, and by an email to Ms Johnston dated 12 April, Ms Young sought to step away from the report altogether. This proposal was rejected by Ms Johnston who stated that Ms Young's specialist expertise was needed on the report. She also emailed the heads of service to confirm that their returns should also set out their provision for women and their provision for LGBTQ+ people, as well as for trans people. In reality, however, it seems that the report was 'parked' with little further work being done after this time.

55. On 12 May 2022 Ms Young went off sick due to her eye condition. Her punctal plugs had fallen out and she required further surgery. In the

meantime, her ability to read or use screens was very limited. She was concerned about social isolation and Ms Johnston agreed that she could join various online work meetings, as well as having a 1:1 weekly welfare call with Ms Johnston, whilst she was off. The purpose of this was not for Ms Young to contribute to work, but to reduce her isolation. An occupational health report, dated 12 May 2022, noted a decline in Ms Young's psychological well-being.

56. Ms Johnston's evidence is that she was attempting to resolve Ms Herdan and Ms Sultan's complaints informally at this stage. There is little indication as to what those attempts consisted of. Ms Johnston was in discussions with HR, although no record of those discussions was disclosed.

Further complaints and resignations

57. It appears that things were not moving quickly enough for Ms Herdan, because on 16 May she wrote directly to the Leader of the Council, Bev Craig, in the following terms:

    I was hearted to see your support on twitter for Adam Preston following transphobic abuse within Manchester. I only started with MCC in February, having moved across from Stockport Council, and - to be frank - right from the outset I have been shocked at the transphobia I have witnessed from some MCC staff and also key partners we work with. I am already in the process of looking for new jobs as a direct result of the prejudices I have witnessed here. I have significant concerns for trans colleagues and residents, and would absolutely discourage them from applying to work here if I were asked.

    I would value a conversation with you about this. Although I am in the Equalities team, I do not feel emboldened to do anything about this, as I believe we are a key part of the problem – hence contacting you directly.

58. I pause here to note that this *could* have been a complaint about very serious actions or incidents. However, it is impossible to tell because Ms Herdan gives no specifics about the transphobia she says she has witnessed. She was not called by the respondent to give evidence in this case. In the short exchange that follows Ms Craig expresses her support and signposts Ms Herdan as to ways to take matters forward, and Ms Herdan writes that she is dealing with Ms Johnston who has been "*incredibly supportive and helpful*".

59. At 16.49 on 20 June 2022 Ms Herdan sent an email to Ms Johnston containing appraisal feedback in respect of Ms Young. The email starts "*As I am now beginning to clear out prior to leaving*". If there was any earlier resignation correspondence it did not appear in the bundle. A later email chain where Ms Herdan attaches her formal letter of resignation appeared in the bundle of late-disclosed documents. Ms Herdan explained in her 20 June email that she drafted the points "*a few months ago*" but did not send them at the time because "*they did not feel constructive*". She goes onto list four 'strengths' she perceives Ms Young to have as a manager and 15 areas for 'development'.

60. Ms Young disputes that these criticisms are valid. In some cases, she appears to have reasonable evidence suggesting that they may not be. Her view is that Ms Herdan was motivated purely by an animus against her due to the perception Ms Herdan had that Ms Young was transphobic. Some of the bullet points do seem likely to be influenced by that view – for example it is stated that "*There is a concern that working with Lorna will lead to reputational damage for the team*". No one has suggested that the risk of reputational damage could stem from anything other than what Ms Herdan would characterise as Ms Young's transphobic views. Whilst I cannot conclude that Ms Herdan's concerns about relationship dynamics and Ms Young's management style were anything other than genuine, I find it highly likely that her strength of feeling on these matters was influenced by her negative views about Ms Young due to the perception of transphobia. Beyond that, I do not need to make definitive findings about the legitimacy of these complaints, and I do not do so. Ms Herdan notes in her email that she has "*not mentioned (what I perceive to be) Lorna's transphobia*" and that she will cover that separately.

61. In a second email, timed at 22.57, Ms Herdan did exactly that. The email is primarily a cover letter for a dossier of annotated tweets which Ms Herdan has prepared and attached to it. In the body of the email, Ms Herdan states that she is not criticising Ms Young's views but "*her behaviour in sharing those both within and outside of work*". She goes on to state:

    I am ashamed to be associated with someone holding those views in the position that Lorna is in. I am frightened for trans friends and trans colleagues and I am emotionally exhausted from having to listen, see and research Lorna's views in order to do my job – whilst repeatedly being told "the other side" "isn't credible" and having repeated requests for trans awareness training refused. I have lost sleep over this and have felt more anxious in my role than I have in years as a direct result of Lorna's behaviour.

    As you know, I am also resigning primarily because of the above (although the more general mismanagement and treatment of myself/my colleagues has also been frustrating).

62. I pause to note that much has been made by Mr Roberts in relation to Ms Herdan's use of the word "ashamed" in this email. It featured in the opening sentence of his opening note and was a leitmotif to which he consistently returned. He asked me to compare it to an employee voicing to their manager that they were "ashamed to be associated with a Muslim" or "ashamed to be associated with a gay person". Whilst I recognise that there is no hierarchy of protected characteristics I also recognise that the characteristic of belief is qualitatively different, at least in some ways, from other characteristics, and that criticism of a protected belief can be entirely legitimate, in a way that criticism of other protected characteristics (as opposed to beliefs or other secondary characteristics which might be associated with them) would not be. Ms McColgan draws on the explanation of **Grainger V** in **Forstater**, and the now established position that for (otherwise qualifying) beliefs to be excluded on **Grainger V** grounds they

would have to be tantamount to be belief in support of Nazism or totalitarianism. The very point, as she says, is that even beliefs which people may regard as offensive, abhorrent and unacceptable are protected. (Indeed, it may be such beliefs where the need for protection is likely to be strongest.) But 'protection' does not extend to immunity from criticism. I consider there is force in Ms McColgan's submission on this point. Ms Herdan's used of the word "ashamed" is simply a part of the evidence in this case, it is not a lightning rod taking us straight to the conclusions contended for by Ms Young.

63. The attachment contained screenshots of Ms Young's Twitter account. In her 'bio' she identified herself by name and by role, tagging the council's own Twitter account. None of the tweets which Ms Herdan drew attention to were actually posted by Ms Young. Each 'offence' arose from her 'liking' a tweet which either contained content which Ms Herdan considered unacceptable, and/or was simply posted by someone who was well-known for advocating a gender critical position – specifically JK Rowling and Julie Bindel. There were ten 'liked' tweets altogether, with an additional two (which Ms Young had not 'liked') provided for context. Some of the liked tweets are humorous, some are thoughtful, none of them contain anything which could be considered abusive language, nor which could be considered offensive by any standard other than one which deems any expression of gender critical views to be necessarily and inherently offensive.

64. On the following day, 21 June, Ms Herdan sent a short formal resignation letter to Ms Johnston, giving notice to expire on 25 July. She stated plainly that the primary reason for her resignation was "*negative attitudes towards trans people that I have witnessed*" and that remaining in the role would be in direct conflict with her values and her understanding of her role as an advocate for equalities.

65. On the same day, Ms Sultan also resigned. In her resignation letter to Ms Johnston she said that the main reason for leaving was "*irreconcilable differences*" with Ms Young in terms of their approach to work. She noted that she had raised the concerns informally but felt unable to raise them formally due to lack of evidence. Ms Johnston acknowledged in her oral evidence that the two resignations were probably coordinated. Ms Sultan made a formal written complaint against Ms Young on 19 July 2022, during her notice period. However, she later asked to withdraw it in order to amend it. Ms Johnston chased her for further input on several occasions subsequently but received no response.

66. Ms Sultan's complaint did not directly reference any concerns about transphobia. The main concerns were about the management of work within the team and Ms Sultan feeling overlooked and underutilised. She raised the possibility of a racial element to Ms Young's treatment of her, as she felt that Ms Herdan was not subject to this treatment to the same degree and she referenced a comment Ms Young had allegedly made about "costumes" at an Indian wedding.

67. On 22 June 2022, Ms Johnston had a telephone conversation with Ms Young where she informed her that Ms Herdan had resigned (she already knew Ms Sultan was leaving) and, in broad terms, that there had been issues raised by both colleagues about her management. Ms Young remained off sick at this time, her planned surgery date of 24 June having been put back to 1 August 2022 (the surgery was later put back again to 15 August and, ultimately, the procedure failed). In response to questions from Ms Young, Ms Johnston confirmed that Ms Young could not join the virtual team meetings going forward, as this would not be welcomed by Ms Herdan and Ms Sultan, and that she could not say goodbye and wish them well in their new roles. Ms Young was upset by this. Whilst she had found the work on the Sex and Gender Report difficult to progress, she had no idea that her direct reports had formed the views on her that were expressed in their complaints. Again, to some extent this is likely to be symptomatic of the fact that she was (prior to her sick leave) working remotely with limited contact, and virtually no face-to-face contact.

68. Being told of concerns/complaints at this point, without being given details, unsurprisingly caused Ms Young to experience significant anxiety.

Absence management and commencement of investigation – June 2022 onwards

69. Ms Johnston's witness statement made reference to the fact that on 27 June she forwarded the resignation letters and supporting information to "HROD" (the respondent's HR department) and was informed that there was sufficient material to start an investigation. Ms Johnston did not name the person that she spoke to, and no supporting documents appeared in the bundle. In the additional disclosure bundle, a series of emails between Ms Johnston and Tracey Hamer, and HR Specialist were produced. Ms Hamer's immediate response was "*Having read the attached, I'm still not clear what LY has alleged to have said done that would be classed as discriminatory towards transgender people."* She suggests that the case may be better taken forward as a capability issue by Ms Johnston (presumably referring to the various additional complaints about management style/effectiveness). (The respondent points out that Ms Hamer's email was sent without sight of the attachments to Ms Herdan's email).

70. On 1 July Ms Herdan provided a further 'Summary of Events' document to Ms Johnston.

71. A further absence review meeting ("AMR") took place between Ms Young and Ms Johnston on 14 July 2022. This meeting included discussion around the way forward for the EDI team in view of the resignations. Ms Young commented that she did not want anyone "woke". That is an unfortunately expressed comment, but I accept that she also explained to Ms Johnston that she meant, by that, that the team needed equality specialists who can see beyond their own point of view, and not equality activists.

72. On 19 July 2022 Ms Herdan wrote to Ms Johnston setting out extracts from council policies that she felt were relevant to the investigation. There

followed a short exchange of emails during which Ms Herdan expressed her worry that the matters raised would not be fully investigated or acted upon "*if seen solely as a capability issue*". This appears to reference Tracey Hamer's observation that the substantive issues raised seemed to be the capability issues, rather than Ms Young's Twitter activity. Ms Herdan was not party to that email exchange, although it is possible that it was discussed with her by Ms Johnston. In any event, she was keen to push back against that proposal. Ms Herdan sought a formal response in terms of how the council intended to avoid similar situations in future and safeguard the rights and safety of trans and non-binary people and protect them from discrimination. Ms Johnston reassured her that she would "*fully map out all the issues raised and make sure that these are investigated in line with our policies and with support from HROD*". On the same day Ms Sultan also emailed Ms Johnston, this time with a further version of her complaint.

73. On 25 July 2022 Ms Herdan provided an 'incident log' document to Ms Johnston. That expanded the issues she had raised in previous correspondence to include suggestions as to relevant witnesses and to supporting evidence in the form of email chains, and was in response to a request for further information from Ms Johnston.

74. At some point thereafter (it is unclear when due to the lack of evidence around Ms Johnston's interactions with HR) Ms Johnston undertook some sort of scoping exercise in relation to the investigation. She produced a document, largely copied and pasted from parts of the resignation correspondence, splitting the complaints into various sections. She specifically excluded complaints raised by Ms Herdan and Ms Sultan about problems with their on-boarding when they commenced employment, noting that those matters were outside Ms Young's area of responsibility.

75. Aside from that, there was no qualitative evaluation of the complaints and no attempt to address such questions as:
    (a) Which were capability matters and which were misconduct matters?
    (b) To the extent there were any misconduct complaints, what was the actual misconduct alleged?
    (c) Were all of the matters serious enough to justify investigation, particularly given the volume of matters raised, the fact the complainants had left employment, and the fact that Ms Young was off sick?

    What resulted was a starting point for an investigation which was vague and amorphous despite being voluminous and superficially detailed.

76. A further AMR took place between Ms Young and Ms Johnston on 9 August. Ms Johnston explained her plan was to start to look at the complaints with Ms Young following her recovery from surgery and during her return-to-work process. Ms Young explained that she was finding not knowing the detail of the complaints extremely stressful. I accept her evidence as to the detrimental impact this was having on her during this time, particularly against the backdrop of her eyes having become very painful and her ability to use them very limited.

Ms Young's return to work - September 2022

77. On 19 September 2022, Ms Young commenced a return to work, working remotely on a phased return basis. Both Ms Sultan and Ms Herdan had now left the organisation. In early September three new Equality Specialists had been recruited by Ms Johnston. They were Demi Cole (Race and Women lead), Barry Young (LGBT Lead) and Michelle Wheeler (Disability and Age Lead). (For the avoidance of doubt, Mr Young is not related to Ms Young.)

78. Ms Johnston held a return-to-work meeting with Ms Young on 20 September, where she informed her that complaints were being taken forward and that they were serious. Both Ms Young and Ms Johnston agree that Ms Young was also told that she was not allowed to line manage the team until the complaints had been resolved, and Ms Johnston would take over that function. It is Ms Johnston's evidence that that would have been the case in any event, during a phased return, and that that is the council's standard practice. I find that Ms Young was told that her managerial responsibilities were being removed due to the investigation, and that that was in fact the case, albeit I accept that had that not been happening they would also have been removed during any period of phased return.

79. During this meeting Ms Young also expressed a concern about Ms Johnston being the investigating officer in relation to the complaints and requested that this be changed. This was due to her perception that Ms Johnston had been cooler towards her since earlier in the year when discussions had taken place about the Sex and Gender Report.

80. Ms Young raised this with HROD the same day (22 September). On 10 October she was informed that Sarah Narici had been identified as an alternative investigating officer. I pause to observe that the investigation process undertaken by the Council was interminably slow. To some extent, that was due to matters outside the Council's control, particularly Ms Young's ill health. It also the case however, that even steps which should not have been particularly difficult, such as transferring the case to alternative investigating officer often took weeks to progress.

81. Only two days into the attempted return, Ms Young recommenced sickness absence on 21 September 2022, with the reason for absence given as both her eye condition and stress.

82. On 26 September 2022, before the investigation handover was completed, Ms Johnston held an interview with Ms Herdan. The notes of this interview, along with the other materials, were duly handed over to Ms Narici.

Ms Narici's investigation – September 2022 – December 2022

83. Ms Narici had very limited experience of formal investigations and I find that she was out of her depth in being asked to deal with an investigation as complex and sensitive as this one clearly was. On 12 and 13 October 2022, Ms Narici received documentation and was briefed by Ms Johnston. She took no steps, at the outset, to marshal or evaluate the complaints, or to ask herself the sort of questions I have identified at paragraph 76 above.

84. On 18 October 2022, Ms Narici contacted Ms Young to arrange a meeting and also contacted Ms Sultan. On 19 October 2022, Ms Narici met with Alfie Hewitt. Ms Sultan provided an edited version of her complaint by email dated 23 October 2022.

85. On 26 October 2022, Ms Narici sent an initial email attempting to arrange a meeting with Ms Young and her union rep. There was subsequent correspondence attempting to pin down a date. The initial email referred to an intention to share material with Ms Young in order for her and her union representative to review it before the meeting but, at this stage, Ms Young had still received no information at all as to what the complaints were. Ms Young informed Ms Narici about the limitations she faced reviewing documents due to her eye condition and asked that this be taken into account in relation to timelines for providing her with documents in advance of the proposed meeting.

86. Ms Young returned to work, again on a phased return and working fully remotely, from 1 November 2022. This time, it was agreed with Ms Johnston that Ms Young would not be working with the new team until she resumed working full time hours. Ms Young was left with the understanding that when that happened, she would resume her managerial responsibilities.

87. Ms Narici wrote to Ms Young on 3 November 2022 sending her a formal invitation to an investigation meeting scheduled to take place on 22 November. The letter stated that the allegations were being investigated under five separate council policies, and that they related to:
    (a) Your management of staff and the distribution of workload, which has left individuals feeling singled out and/or targeted by you
    (b) Inappropriate comments made by you to/or about the staff you manage
    (c) Inappropriate comments made by you about other Council officers
    (d) Inappropriate comments made by you which are viewed to be discriminatory in nature and are associated with the protected characteristics of race, age and gender reassignment
    (e) Breach of personal data

88. There was no further specificity as to *what* allegations were being pursued under each of these headings. Instead, Ms Narici had appended to the letter the various complaint documents (redacted in certain areas) and left Ms Young to work it out for herself. Further, Ms Herdan's email appendices supporting her complaints about Ms Young's performance as a manager (amounting to 50 pages) had not been included, and references to the emails had been redacted, meaning that Ms Young was not given the material that she would have needed to piece together the substance of what Ms Herdan was alleging.

89. It is generally a requirement of a fair dismissal process (in misconduct cases) that allegations are defined and clearly put to the employee, prior to the disciplinary meeting, in a way that means the employee can understand and respond to them. The same requirement is not necessarily true of an investigation meeting – in some cases the scope of the allegations will emerge or evolve from the investigation process. Even with that caveat, however, I am deeply troubled by the way the subject matter of this

investigation was presented to Ms Young. She was simply given a welter of narrative complaints, from which she was meant to discern the allegations. The objectively weak nature of many of these complaints actually made it more difficult, nor easier, for her to understand what the respondent was really concerned about. Ms Young's unchallenged evidence was that she eventually extracted around one hundred separate potential allegations from the detail of the appendices to Ms Narici's letter. Some of the allegations were lacking in credibility and/or seriousness even on a cursory view – for example the 'on-boarding' complaints that Ms Johnston had previously excluded remained apparent on the face of the documents and there was nothing to inform Ms Young that they were not being considered (indeed, there is nothing to suggest that Ms Narici had picked up on that subtlety). Other complaints were lacking in information because Ms Herdan herself (and to a lesser extent Ms Sultan) had put them in terms which were trenchant, yet at the same time lacking in any specificity. There are various references for example to "inappropriate comments", but it is hard, if not impossible, to discern what Ms Young was alleged to have said, never mind when and to whom she was alleged to have said it. An investigation being put on this basis would be extremely difficult for any employee to deal with and prepare to respond to. For an employee suffering from a painful eye condition which made reading this volume of material slow and difficult, that difficulty was significantly exacerbated.

90. In amongst this wider slew of material there was included, of course, the evidence of Twitter 'likes' which had been collated by Ms Herdan, and which I have discussed above. No one had gone back to Tracey Hamer's original key point to try to establish in what way Ms Young liking these tweets could reasonably be considered to be offensive to transgender people given their relatively innocuous nature. Ms Young says, and I accept, that the inclusion of these screenshots as part of the investigative material led her to feel that she was being persecuted for holding (or even just sympathising with) gender critical beliefs.

91. Finally, the letter warned that the matters under consideration could potentially constitute gross misconduct and, if proven, could result in summary dismissal. It isn't necessary to put such a statement in an investigation meeting invitation. The fact that it was put in means, presumably, that Ms Narici, or someone advising her had formed a view that something in this amorphous mass of complaints and criticisms amounted to potential gross misconduct. In circumstances where much of it clearly could not, it would have been only fair to explain to Ms Young what it was that potentially did, so that she could focus on attention on those matters, and not on trivialities.

92. Ms Young described the effect of receiving the letter and appendices and I accept her evidence on this point. She felt betrayed by Ms Herdan and Ms Sultan, whom she had tried hard to support and believed she had good relationships with. She felt confused and overwhelmed by the nature of the allegations, as I have described, and felt that it was impossible to respond to them, particularly in view of the struggles she was having with her eyes. As I have already stated, she felt that she was being persecuted due to her

beliefs and that the council had chosen to take an adversarial and hard-line approach, rather than simply having a conversation.

93. It is deeply concerning that the respondent's evidence was opaque as to how the 'charges' set out in this letter came to be formulated and as to who made the decision that the matter should be progressed as a disciplinary matter. None of the respondent's witnesses was prepared to accept responsibility for that decision. Mr Roberts argues persuasively in his closing that key decisions were being taken by senior managers within HR and elsewhere, who have not come to the Tribunal to account for those decisions.

94. On 17 November 2022 Ms Young wrote to Ms Narici explaining in very clear terms the difficulties she was having:

My eye condition has flared up and I can only use one eye to look at a screen. It will take at least a week to calm down.

I've been working up to 7 hrs a day this week to put my statements, with supporting evidence together because of the sheer volume of allegations and comments (approx 100) across both it's proving too much for my eyes, and my mental health too.

I'm nearly finished statement for Sarah Herdan and started on Adiba Sultans yesterday but I can't do any more on both at the moment until my eyes calm down and I need a mental health break from it too.

I'm keen to get through this process and present my defence but I'm concerned at the effect it's having on my health. I'm still awaiting further clinical treatment / surgery for both eyes and until then I remain at higher risk of retinal tears, cornea scarring and vision loss. I had serious vision loss for a year as a result of retinal tears in 2012 and needed major eye surgery, it was a lot to cope with and I want to avoid this again.

Please can we slow down the pace of this investigation to give my eyes chance to calm down, recover and then space out the time I can reasonably spend on preparing my statement to help me cope better physically and mentally with this process as a reasonable adjustment?

There is so much in each statement to cover, is it possible that the investigation meetings can be done as a series of meetings that focuses on different sections of the complaints? E.g. Induction is an area that I've completed my statement on and would be able to discuss at the 22nd Nov meeting.

95. By email dated 21 November 2022 Ms Young explicitly asked for the scope of the investigation to be revisited and narrowed. Whilst it would be unusual for a subject employee to influence the scope of a disciplinary investigation, in the particular circumstances of this case this was an entirely reasonable and pragmatic suggestion.

96. Ms Narici responded to both emails to say that she envisaged the interview taking place over several sessions, and that she appreciated "this could be overwhelming". What never happened was any attempt to set a structure to the sessions so that Ms Young could know what was to be covered (and not covered) in each. Nor was Ms Narici prompted to stand back and recognise that the investigation as currently framed was unworkable, and attempt to frame some specific misconduct allegations which could be used as the basis for her investigation interviews.

97. The bundle contained an unfinished draft, in excess of 40 pages, of Ms Young's rebuttals to the various complaints. That document was never completed and therefore never submitted to the council.

98. On 15 November 2022, Ms Narici interviewed Ms Johnston as a witness to the investigation. Given how unwieldy the allegations already were, it is somewhat surprising that several of Ms Narici's questions seem directed towards establishing whether there might be additional comments or allegations beyond those already under investigation. There was also a question about the removal of line management duties and Ms Johnston stated that this was "partly" due to the on-going investigation but also her "standard practice" in relation to any manager returning to work after a long-term absence.

99. On 22 November 2022, the investigation meeting between Ms Narici and Ms Young took place as planned. Ms Young did submit some written information in advance. Limited ground was covered during the meeting, and it was agreed that a further meeting would be scheduled for early December (although this ultimately did not take place).

100. On 24 November 2022 Ms Young sent Ms Narici multiple emails addressing various parts of the complaints that had been discussed, and providing evidence seeking to rebut them. There is no evidence that Ms Narici considered these documents with a view to narrowing or closing off any avenues of investigation. She did agree that she would share questions in advance of the next meeting. Subsequently, there were several further emails from Ms Young also seeking to address and rebut different parts of the allegations.

101. Ms Narici held a further investigative meeting with Ms Johnston on 14 December 2022 and a further meeting with Ms Sultan on 28 November. Attempts to schedule a second meeting with Ms Young and her union representative before Christmas were unsuccessful and on 7 December 2022 Ms Young commenced a further sickness absence due to having contracted a respiratory illness. She returned to work on 22 December.

The 'GalwayGirl' Account

102. In addition to the 'Lorna Young' Twitter account mentioned above, Ms Young also had a second account which was anonymous and named 'GalwayGirl' ("GG"), with the handle '@a_tri_sisters'. There was nothing in the bio of that account which linked it to either Ms Young or to Manchester City Council.

103. Ms Young's evidence, which I accept, was that the GG account had been her first Twitter account, and had been followed by Sofia Higgins, Ms Young having given her the details of it some years earlier when they were friends. At some point Ms Young decided to open a 'professional' account, i.e. the Lorna Young account, and she asked Ms Higgins, as a work contact, to 'unfollow' the GG account and instead follow the Lorna Young one.

104. Although he was not a witness, I find that the account given by Alfie Hewitt in an internal statement dated 13 January 2023, as to how the existence of the GG account became known to the EDI team is likely to be broadly accurate, although I reject some elements of it. He says that the team were aware of the existence of a second personal account, aside from the Lorna Young one. in January 2022, but that it was not seen as anything sinister. He states that he believes that Ms Young told either Ms Herdan or Ms Sultan about her personal account directly. I find that she did not. I accept her evidence that she only told Ms Higgins. Further, it is clear to me that if Ms Herdan had known about it at all (either through being told directly) she would have taken it upon herself to attempt to find and investigate it at a much earlier stage.

105. I accept Mr Hewitt's account that he was catching up (via Whatsapp or another messaging app rather than in person) with Ms Herdan and Ms Sultan on 22 December 2023 and the subject of the Twitter account came up. However, I do not accept that it was Ms Herdan who recollected that the account had a connection to Galway. I consider it is likely that either he, or perhaps Ms Sultan, remembered this information from a conversation they must have had with Ms Higgins.

106. Mr Hewitt then states that "no more than five minutes later" Ms Herdan posted a link to the GG account. Given the clue 'Galway' it took Ms Herdan (who was clearly an experienced Twitter user given her earlier investigations into the Lorna Young account) very little time to identify the account. I find it inconceivable that she would have 'sat on' the clue over the previous months (particularly when she had mentioned that she suspected a second Twitter account in the context of her complaints) which is why I conclude that she must have received the information during this chat.

107. Mr Hewitt immediately re-posted the link into a team chat her shared with the new EDI team – Barry, Michelle and Demi. To use his words "*no more than 5 minutes later…[both chats]…started flooding with notifications*". Mr Hewitt goes on to explain that the GG account was almost entirely concerned with gender critical "*views, policies and news*". He states that he was not well acquainted with the debate and could not ascertain the seriousness, but that other members of the group were very angry, upset and uncomfortable and that "*everyone thought that someone with such beliefs, and passion for sharing, advocating and arguing these beliefs should not be a manager of an EDI team*."

108. At 08.56 on 23 December 2022 Ms Herdan emailed Ms Narici and Ms Hamer, providing details of the GG account. (In a subsequent email she

stated that she was made aware of the GG account on the evening of the 22nd and reported it on the morning of the 23rd, which further supports the sequence of events outlined above.) She did not provide specific examples of objectionable content from the account, but she did provide screenshots of Tweets from both the GG account and Lorna Young account in support of the theory that they were operated by the same person. This included references to having family in Australia and references to the account-holder in each case having lost her father to cancer. The email concluded:

I recognise there may not be much you can do with this information, but I still wanted to raise this because if this account is Lorna, which I suspect it is, then I cannot state enough how serious the implications are for trans and non-binary people. Much as in my experience with her, Lorna has an absolute focus on and disdain of trans women, which I feel is absolutely not in line with the values of Manchester City Council, and also incredibly dangerous given her position as EDI Manager. Her opinions towards others who do not hold such views also appear quite extreme.

109. Given the proximity of the Christmas holiday, nothing was done immediately in relation to the GG account. In the meantime, the new team members continued to watch the GG account and noted similarities which made them more convinced that it belonged to Ms Young.

110. On 6 January, Barry Young reported to Ms Johnston that he had had had a conversation with Ms Young around reference to gender identities in a particular document and that Ms Young had expressed gender critical beliefs and referred to case law establishing that holding gender critical beliefs was a protected characteristic. In an email account of the conversation, requested by Ms Johnston, Mr Young refers to "*so called gender critical beliefs*". It is difficult to resist the conclusion that Mr Young's view of this conversation was influenced by a negative view of Ms Young which he had developed through having read the GG Twitter account content.

111. On the same day, Ms Johnston had a discussion with Ms Young about Mr Young's complaint. She informed Ms Young that Mr Young had strong views on gender critical beliefs and that he was upset. The conversation was upsetting for Ms Young, who began to cry. She expressed that she was still being investigated due to Ms Herdan and Ms Sultan's complaints and could not deal with more. Ms Johnston instructed her not to talk about sex and gender with anyone. Ms Young felt compelled to volunteer again that she did not hold gender critical beliefs and gained the impression from Ms Johnston during the conversation that holding such beliefs would be unacceptable at the council (to be clear, there is no allegation, and no finding, that Ms Johnston said that directly).

Further investigation – February 2023

112. On 10 January 2023 Ms Narici invited Ms Young to a further investigation meeting on 18 January. It was apparent from the invitation that the scope of the investigation remained as before. There were no proposed questions or topics for discussion provided. On 9 January Ms Young

commenced another sickness absence and on 11 January she emailed James Binks, a senior manager, asking to be transferred to another line manager as she had lost confidence in Ms Johnston. This was refused, pending a change of line manager that was anticipated to take place in February 2023, in any event, as a result of departmental restructuring. It is worth acknowledging that at this point Ms Young's 'background' physical health complaints remained very much at large – she was, for example, at around this time also undergoing urgent assessment for suspected bladder cancer, which proved to be negative.

113. On, or shortly before, 13 January 2023, Mr Hewitt approached Ms Johnston to inform her about the GG account and the fact that it was the subject of general knowledge and discussion amongst the team. She asked him to write a statement and he produced the statement I have referred to above. Shortly afterwards, she held a meeting with the team (not including Ms Young) emphasising that they did not know that the GG account belonged to Ms Young and should not be speculating about it.

114. It appears that the council's audit department was asked to scrutinise the GG account around this time, although the lack of disclosure of internal communications means that the timeline is opaque.

115. On 6 February 2023, Ms Young returned to work. Ms Johnston told her that there had been another complaint and that HROD had decided that she was to be removed from the EDI team and was to have no communication with Mr Young, Ms Cole or Ms Wheeler. The reason for this decision was the group's unhappiness about the GG account and the fallout around that, but Ms Young was not told that at this stage. Ms Young became upset and said that she felt she was being bullied, she also talked to Ms Johnston about the various health issues she was dealing with.

116. On 12 February 2023, Ms Herdan contacted Ms Narici and provided a link to a file containing around 23 screenshots of allegedly objectionable content from the GG account. It is striking that Ms Herdan was still taking it upon herself to compile evidence against Ms Young six months after leaving her own job with the council, and equally striking that no one in the council itself, despite having had the account flagged to both Ms Narici (as the officer in charge of the on-going investigation) and Ms Johnston (as Ms Young's line manager) had done any exercise at all in terms of analysing the account to see if there was content which required investigation as a possible disciplinary matter (as a separate issue to the question of ownership).

117. During this period, Ms Narici continued to conduct further interviews as part of her investigation.

118. On 16 February 2023 Ms Narici wrote to Ms Young to provide a formal invitation letter for a second investigation meeting that was, by this point, scheduled for 22 February 2023. However, the invitation letter also informed Ms Young, for the first time, that complaints had been raised about the GG account, that that account was believed to be owned by her, and that tweets on that account were being added as allegations of gross

misconduct. The letter stated that investigation would consider the material, which Ms Young and her representative would have the chance to review. It did not enclose any copies.

119. Ms Young replied, understandably, asking for copies of the material the council was concerned about. She also stated:

I've just read the digital media policy and as I understand it this policy applies in cases where an employee with a private social media account 'does not identify as Council staff [but] a connection with their employment can be made'.

So to help me prepare, in advance of this meeting please can I have a copy of the evidence and audit info that has been used to allege that galway girl is my twitter account and the evidence that a connection to my employment can be made?

Ms Young was therefore not denying that the account was hers (although she did not expressly confirm it either) but was questioning what the link was with her employment which the council considered brought the content of the account within the ambit of its digital media policy. That was a legitimate question to ask.

120. In her reply, Ms Narici informed Ms Young that both a present and former member of the EDI team had stated that they believed the account was hers and provided evidence of similarities between this account and the Lorna Young account, which would be discussed in more detail in person. Ms Narici also refused to send copies of the screenshots, stating:

Given the nature of the content on the Twitter account, I would like to avoid sending the material via email. I do not personally feel comfortable transmitting this content via my / a Council email address. This is why it has not been provided at this time and why it states in my letter of yesterday that you'll be given appropriate time to review at the meeting with your representative."

121. I find it very difficult to understand why Ms Narici took this approach. It is a core principle of natural justice that an individual must understand what they are accused of and, in the context of this investigation, that must mean being given at least some indication of what the specific content was which Ms Narici, as the investigator, considered worthy of investigation. The only explanations given in evidence was that she wasn't sure the account belonged to Ms Young, and that she was concerned that certain words might trigger a firewall or flag on the council IT system. I do not understand why the first issue was a problem – this was information publicly posted on a widely-used website which Ms Young had requested Ms Narici send to her. In relation to the second issue, there are simple ways around these problems such as sending a second email asking Ms Young to confirm receipt, sending a link to a document transfer site (as Ms Herdan had done) or even sending physical copies in the post. Ms Narici's refusal to provide copies, or even to outline what activity by the account amounted to 'potential

gross misconduct' was a Kafkaesque step which inevitably heightened Ms Young's fear and anxiety.

122. On the same date, 16 February 2023, additional material was provided to Ms Narici in the form of the new statements from Barry Young and Alfie Hewitt about the GG account (and, in the case of Mr Young, the telephone conversation which he had been uncomfortable with). It is relevant to note that these were not complaints made solely on the initiative of those individuals, as with the original complaints from Ms Herdan and Ms Sultan. Rather, they were accounts generated during the investigation, in part following internal discussions. In particular, Mr Hewitt's statement followed a conversation with Ms Johnston and that he was asked to provide a written account.

123. On 17 February 2023 Nick McMillan, a senior HR manager, emailed Ms Narici and Ms Hamer passing on the results of the investigation by the Council's audit team. That recorded that the GG account and the Lorna Young account had both posted the same picture of the Trevi fountain, which appeared to be a personal picture rather than a commercially available one. On that basis it was considered likely that the accounts were operated by the same individual.

124. Ms Young's reaction to the 16 February 2023 letter and the emerging social media allegations was one of acute distress. I accept her evidence that she spent the weekend of 18 – 20 February 'scouring' the account to try to work out what the Council considered amounted to gross misconduct. In doing so, she noted that a user called Barry Young had made a critical comment on one of the posts, and connected this account (correctly) with her colleague, Barry Young. She then concluded (with a degree of justification) that her entire team (comprising largely of new colleagues who she had understood to be insulated from knowledge about the complaints made by Ms Herdan and Ms Sultan) were *"in on it*" and that they had been "*sharing info between them about my Twitter account and stalking it for evidence to report to the Council*".

22 February 2023

125. On 22 February 2023, Ms Young made a serious attempt on her own life. This followed attempts to obtain urgent support from her GP and from occupational health, which were unsuccessful, and a 'cry for help' email sent to Ms Johnston, Keiran Barnes, Sharmila Kar (who was due to take over as Ms Young's line manager imminently) and Jane Slater (Ms Young's Union Rep). It seems that several of the recipients of that email were on leave or away from work, but, in any event, there was no response to it (save for a brief reply from Ms Slater) in time to avert Ms Young's actions that afternoon. She took an overdose of medication which resulted in her receiving emergency medical care from the Ambulance Service and at Fairfield Hospital. Due to a lack of inpatient beds, she was then treated by a hospital-based At Home Treatment Team, rather than being physically admitted to a ward. She remained, both physically and mentally, very ill in the following days and weeks.

Continuing investigation and ill-health – February - May 2023

126. Ms Narici (who had not been copied into the email referred to above) was not told of these events, save that she was informed by HR that Ms Young would be unable to attend the meeting scheduled on 23 February due to illness. In the circumstances, Ms Narici continued the other elements of her investigation. She interviewed Barry Young on 23 February and Michelle Wheeler on 27 February. On 2 March 2023 she interviewed Demi Cole and conducted a further meeting with Ms Sultan. These interviews all addressed, to varying degrees, awareness of the GG account and reactions to its content. These witnesses, several of whom had never met Ms Young in person and had had limited contact with her, were asked about the impact of the tweets on their confidence in her as a manager.

127. It is clear that, by this stage, the investigation into earlier management allegations had largely receded in prominence. Although not formally discontinued, those allegations did not materially progress in parallel with the social media investigation. Ms Narici's decision to focus on the GG tweets is, to some extent, understandable. The Twitter activity was recent, was seemingly having a direct impact on the current team, and was relatively simple in terms of evidence. In contrast, the allegations of poor management, which had been made by Ms Herdan and Ms Sultan were much more complex and difficult to investigate. They were also becoming more and more historical as the investigation continued to proceed at a crawling pace. Again, however, it is difficult to understand why the respondent (presumably HROD in this instance, although possibly Ms Narici) chose to keep the swathe of poor management allegations open and hanging over Ms Young, when the reality was that they were not being actively investigated.

128. From 1 March 2023, Sharmila Kar became Ms Young's line manager. This was due to a departmental restructure. Although Ms Kar's name appears on much of the correspondence from this date forward, she was candid in her evidence that she was simply acting as a "post box" for correspondence which was drafted by the respondent's HR and/or legal team. I find that she was not involved in the investigation (and had only a very limited awareness of what it was about) and took no genuine ownership of managing Ms Young's on-going absence.

129. On 2 March 2023 Ms Young was seen by Dr Sujay Roy, an occupational health physician employed by the respondent's occupational health provider. Dr Roy seems to have provided a report the same day. The report noted that the investigation process was an on-going stressor for Ms Young, but that she was not currently well enough to engage with the process or make decisions in relation to it. It proposed a further review in 4-5 weeks when, he hoped, Ms Young would have been able to benefit from medication.

130. Occupational health involvement intensified during March 2023. A referral on 2 March 2023 was followed by a report indicating that Ms Young's condition required review. A further report dated 30 March 2023 recommended another review four-week review. The Tribunal accepts that

these reports emphasised the severity of her mental health difficulties and the connection with workplace stressors.

131. A more substantive report of 27 April 2023 raised the possibility of ill-health retirement and indicated uncertainty as to the prospect of any return to work. By this stage, there was no clear prognosis for recovery and, particularly, whether Ms Young would ever be fit to sustain engagement in the disciplinary investigation.

132. During this period, there were intermittent communications between Ms Young and Ms Kar. Those communications show attempts to arrange absence management review meetings. Ms Young repeatedly indicated that she was not fit to engage with substantive matters.

17 May 2023 meeting with Sharmila Kar

133. On 17 May 2023, Ms Young attended a meeting with Ms Kar and Hella Monroy-Dominguez from HR. Ms Young was supported by a union rep, Carl Greatbatch and Tina Wardle, a mental health crisis worker. I had the benefit of a transcript of that meeting. The meeting began with introductions and a general discussion around Ms Young's wellbeing. The question of ill-health retirement was raised but Ms Kar indicated that that would be "parked". Ms Kar then began to talk about the outstanding investigation and the need to resolve it. She acknowledged occupational health advice that Ms Young was unable to participate in the investigation, and began to question whether she might be able to participate indirectly, for example by responding to written questions.

134. Ms Young's reaction to the discussion of the investigation was acute. She became extremely distressed when the investigation was raised and the meeting was stopped for a period of time. On return, Ms Young expressed clearly, several times, that she could not go back to the subject of the investigation which had, in her words, nearly killed her. She also described it as "bullying and lies". She remained very agitated and emotional until the meeting was eventually brought to an end, largely at the instigation of Ms Wardle.

135. On 30 May 2023, a case meeting took place at which it was decided that Ms Narici should begin drafting an investigation report based on the material she had collated to date. A template was provided on 6 June 2023 and further progress meetings took place in June between Ms Narici and HR

136. By a letter dated 6 June 2023 (although possibly sent on the 8 June) following up from the 17 May meeting Ms Young was informed as follows:

We attempted to explore alternative options to seek to progress the ongoing disciplinary investigation. You were not receptive to the offer to progress the investigation by correspondence and expressed a desire to leave subject to release of pension benefit. It is not the Council's intention to dismiss you on medical grounds.

The investigating officer will complete her investigation relating to the social media posts. She will make a decision as to whether the case should be referred to a disciplinary hearing and her findings will be shared with you. You will receive a list of relevant allegations, an investigation report and copies of the associated evidence. You will be given a period of time to consider and respond to the findings prior to the confirmation of any disciplinary hearing.

You will have an opportunity to attend any subsequent disciplinary hearing or to provide evidence to be considered in your absence.

We appreciate that this is not our usual approach to disciplinary proceedings, but we do think given your length of absence and the ongoing stress these circumstances are causing that matters need to be resolved.

137. The letter bore Ms Kar's name, but I find that it was not drafted by her and represented a decision taken at a corporate level, involving HR and legal advice. Ms Young was very upset by both the decision outlined in the letter, and by the tone it used. In respect of the decision, as I have already noted she wanted the investigation to be abandoned altogether, and for her to be permitted to retire on grounds of ill-health. In terms of the tone, she felt that the respondent had formed the view that she was refusing to participate, rather than that she was unable, and that this was unfair given the state of her health.

Sarah Narici's report

138. A draft report was produced by Ms Narici on or about 12 July 2023 (1565). The report recounted a broad investigation but then focussed on the "Galway Girl" material. It identified five examples and characterised them as potentially gross misconduct. None of the examples were 'original' tweets posted by the GG account. In three cases, Ms Young (as GG) had commented on or replied to tweets posted by others. In the remaining two cases, she had (as GG) "liked" tweets posted by others. It is convenient to set out here the posts which Ms Narici identified as being of particular concern (albeit she referred to them as being "examples").
    (i) There was a tweet from a user called "Trans Widows' Voices" which posted a link to a Daily Mail article with the headline "'First non-binary CofE priest' says 'God guided me to truth'". Ms Young had replied to that, posting "*God did no such thing. Whatever guidance you were hearing to put your children through this it wasn't from Him. More likely the devil*." ("the vicar tweet")
    (ii) Ms Young had "liked" a tweet by Graham Linehan which stated "*A temporary alliance. But women are important. Trans ideology is the most evil, homophobic, misogynist movement of my lifetime. I can't think of anything that comes close to it. It's a revolution of mediocre straight men*." ("the trans ideology tweet")
    (iii) Ms Young had "liked" a post by an account called Hackney Pound which said "*How do you say fuck off whiny wankers in Welsh?*" in response to an article published by the BBC about non-binary Welsh speakers highlighting difficulty in expressing their gender identity in the Welsh language. ("the Welsh language tweet")

(iv) There was a tweet from a user called Adele, which said (in part) "*Transage people exist, and we are valid*." (For the avoidance of doubt, the tweet referred (whether sarcastically or otherwise) to people who wish to be able to identify as a different age to their chronological age rather than, for example, to older transgender people). Ms Young had posted a reply to that tweet stating "*Transage now, Really! Stop the world I want to get off. For the love of God will these deluded people just grow up and get some therapy*." ("the transage tweet")

(v) There was a Tweet from an account called Libs of TikTok re-posting a TikTok video clip where an American teacher describes coming out as transgender to elementary school children, with the caption "*Teacher discusses coming out as transgender to elementary students – "I used to be a boy but that made me hurt so I went to a doctor.. now I take medicine and I'm a girl* ". Ms Young replied saying "*Children don't need to know this much about their teachers. People like this should not be teachers*." ("the teacher tweet")

139. In addition to those five examples of Tweets, Ms Narici highlighted two further matters:

(i) Firstly, she noted that in a witness statement (made by Alfie Hewitt, although this is not specified in the report) it had been alleged that Ms Young (as GG) had retweeted (i.e. re-posted) a post which included the wording "*I don't give two fucks about your pronouns*".

(ii) Secondly, she identified a post where Ms Young (as GG) had replied to a reposted video with two "clapping hands" emojis, signifying applause/approval. The video had been posted by a TikTok user account called "Insurrection Barbie" and featured a woman complaining about a cosmetics firm using two transgender women to promote a product line aimed at women. There was a transcript prepared of the video (although parts of it seem nonsensical and perhaps mis-transcribed) containing the following comments which were highlighted by Miss Narici in her report:

- 'As far as I'm concerned, you can cut off your genitals, slap on some makeup, throw on some heels, but that does not make you a woman. You are simply a grown man playing dress up in women's clothing.'
- 'These people are forcing their sexuality on our children and their schools'
- 'This is so much more than men is wanting to express themselves to the art of makeup that say literal war against women in the matter of grooming our children. (the "Insurrection Barbie tweet")

140. Miss Narici's draft report indicated that she was unable to reach a definitive conclusion as to whether the GG account did belong to Ms Young. Confusingly, her conclusion stated both that the allegations are "*founded*" and that there was a "*case to answer*". She also stated "*I feel the views are not compatible for an officer who has been appointed to undertake a role as Equality, Diversity and Inclusion Manager*."

141. The draft report was not shared with Ms Young.

July 2023 to letter of 19 December 2023 (invitation to SOSR meeting)

142. On 11 July 2023, Ms Young wrote to Ms Kar, outlining some of her medical history and requesting that:

> "…before proceeding to a hearing, it would be a reasonable step for the Council to ascertain the effects of my depression and mental health on any of the behaviours and conduct referred to in the allegations about me, in order to inform a view about my culpability for those allegations, based on my disability related mental health / depression flare up at the time. E.g. via a specialist mental health assessment."

She went on to say in the same letter:

> "I know that due to my mental health deteriorating, depression symptoms and from the longer term cognitive effects from meningitis, I wasn't myself since shielding started and that definitely affected my behaviour and judgement on and offline."

143. Two further AMR meetings happened on 23 August and 28 September where Ms Young provided updates on her physical health (she was undergoing pelvic biopsies at this time). Ms Young also completed a course of counselling sessions provided by the respondent.

144. On 31 October 2023, Ms Young attended an occupational health appointment with Dr Sujay Roy, who provided his report on the same date. This was over three months since Ms Young had raised the point that her judgement at the time of taking certain actions with her GG account may have been adversely impacted by her poor mental health and asked for an assessment in relation to this. It is worth setting out Dr Roy's conclusions in full (the underlining is my emphasis):

> Lorna appears to have had significant, recurrent mental health issues spanning many years since her 20's and pre-dating her current employment. Unfortunately due to a number of issues including increasing physical health problems, close family bereavement, the social isolation brought on during covid shielding, together with issues at work, these have progressively compounded her mental health difficulties and more latterly to a point whereby she is having safeguarding input from the mental health teams and continues to get self-harm and suicidal ideations.
>
> It would be my impression that she has developed a significant level of mental ill-health across recent years which has been further compounded by a number of underlying physical health problems that have aggravated her mental health position further through factors such as the development of chronic pain and fatigue, sleep disruption, and their associated impact upon her cognitive and social functioning. <u>On balance of probability, it would be my view that it is likely that Lorna's ongoing health problems across the 2019 period onward would have had significant bearing upon her decision to find solace through social media, the degree of investment of her time into that form of social output, as well as impacting upon her cognitions and judgement in terms of the nature of interaction she was contributing to in such forums. From a medical perspective, therefore, I would deem it likely for this to have been a contributory factor in the context of her social media usage.</u> She developed a substantial chronic mental health illness of depression and anxiety which was progressively decompensating, the impact of which is known to lead to things such as behavioural changes including susceptibility to emotional lability including anger and irritability, a sense of apathy, reduced capacity to control impulsive behaviours or thoughts, and impairment of concentration.

145. The individuals responsible for managing this process on behalf of the respondent (realistically, at this stage, the respondent's legal and HR teams) could have used this report as a trigger to pause and assess whether it was appropriate to continue the disciplinary investigation in view of the conclusions expressed, and the current state of Ms Young's health. There is no evidence that they did so. There was a further AMR meeting, conducted by Sharmila Kar on 14 November 2023. At that meeting Ms Young directly requested that the respondent consider the matters outlined in Dr Roy's report and make a decision not to put her through a disciplinary panel. A further AMR was arranged for 21 December 2023. Ms Young expressed to Ms Kar that she was happy to receive "good news" at any time i.e. if the respondent decided not to pursue the investigation to a full hearing but requested that she wanted to avoid receiving "bad news" just before Christmas.

146. There was an exchange of emails on 6-8 December 2023 in which Ms Young queried whether the respondent had reached a conclusion in relation to whether it intended to pursue the disciplinary in light of Dr Roy's report and was told that matters would be confirmed "as soon as possible".

147. A letter dated 19 December 2023 and sent in Ms Kar's name was sent to Ms Young on 20 December. The letter informed her "*We now require you to attend a meeting to consider your suitability to remain in the employment of Manchester City Council*". There was no date set for the meeting, and the letter stated that further arrangements would be communicated shortly.

148. From Ms Young's perspective, this was clearly "bad news". Given that it had taken nearly two months for the respondent to decide how it intended to move forward in light of Dr Roy's report, and given that nothing substantive would happen until the new year in any event (including setting a date for the meeting) it is difficult to understand why those managing the process thought it was necessary to send a letter just before Christmas.

149. Again, it is worth setting out the key part of the letter in full:

> The meeting will consider:
>
> a) Whether the online posts which led to the disciplinary investigation conflict with your role as the Equality Team Manager and the Council's position on transgender rights and go beyond a stated view or belief that might reasonably be protected as a gender critical opinion.
>
> b) The fact that your medical condition may have contributed to your social media usage.
>
> c) Concerns raised by current and previous members of the Equality Team you managed. As set out in the letter dated 10 January 2023 the issues that have been the subject of investigation include:
>
> > a. Your management of staff and the distribution of workload, which has left individuals feeling singled out and/or targeted by you.
> >
> > b. Inappropriate comments made by you to/or about the staff you manage.

c. Inappropriate comments made by you about other Council officers.

d. Inappropriate comments made by you which are viewed to be discriminatory in nature and are associated with the protected characteristics of race, age, and gender reassignment.

e. Breach of personal data

d) Your ongoing absence on grounds of sickness, the resulting inability to progress ongoing investigations and the impact these issues appear to have had on your health.

e) Whether, as a result of the issues set out above that there has been a serious breakdown of trust and confidence between you and the Council.

f) Any other relevant information which you may wish to present to the meeting.

I must warn you that one outcome of this meeting may be a decision to terminate your employment for "some other substantial reason". This would be a dismissal with notice and would include a referral to consider release of pension benefit on medical grounds, given that it is acknowledged that your underlying medical condition may have been a contributing factor to your social media usage.

150. It is worth emphasising that no particulars were given in relation to the items listed at paragraphs (c)a.-e., nor were there any attachments to the letter. Even by this stage, almost a year after the discovery of the GG account, the respondent had still failed to inform Ms Young what it was about the activity of that account that it found to be objectionable. Similarly, she had no way to understand what inappropriate comments she was alleged to have made, what the "breach of personal data" referred to, or any detail of the complaints in relation to her management of staff and distribution of workload. The letter stated that the evidence associated with the issues outlined would be provided to an independent manager to review and would also be shared with Ms Young, although no timescale was provided for this.

Early 2024 to letters of 18 and 19 April 2024

151. Around this time Ms Young engaged a firm of solicitors, and they took up correspondence with the respondent, initially corresponding with Ms Kar and then directly with the respondent's legal department. Within that correspondence, Ms Young's representatives repeatedly, and very clearly, sought particulars of the allegations against her. That was not forthcoming from the respondent.

152. By an email dated 15 April 2024, Ms Young contacted Ms Kar directly, copying Ms Monroy-Dominguez, to raise a grievance regarding the respondent's lack of acknowledgment or response to a solicitor's letter sent on Ms Young's behalf on 8 March. Ms Kar responded to that email on 17 April. At that time, the respondent had agreed that correspondence (other than through solicitors) would go through the claimant's sister, but I do not think that Ms Kar can be fairly criticised for replying directly to an email sent direct to her. Ms Kar's reply acknowledged the grievance and apologised for the delay. I doubt there would have a concern raised about the direct

reply had it stopped there. However, Ms Kar went on to inform Ms Young that she would shortly receive an invitation to the meeting envisaged in the 19 December letter, at which the termination of her employment would be considered. Ms Young objects both to the substantive decision to move to a dismissal meeting, and to the way in which this was communicated directly to her, rather than (initially) through her solicitors or via her sister.

153. In fact, by letter dated 18 April 2024 to Ms Young's solicitor, the respondent communicated this decision again, This letter stated that "*in view of the seriousness of the allegations and that role that Ms Young performs for the Council it is necessary for us to consider whether it is appropriate for her to continue in our employment*". However, the respondent went on to state "*we have decided not to pursue the allegations concerning Ms Young's conduct towards her colleagues. The report will focus on the social media posts*". There was a further paragraph in the letter dealing with the earlier suggestion that, following termination of employment, Ms Young might be able to access pension benefits on an early release basis, due to her health. The letter acknowledged that this was usually only available in cases of dismissal on grounds of ill health, but noted that the respondent had discussed the matter with the relevant LGPS manager and secured agreement that if Ms Young was to be dismissed for conduct which an underlying medical condition had contributed to, she could be referred for a medical assessment for ill health retirement. It cautioned that there was no guarantee she would meet the criteria.

154. In a letter sent via Ms Young's sister (an arrangement in place by agreement at that time) on 19 April 2024 Ms Young was invited to a meeting on 13 May 2024 and advised that the outcome of this meeting could be the termination of her employment for "some other substantial reason". It was stated that the purpose of the meeting was to consider:

a) Whether the on line posts which led to the disciplinary investigation conflict with your role as the Equality Team Manager and the Council's position on transgender rights and go beyond a stated view or belief that might reasonably be protected as a gender critical opinion.

b) The fact that your medical condition may have contributed to your social media usage.

c) Your ongoing absence on grounds of sickness, the resulting inability to progress ongoing investigations and the impact these issues appear to have had on your health.

d) Whether, as a result of the issues set out above that there has been a serious breakdown of trust and confidence between you and the Council.

e) Any other relevant information which you may wish to present to the meeting.

155. It will be apparent that the other concerns around management style, inappropriate comments and data breach had now been excluded, although there was no direct acknowledgement of this or explanation in the letter.

Attached to the letter was an unattributed report prepared for Ms Osborne (who had been named as the manager conducting the meeting). This had been prepared by Ms Monroy-Dominguez, although she acknowledged in her evidence (and it is clear from reading the document) that it was largely copied from Ms Narici's draft report. Although some of the evaluative language had been removed from the concluding sections, it still contained statements such as "*it is felt that these views are not compatible with an officer who has been appointed to undertake a role as Equality, Diversity and Inclusion Manager*" and "*the social media posts do not align with the Council's corporate values or Our Manchester behaviours and do not meet the expected behaviours of Council employees*." There were 43 appendices to the report, amounting to 98 pages. This included, for the first time, copies of the Twitter screenshots. No distinction was made between those included because they were said to be offensive and those included because they were said to evidence a connection between the accounts. The number of screenshots included was significantly higher than the number of examples used in the report (the examples given were copied directly from Ms Narici's investigation, as set out above). In addition, the appendices included correspondence, occupational health reports, and witness statements (some of which were significantly redacted). The letter provided that the claimant could prepare a written submission if she was unable to attend.

156. I note for completeness, that the material attached included at least one Tweet critical of the practice of surrogacy, which is presumably why the claim was pleaded to include a moral belief that surrogacy is wrong. The respondent did not rely on that Tweet beyond placing it in the investigation pack, and it has not featured in this hearing.

Dismissal process

157. The claimant's solicitors attempted to push for more information from the respondent as to what Twitter activity was considered objectionable, and why. Nothing further was forthcoming.

158. On 9 May 2024 Ms Young submitted her first claim form to the Tribunal.

159. On 10 May 2024 Ms Young sent the respondent a detailed written statement setting out her response and comments to various matters raised in the report and the appendices. This also raised other matters, for example evidence of Barry Young and Sharmila Kar's own online activity demonstrating their support for gender identity theory. In this statement Ms Young also expressly acknowledged, for the first time, that she was the owner of the GG Twitter account. She offered interpretations in relation to some of the online activity, some of which I will explore later, and she expressed regret specifically in relation to the vicar tweet, acknowledging that she had fallen beneath her own standards in posting that response.

160. Ms Osborne decided to push back the date of the meeting in order to consider Ms Young's submission more fully. Ms Young was notified of a re-arrangement of the date to 24 May 2024. On 16 May 2024 Ms Osborne met with Ms Dominguez-Monroy and Ms Mazeika-Rimmer from HR, and Jeanette Williams from legal services. It was agreed that Ms Osborne would

be provided with a briefing note outlining matters for her consideration as part of the SOSR process. In a document prepared around this time, as part of the briefing process, the following questions are posed:
If an individual held Gender Critical views, would these views make them automatically incompatible with any role within an EDI setting?
Do these beliefs/views impact the individual's role as EDI Manager?

161. The outcome of the meeting was conveyed to Ms Young in a letter dated 6 June 2024. The letter informed her that she was dismissed, that a PILON would be made, and that her case would be referred for medical assessment with a view to early release of pension benefits (which duly happened). In terms of the factual basis for the dismissal, reliance was placed on only four items, all associated with the GG account namely the teacher tweet, the vicar tweet, the trans ideology tweet and the Insurrection Barbie tweet. Other items specifically identified in Ms Narici's report, such as the transage tweet and the alleged tweet about pronouns, which had never been produced, did not feature, presumably because Ms Osborne did not feel that they represented a proper basis for dismissal. Although there are no precise dates available for when Ms Young took the actions that are criticised by the respondent (not least because these are 'replies' or 'likes' rather than original posts) they are agreed to have taken place between October 2022 and January 2023.

162. Ms Osborne acknowledged that "*employees have a right to hold beliefs and views which others disagree with and [which] do not align with Council values*" but went on to say "*these views should be articulated respectfully and moderately, without the use of offensive language, with the reputation of the Council and its role in offering inclusive services to all of our residents clearly in mind*." Ms Osborne also acknowledged the occupational health evidence as to the effect on Ms Young of her poor mental health and social isolation in leading her to engage online in the way that she had, and said "*Whilst your ill health may have impacted on your decision-making, the serious nature of the comments posted have led to a fundamental loss of trust and confidence in you as an employee of the City Council".* The grounds for dismissal were set out as follows:

(a) The disciplinary investigation could not be concluded for the reasons I have identified in section 1 above.

(b) The evidence presented in this case demonstrates clearly that you have expressed offensive and discriminatory views against the transgender community on multiple occasions, in breach of a number of Council policies as set out in section 3 above.

(c) Your right to hold gender critical views under the Equality Act 2010 does not excuse the use of discriminatory and offensive comments which failed to treat others with the dignity and respect that is required of you as an employee of the Council.

(d) Your position as a manager within the Equality, Diversity and Inclusion team gives rise to a reasonable expectation that you should exemplify good practice and

role modelling in relation to sensitive and complex EDI issues and is therefore incompatible with your actions, comments, and behaviour.

(e) Your ill health was clearly a contributory factor which impaired your judgement and state of mind during the period in question. As a result of this, it would have been potentially unfair to make a decision regarding your conduct in line with the MCC Disciplinary Policy, however, I have to consider whether it would be appropriate for you to return to your role as EDI Manager.

(f) I do not think a return to this role is compatible with the offensive views you have expressed on social media which are likely to undermine the confidence of colleagues, staff and partners working in or with the EDI Team. The written statement of 13" May also leads me to consider that you could not be reincorporated into the EDI team without undue disruption.

163. Ms Osborne went on to state that she had considered the possibility of redeployment, but that "*the views expressed, and language used, was such that it would not be compatible with upholding the reputation of the Council or the trust and confidence of staff and partners in* any role *within the Council.*"

164. In cross-examination, in answer to a straight-forward question, Ms Osborne agreed that the reason she considered Ms Young could not be employed in any role within the council was due to her views, rather than anything she had said or done. Whilst she attempted to reframe this under re-examination, I find that her initial answer was genuine. At least as at June 2024, the respondent's position was that the employment of anyone holding the views Ms Young held was incompatible with the "values" of the council, as exemplified by the Motion and the Workplace Statement.

165. Ms Young submitted an appeal against her dismissal on 19 June 2024. She also entered a second (short) period of Early Conciliation before submitting a second claim to the Employment Tribunal on 2 September 2024.

166. The appeal was considered by Angela Harrington, who dismissed it. The appeal outcome was sent to Ms Young on 5 September 2024. It therefore post-dates the second claim. Although Ms Young rejects the outcome of the appeal, and various criticisms were made of it in her statement and in Mr Roberts' submissions, there is no freestanding complaint about it as part of these proceedings.

167. For completeness in terms of the chronology, I note that Supreme Court handed down its decision in **For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16** on 16 April 2025. That decision established that "sex" within the EqA has a biological meaning. Ms Osborne referred to the clarification of the law provided by that decision, and seemed to imply (although she did not explicitly state) that the respondent's approach to the events in this case may have been different subsequent to that decision.

The Law

Protected belief

168. Section 10 EqA applies to any particular "religious or philosophical" belief (or lack thereof). The key authority in determining whether a belief attracts protections is **Grainger plc v Nicholson [2010] ICR 360** as decision of Burton J in the EAT. **Grainger** sets out a test comprising five separate criteria, which has subsequently been cited by the Court of Appeal with apparent approval, and which both parties agree to be the applicable test before this Tribunal. The test, as per paragraph 24 of the Judgment, is as follows:

> (i) The belief must be genuinely held.
> (ii) It must be a belief and not, as in McClintock, an opinion or viewpoint based on the present state of information available.
> (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.
> (iv) It must attain a certain level of cogency, seriousness, cohesion and importance.
> (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others

169. This test, and particularly, "Grainger V", the criterion that the belief must be worthy of respect in a democratic society, has been the subject of significant subsequent authority, particularly, although not exclusively, arising out of the trans debate. Relevant cases include **Forstater v CGS Europe & Ors [2022] ICR 1, Mackereth v Department for Work and Pensions [2022] ICR 1609** and **R (Smith) v Chief Constable of Northumbria [2025] EWCH 1805**.

170. Although I have consider each of these authorities, and what was said about them in the parties' written submissions, I did not find the disputed protected belief in this case to be determinative of any of the complaints, and so I do not deal with this area of the law in detail.

Direct Discrimination

171. Section 13 EqA provides, so far as relevant, that:

> **13 Direct discrimination**
> **(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others…**
>
> **39 Employees and applicants**
> **(2) An employer (A) must not discriminate against an employee of A's (B) …**
> **(c) by dismissing B;**
> **(d) by subjecting B to any other detriment.**

172. I remind myself of the shifting burden of proof, as codified by s.136 EqA and as established and elaborated in the guidance provided in **Barton v Investec Securities Ltd [2003] ICR 1205** and subsequently 'tweaked' in **Igen Ltd v Wong [2005] ICR 931** and **Efobi v Royal Mail Group Ltd [2021] ICR 1263**.

173. It is well-established that the comparator exercise envisaged by the wording of s.13 can be satisfied by the use of either a real-life, actual comparator or a hypothetical comparator. It is also the case, however, that the construction of a hypothetical comparator may not be necessary:

"It is trite law that it is not necessary in every case to construct a hypothetical comparator, and that doing so is often a less straightforward route to the right result than making a finding as to the reason why the respondent did the act complained of: see the very well-known passage at paras. 8-13 of the speech of Lord Nicholls in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] ICR 337." **Page v NHS Trust Development Authority [2021] ICR 941**.

174. In statutory terms, one feature of direct discrimination, as opposed to certain other forms of discrimination, is that there is no defence of justification available to the discriminator.

175. In religion and belief cases, a distinction has developed in the authorities between unfavourable treatment on the ground of the belief itself, which cannot be justified, and unfavourable treatment resulting from the objectionable or inappropriate way in which the employee has manifested that belief. Objectionable (or arguably objectionable) manifestations of belief may include dress code infringements (e.g. **Eweida v United Kingdom 57 EHRR 8, ECtHR**) and unwanted proselytising (e.g. **Wastney v East London NHS Foundation Trust [2016] ICR 643**) as well as social media commentary. This distinction echoes the concept of "separability" in victimisation and protected disclosure cases where it may be argued that the reason for the impugned treatment is not the conduct itself but some properly severable feature of it. ("Separability" is an evidential approach which may be relevant in certain cases, and not a rule of law).

176. The various relevant threads of authority have been recently drawn together by the Court of Appeal in the case of **Higgs v Farmor's School [2025 EWCA 109**. Lord Justice Underhill's Judgment (with which Bean LJ and Falk LJ concurred) is a comprehensive survey of the law in this area, informed by submissions made by notable advocates, not only on behalf of the parties but also on behalf of various intervenors. Permission to appeal to the Supreme Court has been determined and refused. Although the advocates in this case went to some considerable effort in traversing the antecedent authorities, I agree with Mr Roberts that **Higgs** must be the touchstone in my determination of this case, and the principles set out therein must be the ones which I apply.

177. It is worth, therefore, spending a little time setting out the background to that Judgment. The claimant, Kristie Higgs, worked as a pastoral administrator and work experience supervisor at the respondent secondary school. The school received complaints from a parent about various social media posts Ms Higgs had made (mostly quoting from other accounts) objecting to government policy on sex education in primary schools because of its promotion of "gender fluidity" and its equation of same-sex marriage with marriage between a man and woman. She was suspended and ultimately dismissed for gross misconduct, before bringing a claim of

direct discrimination on grounds of her beliefs. The relevant beliefs, including a lack of belief in gender fluidity and same-sex marriage, were accepted as being protected.

178. The Employment Tribunal rejected the claim, holding that the school's actions were not because of (nor related to) the protected beliefs, but were rather taken on the grounds that someone reading the posts could conclude that Ms Higgs held homophobic and transphobic views. Ms Higgs did not have an unfair dismissal claim (due to limitation issues) but there were observations in the Judgment suggesting that the Tribunal may have been inclined towards a finding that the decision to dismiss was disproportionate in the circumstances of the case.

179. The EAT upheld the claimant's appeal, ruling that the ET had failed to consider whether there was a sufficiently close nexus between the claimant's beliefs and the conduct she had been disciplined for. The EAT hold that there was such a nexus, and remitted the matter for the ET to determined whether the reason for the treatment was simply the manifestation of the belief (which would be impermissible) or was a justified objection to the manner of the manifestation.

180. The appeal to the CA was Ms Higg's appeal against the EAT's decision to remit. She argued that the EAT had been bound to reach its own conclusion the interference with her rights could not be justified under article 9(2) ECHR and to allow the claim for direct discrimination to succeed.

181. Article 9 ECHR deals with freedom of thought, conscience and religion and guarantees the right to manifest one's religion or belief in public or in private in worship, teaching, practice and observance. Article 9(2) recognises that the right to manifest one's religion or believe can properly be subject to constrained, but requires that these may be only "such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

182. The Court of Appeal recognised that the effect of article 9(2) is to require an assessment of proportionality of the limitation in question. It referenced the "*classic*" four-part approach to that assessment as set out in **Bank Mellat v MH Treasury (No 2) [2014] AC 700** ("the Mellat test"), specifically:

> "(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."

183. As to point 3, Ms McColgan drew attention to paragraph 75 of Lord Reed's judgment, emphasising that it is not to be taken too literally and referring to a margin of appreciation to be given in determining whether a

less intrusive measure could reasonably have been adopted (albeit in the context of a state actor).

184. The Court also recognised (paragraph 55) that there may be cases where the employer's treatment may be ostensibly on the ground of conduct which manifested a religious or other belief, but where the real reason is simply an animus against the belief in question. Such cases are not true manifestation cases, and no justification is possible. Underhill LJ went on, in this paragraph, to say that "*In a manifestation case proper the employer genuinely has no objection to the employee holding the belief and is motivated only by the conduct which constitutes its manifestation*."

185. Underhill LJ noted the following three principles in relation to freedom of speech in the **Higgs** Judgment:

(i) Freedom of speech necessarily entails the freedom to express opinions that may shock and offend.

(ii) The protection of freedom of speech is particularly important in the case of "political speech" – that is, expression of opinion on matters of public and political interest.

(iii) In any given case it is important to be alive not just to the effect of restrictions on freedom of speech in that case but to their chilling effect more widely.

However, he went on to note that those principles were developed in the context of limitations on freedom of speech imposed by state authorities, and recognised that slightly different considerations apply when it is necessary to assess whether interference in the freedom of speech rights of an individual by their employer is justified in the context of the employment relationship and the law applicable to it.

186. In paragraphs 66-79 Underhill LJ discusses the importation of a test of objective justification into separability cases involving religion and belief, due to the operation of Article 9(2), with particular reference to **Page v NHS Development Authority [2021] ICR 941**. Particularly relevant for this claim are the propositions that: (1) "objectionable" is an acceptable (if inapt) shorthand for the phrase "to which objection could justifiably be taken", and both have the same effect as the word "inappropriate" (2) the burden of proof of objective justification is on the employer.

187. The Judgment subsequently devotes significant discussion to the doctrinally problematic effects of introducing an objective justification test into a subset of direct discrimination claims. However, I need not engage with that discussion here – **Higgs** clarifies beyond any doubt that I must apply such a test (provided, of course that I find that this is indeed a true manifestation case) and the jurisprudential foundations on which it properly sits are not my concern.

188. At paragraph 112 of the Judgment, the court excerpted paragraphs from the Judgment of Eady J (as she then was) in **Higgs** in the EAT. In particular, it set out the following five "basic principles" formulated to aid Tribunals with the proper approach to be adopted in assessing proportionality in religion and belief cases:

(1) First, the foundational nature of the rights must be recognised: the freedom to manifest belief (religious or otherwise) and to express views relating to that belief are essential rights in any democracy, whether or not the belief in question is popular or mainstream and even if its expression may offend.
(2) Second, those rights are, however, qualified. The manifestation of belief, and free expression, will be protected but not where the law permits the limitation or restriction of such manifestation or expression to the extent necessary for the protection of the rights and freedoms of others. Where such limitation or restriction is objectively justified given the manner of the manifestation or expression, that is not, properly understood, action taken because of, or relating to, the exercise of the rights in question but is by reason of the objectionable manner of the manifestation or expression.
(3) Whether a limitation or restriction is objectively justified will always be context-specific. The fact that the issue arises within a relationship of employment will be relevant, but different considerations will inevitably arise, depending on the nature of that employment.
(4) It will always be necessary to ask (per Bank Mellat): (i) whether the objective the employer seeks to achieve is sufficiently important to justify the limitation of the right in question; (ii) whether the limitation is rationally connected to that objective; (iii) whether a less intrusive limitation might be imposed without undermining the achievement of the objective in question; and (iv) whether, balancing the severity of the limitation on the rights of the worker concerned against the importance of the objective, the former outweighs the latter.
(5) In answering those questions, within the context of a relationship of employment, the considerations identified by [the Archbishops Council] are likely to be relevant, such that regard should be had to: (i) the content of the manifestation; (ii) the tone used; (iii) the extent of the manifestation; (iv) the worker's understanding of the likely audience; (v) the extent and nature of the intrusion on the rights of others, and any consequential impact on the employer's ability to run its business; (vi) whether the worker has made clear that the views expressed are personal, or whether they might be seen as representing the views of the employer, and whether that might present a reputational risk; (vii) whether there is a potential power imbalance given the nature of the workers position or role and that of those whose rights are intruded upon; (viii) the nature of the employers business, in particular where there is a potential impact on vulnerable service users or clients; (ix) whether the limitation imposed is the least intrusive measure open to the employer.

Underhill LJ endorsed that guidance, whilst simultaneously echoing Eady J's note of caution as to the limited value of guidelines and the requirement for nuanced decision-making. In particular, he stated that it would not be necessary – or always even useful – for a Tribunal to structure its reasoning by reference to the nine considerations set out in point 5 and that other considerations may be relevant in other cases.

189. Underhill LJ also recognised that actual or prospective reputational damage could be a relevant consideration in manifestation cases, and set out three considerations of his own in respect of cases where such damage is asserted, at paragraphs 140 to 142, which I summarise as follows:

(1) The subject matter of the employee's views is relevant. A statement about views which have nothing to do with the respondent's business is less likely to damage its reputation than a statement

about views which are central to it. In **Higgs** there was an acknowledged connection between the claimant's expressed views about the proper subject matter for children's education, and her employer's 'business' as a school.

(2) The way in which the employee expresses belief is relevant. An employer may suffer reputational harm where an employee expresses a protected belief in an inappropriate way, particularly where they have expressed themselves in "*egregiously offensive or insulting language.*" Nonetheless, it is noted that "*the threshold of offensiveness should be high: protection should not be lost merely because the employee has expressed themselves intemperately*."

(3) The third consideration is whether it is clear that the views are personal to the employee (as opposed to them being potentially imputed to the employer). This becomes more important in the case of senior employees.

190. The Judgment also contains a helpful discussion on the subject of "stereotyping" and, in particular, the assumption that may be made, potentially incorrectly, that people holding certain (generally conservative) beliefs are likely to discriminate against gay and/or transgender individuals. Related to this is the recognition that the use of labels such as 'transphobic' or 'homophobic' is often unhelpful because of the lack of precision as to what such labels connote, and the variation in interpretation of them between different individuals. The court did not ultimately consider it necessary to reach any conclusions as to the role that such stereotyping may have played in motivating the parent complainant.

191. Ultimately, the Court of Appeal's conclusion was that the ET would be bound to find that Ms Higgs' dismissal was not objectively justified and accordingly that the constituted unlawful discrimination (para 157). The issue around the dismissal, therefore, could be determined by the court. Conversely, the secondary complaints about the disciplinary process were not susceptible to only one outcome, and did require remission to the ET to consider the question of justification.

192. Elaborating on that conclusion, Underhill LJ assumed (without deciding) that the school was entitled to take objection to the posts (and therefore that justification was potentially available). Nonetheless, he concluded that dismissal was "unquestionably" not a proportionate response. There were a number of reasons for that conclusion, including that the language (even if "objectionable") was not grossly offensive, that the claimant had only re-posted the material, rather than generating it herself, which was relevant to culpability, that the risk of widespread circulation (and therefore reputational damage) was speculative, that the employer (and the ET) did not think that the views expressed would affect her work. Taking those matters together, he concluded that dismissal for this "unwise" conduct was not even arguably a proportionate response, and still less where she was a long-serving employee with no complaint about her actual work. That conclusion was reinforced (but did not depend upon) the strong indication in the Tribunal's Judgment that it would likely have found the dismissal unfair.

193. In relation to the attack on the process, Underhill LJ concluded that the school was entitled to carry out some investigation into the complaint, given the offensive language contained in the posts and the fact at least one parent had been caused concern. He held it was "debatable" whether that investigation needed to be disciplinary in character, whether Ms Higgs needed to be suspended to enable it to take place and whether the conclusion that there was a 'case to answer' was justifiable. Formally, those matters were therefore remitted (although, unsurprisingly, the parties were encouraged to take a pragmatic view as to the resolution of the claim).

194. The short concurring Judgment from Falk LJ emphasises a point which is present in Underhill LJ's judgment, but perhaps not fully drawn out above, and which is relevant to this case. A statement must be judged by what it actually says, not by a meaning attributed to it by a casual reader online. The test is an objective one – what meaning do the words used actually have, and what message would they convey to a reasonable reader? It is only when a tribunal has determined what the words mean that it can then proceed to determine whether what was (actually) said was, despite being a manifestation of a belief, expressed inappropriately and whether, if it was, the response was objectively justifiable.

195. It was part of Mr Roberts' submissions, discussed further below, that the actions of Ms Higgs bore close comparison to the actions of Ms Young in this case and that, to the extent there were differences, those differences weighed in favour of Ms Young. I will not record the full text of the posts made/re-posted by Ms Higgs (although I have considered the extracts set out in the CA Judgment carefully). In the words of Underhill LJ "*all the posts are hyperbolically expressed, that is markedly more so in the case of the re-posts*". I also record that Ms Higgs posted on Facebook in her maiden name. Whilst that was not the name she used at work, she was evidently identifiable to at least one parent, who made the complaint (and the dismissal letter noted that she had attended the school herself and many long-standing connections in the local community, suggesting that many people would be able to link the two names). During the investigation process Ms Higgs stated that she was not "*against*" and did not "*have any issues with*" gay, lesbian or transgender people nor, indeed, with schools. She stressed that her concern was about government policy as to what was required to be taught in primary schools. She denied having any discriminatory attitude to gay students in the high school, and the employer's investigation report produced no evidence of any concerns with her work, nor about her expressing her views about gender fluidity or same-sex marriage within the workplace.

196. In view of the comprehensiveness of the ***Higgs*** decision, I have not found it necessary to set out separately many of the other authorities, and principles contained therein, on which counsel placed reliance.

Harassment

197. Section 26 of the Equality Act 2010 provides (as relevant) as follows:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—

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

198. The leading case on harassment is **Richmond Pharmacology v Dhaliwal [2009] IRLR 336**. In particular, I took account of the guidance set out in paragraphs 13-16 of that decision as to how the Tribunal should approach harassment claims.

199. In the case of **Land Registry v Grant [2011] EWCA Civ** Elias LJ commented in relation to the words "intimidating, hostile, degrading, humiliating or offensive" that:

"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

A similar point was made in paragraph 22 of the **Richmond Pharmacology** case.

200. The objective justification test which is imported into direct discrimination in cases involving manifestation of religion or belief is similarly imported into harassment cases (**Higgs**, paragraph 79 and footnote 7).

Failure to make reasonable adjustments

201. Where an employee is disabled within the meaning of s.6 EqA, their employer may come under a legal duty to make reasonable adjustments. This duty is set out in ss.20-21 EqA, which provide as follows:

Duty to make adjustments

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

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature 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.

(5) The third requirement is a requirement, where a disabled person would, but for the provisions of an auxiliary aid, be put 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 provide the auxiliary aid.

(6)-(13)…

Failure to comply with duty

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

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

(3) […] `

202. There is further guidance provided by the 2011 Code, to which I have had regard.

203. The duty to make reasonable adjustments arises by operation of law, it is not essential for the claimant herself to identify what should have been done, although usually this will be the basis on which a claim arises (**Cosgrove v Caesar and Howie [2001] IRLR 653** (EAT)).

204. Adjustments that do not have the effect of alleviating the disabled person's disadvantage are not reasonable, although where there is uncertainty as to whether or not a proposed adjustment will be effective, it may still be reasonable to take that step. The uncertainty is one of the factors to be weighed in the balance (**Tarbuck v Sainsbury Supermarkets Ltd [2006] IRLR 664, EAT**, **Griffiths v Secretary of State for Work and Pensions [2017] ICR 160, CA**).

Discrimination arising from disability

205. Section 15 EqA provides materially as follows:

(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.

206. This test requires the following questions to be asked (See **Pnaiser v NHS England [2016] IRLR 170**):

(1) Was there 'unfavourable treatment'?

(2) What was the cause of, or reason for, the impugned treatment, in the mind of the alleged discriminator (what was 'the something', in the language of the Act)?

(3) Objectively speaking, did that 'something' arise in consequence of the employee's disability?

(4) Was the treatment a proportionate means of achieving a legitimate aim?

207. There is no requirement that the employer was aware of the "something" arising in consequence of disability, provided they were aware of the disability itself (**City of York Council v Grosset [2018] A All ER 77**).

208. The justification question requires the application of the **Bank Mellat** test. Per **Aster Communities Ltd (formerly Flourish Homes Ltd) v Akerman-Livingstone [2015] AC 1399, SC**, the respondent must show: (a) it has identified a sufficiently important aim; (b) the unfavourable treatment was an appropriate means of achieving that aim; (c) the treatment was reasonably necessary; (d) the treatment struck a fair balance between the need to accomplish the aim and the disadvantage caused to the claimant.

209. In weighing the employer's justification against the discriminatory impact, the Tribunal must engage in "*critical scrutiny*", "*considering whether the means correspond to a real need of the undertaking, are appropriate with a view to achieving the aim in question, and are necessary to that end*": **Stott v Ralli Ltd [2022] IRLR 148** at paragraph 79.

210. A key question is whether there were viable, less discriminatory alternative means of achieving the aim. If there were, then the unfavourable treatment will not be proportionate.

Unfair dismissal

211. Section 98 Employment Rights Act 1996 requires the employer to show the reason, or principal reason, for dismissal and that it falls within a potentially fair category (including misconduct under section 98(2)(b) or 'some other substantial reason' under s.98(1)(b)). The Tribunal must then determine, in accordance with equity and the substantial merits of the case, whether the employer acted reasonably in treating that reason as sufficient to dismiss. That assessment is objective and must take account of the employer's size and administrative resources.

212. The reason for the dismissal is the set of facts known to, or beliefs held by, the employer, which cause it to dismiss the employee. See **Abernethy v Mott Hay and Anderson [1974] ICR 323**. The 'label' which applies to those facts, in terms of the potentially fair reasons set out in the statute, is likely to be significant in determining whether a fair procedure was followed by the respondent. It does not, however, necessarily make the dismissal unfair if the employer has applied the wrong label either at the dismissal stage or when defending the claim.

213. In misconduct cases, the employer must demonstrate: (i) a genuine belief in the employee's misconduct; (ii) reasonable grounds for that belief; and (iii) that such grounds were established following as much investigation into the matter as was reasonable in the circumstances (**British Home Stores Ltd v Burchell [1978] ICR 303**). The Tribunal's role is not to determine whether the employee in fact committed the misconduct, but whether the employer's belief and the process by which it was reached were reasonable. In considering the reasonableness of the investigation, the

context of the misconduct must be considered and the 'band of reasonable responses' approach applied – an employer is not obliged to pursue every conceivable line of enquiry (**Sainsbury's Supermarkets Ltd v Hitt [2003] ICR 111 (CA)**).

214. Reasonableness also requires consideration of whether the sanction of dismissal fell within the "band of reasonable responses" open to a reasonable employer: **Iceland Frozen Foods Ltd v Jones [1983] ICR 17 (EAT)**. Tribunals must avoid substituting their own view of the merits for that of the employer; the question is whether the decision to dismiss was one a reasonable employer could have reached (**London Ambulance Service NHS Trust v Small [2009] EWCA Civ 220; [2009] ICR 1403**).

215. Procedural fairness is a component of overall fairness under section 98(4). This requires that an employee knows the allegations which he has to meet, and that the reasons for dismissal are made clear. Relevant to this case, an internal appeal is an important safeguard. The absence of an appeal can render a dismissal unfair, particularly where the original decision is imperfect or where an appeal might have cured defects. Equally, however, the absence of an appeal will not necessarily render the dismissal unfair in all cases. The Tribunal must consider the dismissal process holistically.

216. Where an employer has dismissed for "some other substantial reason" it must be "of a kind such as to justify the dismissal of an employee holding the position which the employee held" (s.98(1)(b)). The reasonableness of the process will depend on the particular reason relied upon and the broader circumstances of the case.

217. There are cases where a breakdown in relationships can amount to SOSR justifying dismissal. Ms McColgan placed reliance, for example, on **Ezsias v North Glamorgan NHS Trust [2011] IRLR 550**.

Time Limits

218. The unfair dismissal complaint was presented in time. Certain of the EqA complaints were (at least arguably) presented outside of the primary time limit.

219. At the material time, section 123 EqA provided, materially, as follows:

123

(1) …proceedings on a complaint within section 120 may not be brought after the end of-

(a) The period of 3 months starting with the date of the act to which the complaint relates, or

(b) Such other period as the employment tribunal thinks just and equitable

(2) …

(3) For the purposes of this section-

(a) Conduct extending over a period of time is to be treated as done at the end of the period;

…

220. The first question, therefore, in respect of any discriminatory act which took place prior to the limitation cut off date (agreed to be 28 November 2023), is whether it is properly to be viewed as part of a course of conduct extending over a period of time. There is a distinction to be drawn between a one-off act which may have continuing consequences, and a series of related acts. However, in identifying the requisite relationship between various acts, it is not necessary to identity an underlying practice or policy (**Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530 CA, Lyfar v Brighton and Sussex University Hospitals Trust 2006 EWCA Civ 1548**).

221. In **Hale v Brighton and Sussex University Hospitals NHS Trust EAT 0342/16** the EAT considered the approach to continuing acts in the context of disciplinary procedures and noted the undesirability of a claimant having to lodge new claims to protect their position at each stage of a disciplinary process. More recently, in **Kristensen v Portman Healthcare Ltd [2026] EAT 127** the EAT has reinforced the view expressed in earlier authorities that a disciplinary suspension will generally be an act extending of a period of time, rather than a one-off act with continuing consequences.

222. Where a particular act (or the conclusion of a particular course of conduct) is out of time s.123(1)(b) EqA provides for Tribunals to extend time where the claimant was presented within "*such further period as the employment tribunal thinks just and equitable.*" This is commonly called the "just and equitable" test.

223. This test enables the Tribunal to take into account any factor that is relevant in the particular case. However, the fact that the Tribunal has such discretion does not mean that claimants are safe to assume that it will always be exercised in their favour, as noted by the Court of Appeal in **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434**:
"there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule."
The quote, often-cited, is to be set against the backdrop of the Court of Appeal confirming that Employment Tribunals have a wide discretion to extend time, and that appellate courts should be slow to interfere with their decisions and must be taken in that context (see **Jones v Secretary of State for Health and Social Care 2024 EAT 2**).

224. The factors set out in **British Coal Corporation v Keeble [1997] IRLR 336** may be relevant. Those include the length of, and reasons for, the delay; the extent to which cogency of evidence may be affected and the steps taken by the claimant to obtain advice. However, this is not a checklist to be mechanistically applied (**Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] ICR D5, CA**). Ultimately, it is for the Tribunal to determine what the relevant factors are, and how much weight to place on those factors. **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194 (CA)** emphasises that

Parliament has chosen to give Employment Tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the statute or interpret the provision as if it contains a list.

Submissions

225. As I have said, the parties presented written submissions reaching 80 and 90 pages in length respectively. I am not going to further lengthen this Judgment by attempting to summarise them. I have already drawn on the submissions in setting out the legal principles, above, and key points put forward in argument are reflected in my discussion of each of the issues below.

Discussion and conclusions

226. This section follows the structure of the agreed list of issues (appended).

Protected characteristic

227. The claimant's pleaded beliefs are, for the most part, acknowledged by the respondent as meeting the **Grainger** criteria and, therefore, as attracting the protection of the EqA. There is a dispute about the fourth pleaded belief, which is expressed as follows in the list of issues:

"*A belief that gender identity theory, specifically the belief that a person's "gender identity" trumps their biological sex such that transwomen are women and transmen are men, is dangerous and has caused social harm*."

228. Miss McColgan's written submissions suggest (at paragraph 3) that this fails the Grainger II test, in that it is an opinion held by Ms Young on the basis (presumably as Ms Young sees it) of the current state of information available, because it could not survive conclusive evidence that gender identity theory did not cause harm. I reject that submission. Beliefs as to the impact of various ideas or behaviours on society at large are a core component of many belief systems, both religious and secular. The idea that something causes harm to society itself involves a value judgement as to what sort of society we should aspire towards and therefore what constitutes harm. Harm to society is empirically measurable only to a very limited degree, in very limited instances. A belief that something causes harm to society may not, of itself, satisfy the Grainger test in full, but when that belief is set in the context of a wider belief, such as the gender critical standpoint held by Ms Young I am satisfied that Grainger II represents no barrier.

229. At paragraph 167 of the submissions Miss McColgan posits that a belief that trans ideology is "the most evil, homophobic, misogynist movement of [Graham Linehan's] lifetime" is not compatible with Grainger V. However, that is not the view pleaded by Ms Young. I am satisfied that the belief, as expressed, does satisfy the threshold of Grainger V (noting the emphasis in **Forstater** and other authorities on both the low bar imposed by Grainger V and that unprotected beliefs are equated with those which where expression can properly be proscribed under Article 10 ECHR).

230. As I have already noted, my conclusion that the fourth pleaded belief does attract protection is not determinative of any of the specific complaints, which is why I have dealt with this issue relatively briefly.

Direct discrimination

231. The claimant relies on twelve alleged detriments and her dismissal as being acts of direct discrimination on grounds of religion or belief. The belief relied on varies slightly between the detriments. Ten of the detriments are accepted to have taken place as a matter of fact, these appear at points 6(a)-(j) of the list of issues. Two are factually disputed, and they appear at points 8(a)-(b). I consider each detriment below, as well as the dismissal, using the numbering from the List of Issues

6(a): Sarah Herdan and Adiba Sultan made complaints against the Claimant

232. This relates (and can only relate) to the complaints made by Ms Herdan and Ms Sultan during the currency of their employment, whilst the respondent was vicariously liable for acts carried out in the course of their employment.

<u>Ms Herdan</u>

233. In relation to Ms Herdan, the complaints comprise an oral complaint raised to Ms Johnston around 7 April 2022 identifying concerns in relation to the Sex and Gender Report, a written complaint to Bev Craig (then the elected leader of the Council), a further complaint to Ms Johnston made by email dated 20 June 2022 and her resignation letter. The contents of these various complaints have been summarised in the findings of fact above.

234. It is apparent from reading Ms Herdan's correspondence that she squarely equated the holding of any gender critical viewpoint with transphobia. Although she recognised the holding of such views to be protected, she regarded the expression of such views, even indirectly or by implication, to be discriminatory. Her complaints are devoid of specificity because she had no example of Ms Young having done anything intrinsically wrong. She merely had a suspicion of "wrongthink" gleaned from a selection of Tweets demonstrating support for certain anodyne sentiments expressed by prominent individuals associated with the gender critical side of the trans debate.

235. The force of Ms Herdan's animus against Ms Young can be seen by her pushing to have her concerns taken forward as misconduct matters (rather than merely performance) and her decision to escalate her concern to the elected leader of the Council. Whilst her actions after leaving her employment are not directly within the scope of the claim, they do serve to shed light on the extraordinary amount of time and effort that she was prepared to invest in maintaining a campaign against an EDI professional who dared to espouse the "wrong" view in this debate.

236. The raising of the complaints clearly amounts to a detriment – the respondent does not suggest otherwise. Was it less favourable treatment on grounds of religion or belief? In my judgment, it clearly was.

237. The voluminous body of case law in relation to direct discrimination has developed largely to assist Tribunals in properly identifying discriminatory motives (whether conscious or subconscious) given that direct discrimination will generally turn on a question of motivation and people do not admit to discriminatory behaviour.

238. In relation to Ms Herdan's complaints, she does, in substance, admit discrimination. For example, the 20 June email recognises that gender critical views are protected by law but nonetheless posits that "voicing them" inside and outside of work is unacceptable. There is nothing more than the voicing of such views that is required, in Ms Herdan's view, to amount to misconduct. It axiomatic that a freedom to hold views which one cannot express, however innocuously, is no freedom at all.

239. I conclude that, in the case of Ms Herdan's actions, this is not properly viewed as a manifestation case at all. No justification is available because Ms Herdan's conduct was, as I have found, motivated simply by her animus against what she perceived to be Ms Young's gender critical beliefs. In those circumstances, Ms Herdan's actions in making these complaints can only be directly discriminatory.

240. In respect of this allegation, I do not consider that it is necessary to construct a hypothetical comparator to determine that Ms Young was treated "less favourably". However, undertaking that exercise supports the conclusion I have already reached. It is unthinkable with Ms Herdan would have complained about a colleague "voicing" views which were compatible with gender identity theory (e.g. "transwomen are women"). It is very hard to imagine Ms Herdan going to such lengths to complain about Ms Young on the basis of almost any other belief she might hold.

241. Ms McColgan reminds me that under s.27 EqA complaints about discrimination and harassment are protected unless false and made in bad faith. She submits that characterising a complaint made in good faith as an act of discrimination would have a chilling effect on the expression of *bona fide* concerns about any behaviour which could be characterised as the expression or manifestation of protected beliefs. Without hearing from Ms Herdan I am reluctant to go so far as to say that her complaints were made "in bad faith". This is not, for example, a situation where an individual has alleged that a racist comment was made, knowing that to be false, in order to cause trouble for a colleague. Rather, it appears to be a case where Ms Herdan's own strong views have led her to mischaracterise the holding of opposing views as necessarily discriminatory. There is nothing to suggest that she did not have a genuine belief that she was doing good by raising these complaints. If she did, in my view that belief was sorely misguided, but it was also encouraged and abetted at a corporate level by the respondent's adoption of the Trans Motion, the Workplace Statement, and by Ms Johnston's warm response to the complaints being made. It is neither necessary or helpful, in this case, for me to consider whether Ms Herdan's

complaints, or any part of them, would constitute protected acts under s.27. I am concerned with whether her actions infringed s.13 and I am satisfied that they did in respect of each of the complaints identified as part of this claim.

Ms Sultan

242. The case much is less clear-cut in relation to Ms Sultan. I find (and it was accepted by Ms Johnston) that there was coordination between Ms Herdan and Ms Sultan in making their complaints against Ms Young. Ms Sultan also made a verbal complaint on 7 April (or possibly the following day), but that appears to have been about Ms Young's management of her, with no explicit reference to Ms Young's views on trans people or gender identity theory.

243. Ms Sultan did not make subsequent written complaints corresponding to those made by Ms Herdan. She did not take it upon herself to audit Ms Young's tweets, nor attempt to escalate the matter to Ms Craig. Ms Sultan resigned on 21 June 2022, the same day as Ms Herdan. Her resignation letter cites "*irreconcilable differences in the work ethic of [Ms Young*]" and expands that by talking about feeling devalued, de-skilled and mis-represented. There is no explicit reference (and no obvious implied reference) to anything related to the trans debate, nor is there any reference to it in the 4-page written complaint she submitted later.

244. Subsequently, Ms Sultan appears to have 'blown hot and cold' in relation to the investigation. At times she was difficult to contact or did not provide further information when requested. She only made complaints related to the trans debate in an interview of 28 November 2022, after she had left employment and only when asked. She continued to maintain her capability complaints and, by this time, was also drawing a clear connection between her Asian ethnicity and Ms Young's allegedly poor treatment of her.

245. By complaining about her, Ms Sultan has unquestionably subjected Ms Young to a detriment. The question is what was the reason for that treatment? The assessment here is more in-keeping with a standard direct discrimination case, where no overt discriminatory motive is visible.

246. Turning to an **Igen** analysis, Ms Young must prove, on the balance of probabilities, facts from which the tribunal could conclude, in the absence of any other explanation, that the respondent (for these purposes Ms Sultan) has committed an act of discrimination against the claimant which is unlawful. Whether the claimant has done so will generally depend on the inferences that can properly be drawn from the primary facts found by the Tribunal. The key facts that the claimant points to are, primarily, those showing coordination between Ms Herdan and Ms Sultan and, secondarily, the fact that Ms Sultan's 'managerial' complaints are demonstrably weak. Ms Young prepared an annex to her witness statement setting out her substantive and exhaustive responses to all of the 'managerial' complaints. It was disproportionate to explore this fully in evidence particularly where, in the absence of Ms Sultan as a witness, the respondent had no positive case to put forward. The fact that evidence is unchallenged does not mean

that it must be accepted by the Tribunal. However, given that Ms Young is able to simply and irrefutably answer some of the complaints (such as the complaint that she did not ensure Ms Sultan knew where the toilet was, when Ms Young was permanently working from home,) I do find that I can conclude that Ms Sultan's complaints were, at least to some significant degree, fabricated or exaggerated due to an animus that she too had developed against Ms Young.

247. Mr Roberts puts forward the thesis as follows:

> "They shared the belief that C was gender critical, that to be so was to be transphobic, and that they would make her life hell by complaining. The modus operandi is similarly apparent: Ms Herdan would lead the charge on transphobia allegations and Ms Sultan would follow with a range of other separate complaints to undermine C."

248. The facts I am prepared to accept Ms Young has proven do not go so far as to support this thesis. There are no facts pertaining to the strength of Ms Sultan's own beliefs in relation to the trans debate (I am prepared to accept she was broadly on the same 'side' as Ms Herdan) or as to her awareness of or views on Ms Young's beliefs. It is not even clear that, during employment, she was aware of the tweets that Ms Herdan had found objectionable. If they had both shared a horror at Ms Young's unacceptable views, then the obvious result would be that they would both complain about those views. The 'twin-pronged' attack which Mr Roberts is forced by the facts to rely on is complex and subtle in a way that also renders it unconvincing.

249. In those circumstances, the burden of proof does not shift to the respondent. Had it shifted, then, in the absence of Ms Sultan, I would have found it had not been discharged. One can speculate on alternative reasons for Ms Sultan's complaints (in view of my conclusion that they were, at least in large part, unjustified) but ultimately the matter does not fall for determination.

Time limits

250. Ms Young's complaints about the actions of Ms Herdan are *prima facie* out of time. Anything occurring before 28 November 2023 is outside the primary limitation period in this case, so these complaints were presented between 17 and 19 months late.

251. The claimant argues that all of the detriments should be regarded as conduct extending over a period, starting with the original complaints and ending with the dismissal. While it is true that these events are linked in one continuous (if convoluted) narrative, I reject the submission that the actions of Ms Young's subordinates in making complaints can be lumped together with the way her managers responded to those complaints as one continuing act. They are different in terms of the personnel involved, but also qualitatively different.

252. I must therefore consider whether it is "just and equitable" to extend time for the presentation of the claim and, in doing so, balance the prejudice to

the parties in allowing the claim to proceed as against concluding that it is time-barred.

253. I consider that little blame can be laid at Ms Young's door for not pursuing this complaint with the Tribunal in a more timely way. Although she was told relatively promptly that complaints had been made she was given no information as to the content and nature of the complaints. When written complaints were shared, they were highly redacted. Ms Young's second complaint, the 20 June email analysing and criticising Tweets sent by Ms Young from her 'Lorna Young' twitter address was not even disclosed by the respondent during litigation until Ms Young's solicitors had pushed for it three times. Overall, therefore, the withholding of that information has been a marked feature of this case. In addition to the withholding of information, Ms Young was extensively engaged in the internal processes which resulted from the complaints being made and was, as has been described, very ill throughout the relevant period, albeit that the exact details of her illnesses fluctuated.

254. The respondent points to the fact that the alleged discriminators left their employment almost two years before the first claim form was submitted. In another case, that would be a powerful indicator against it being just and equitable to extend time for presentation of the claim. Given the narrative of this case, which I have outlined at length, it is not a strong point. Firstly, in the case of Ms Herdan, she displayed an extraordinary enthusiasm – almost bordering on obsession – with seeking to secure Ms Young's downfall which lasted well beyond the currency of her employment. Her absence as a witness has not been adequately explained, beyond the fact that she is no longer employed. Former employees give evidence every day in the Tribunal, all the more so in present times given the delays which so often dog the process. There has been no evidence from the respondent of any steps taken to try to trace her, or of any specific reason for unavailability such as illness or emigration. It is difficult to resist the conclusion that the respondent came to the view, at some point, that putting her forward as a witness could well be more detrimental than beneficial to its cause. That is not the same as genuine forensic prejudice.

255. For all of those reasons I determine that it is just and equitable to extend time for the presentation of the claim in relation to the complaint against Ms Herdan. As the complaint against Ms Sultan has not been made out, the issue does not arise.

6(b): Manchester City Council decided to treat the allegations in Ms Herdan's and Ms Sultan's complaints as potentially constituting gross misconduct and a disciplinary process followed that decision, including the letter of 3 November 2022 described in paras 47-48 GoC1;

6(c): Manchester City Council decided to include in the allegations of gross misconduct against the Claimant and in the subsequent disciplinary process a charge of making inappropriate and discriminatory comments related to gender reassignment (para 82b) GoC1);

256. It is convenient to deal with these two complaints together.

257. The 3 November 2022 letter is discussed at paragraphs 88-92 above. It was the letter sent by Ms Narici to Ms Young inviting her to a formal investigation meeting.

258. It may have been, properly analysed, that there was something within the mass of allegations which had been raised by Ms Herdan and Ms Sultan something which could properly have engaged the respondent's concern as a matter of potential misconduct. If there was, it was buried amongst an avalanche of other things which, quite patently, should not.

259. In relation to the Twitter material supplied by Ms Herdan, it ought to have been immediately clear to Ms Johnston, and to anyone else reviewing this material within the Council's HR and/or legal department, that all this material demonstrated was that to someone who was very invested in the trans-inclusion/gender critical debate, and who had the motivation to spend a significant amount of time digging around in Ms Young's Twitter account, it was possible to discern that she probably held, or at least had sympathy with, certain gender critical beliefs. That is the extent of it.

260. Ms Hamer's early concern ("*I'm still not clear what LY has alleged to have said done that would be classed as discriminatory towards transgender people"*) should have been heeded. Albeit that it appears Ms Hamer had not seen the attachments, she had identified a need for analysis which was never subsequently undertaken. Had the respondent conducted a proper analysis, it could not have reached any conclusion other than that Ms Young's activity on her own Twitter account could not be classified as discriminatory and provided no grounds for disciplinary action.

261. It was the respondent's role to apply a filter on what was being said by Ms Herdan and Ms Sultan to judge what, if anything, amounted to a complaint that could properly give rise to the need for investigation. There is a notable exchange in July 2022 in which Ms Sultan (as part of her complaint) stated "*The gathering of evidence for this is another emotional burden which feels particularly unfair to laden on someone going through the trauma*." Ms Johnston responds "*I completely understand this position and the emotional stress of going through the process however, for the process to be fair and equitable and an appropriate investigation to be completed we do need evidence on which to base a decision*."

262. This is an illustration of a theme whereby Ms Herdan and Ms Sultan appear to have taken an approach (sometimes observed amongst Tribunal claimants) of believing that the asserted *impact* on a victim (in this case them) is sufficient to prove discriminatory conduct, without identifying clearly (or at all) what the *conduct* itself is actually said to be. Ms Johnston was correct to state that evidence was needed, but the respondent failed to follow through on that by narrowing the scope of the investigation to those allegations where *prima facie* evidence was present. Therefore, they ended up with the investigation letter with its vague and amorphous allegations of "inappropriate comments" and "breach of personal data".

263. I am satisfied that the burden of proof shifts in relation to these allegations. It is material that Ms Johnston had demonstrated partisan support for Ms Herdan when she initially raised a complaint, the substance of which was, in effect, that she perceived Ms Young to hold gender critical views. It is also material that no one amongst the respondent's witnesses would take responsibility for the decision to proceed down a disciplinary route, and for it to be stated that this was a potential case of gross misconduct. Those matters, combined with the content and circumstances of the 2 November letter as I have described them, are matters from which the tribunal could conclude, in the absence of any other explanation, that the respondent had committed an act of discrimination against the claimant which is unlawful.

264. The respondent's explanation is simply that serious complaints were made which required to be investigated. It is noted that the complaints included complaints of race and age discrimination. It is also noted in Ms McColgan's submissions that the Lorna Young Tweets were not the only source of "inappropriate comments" related to transgender people. The evidence for that is said to be a concern raised by Ms Herdan that Ms Young:

'constantly told me her negative opinions on other people [including Tara Hewitt, 'a transgender EDI profession at the NHS'] before I even met them… the connotation being that she wanted to impact my judgement on them' and that she had 'repeatedly tried to engage me in negative conversations about Tara Hewitt, particularly about her inclusive approach to the LGBTQ+ community'

However, the alleged Tara Hewitt comments were not investigated further as part of the respondent's process, and did not form part of the evidence before the Tribunal.

265. The fact that it may have been possible for some other investigation, properly scoped, and properly delineated between capability and misconduct, to have been legitimately undertaken, does not provide the respondent with a non-discriminatory explanation for launching *this* investigation, with its unspecified allegations and its clearly sign-posted destination, arising out of complaints which were themselves (at least in part) directly discriminatory against Ms Young but which were lauded and indulged by Ms Johnston and Ms Narici. The investigation as a whole is infected and tainted by the inclusion of the transgender discrimination allegations as a mainstay of the matters under consideration. I find that the respondent does not discharge the burden of proof.

266. Further, there is no question of a ***Higgs*** justification arising in relation to this part of the claim. The tweets which Ms Herdan had complained about were unobjectionable on their face and should not have been put to the claimant as something within the scope of a formal disciplinary investigation (far less one potentially leading to summary dismissal for gross misconduct). In other circumstances, and had the investigation been very clearly limited to the Tara Hewitt comment, there may have been justification for investigating. I take the respondent's point that an investigation is a relatively minor interference with Ms Young's right to freedom of expression, but given Ms Herdan's own discriminatory animus against Ms Young (which

the respondent ought to have identified) the addition of the Tara Hewitt material to the unobjectionable Twitter material did not elevate the discriminatory complaints to something which the respondent was compelled to investigate (in terms of opening a formal disciplinary investigation into Ms Young).

267. Again, the construction of a comparator does not particularly assist, but I am satisfied that an employee subject to complaints about holding and expressing views in support of gender identity theory would not have been made the subject of a disciplinary investigation in a comparable way.

268. I therefore uphold the complaint of direct discrimination in relation to detriments 6(b) and 6(c).

Galway Girl Tweets and dismissal

269. The subsequent detriments concern the respondent's investigation into the GG Tweets. I consider it to be more helpful to consider Ms Young's dismissal, on the grounds of those tweets, and then to move backwards from that conclusion to look at the detriments.

270. The first dispute between the parties is whether Ms Young was actually dismissed for holding protected views, or whether she was dismissed due to the way that she expressed them i.e. whether, in the terms of **Higgs**, this is a genuine manifestation case or not. Mr Roberts' primary contention is that she was dismissed merely for holding those views, and that the question of justification therefore does not come into play.

271. Before examining that further it is worth reflecting on the following observation of Underhill LJ in Higgs (paragraph 55):

> "In a manifestation case proper the employer genuinely has no objection to the employee holding the belief and is motivated only by the conduct which constitutes the manifestation. Most claims of discrimination on the ground of religion or belief are likely to be genuine manifestation cases of this kind."

272. In my view, it is simply not realistic, on the facts of this case, to describe the council as an employer which "genuinely" has no objection to the views held by Ms Young. Its corporate stance was encapsulated in the TRAHR motion and in the Workplace Statement. Unlike (in the experience of this tribunal) many other diversity policies and documents, those were not documents which were produced and then languished in obscurity. That corporate stance informed the attitudes *and* the actions of everyone who came into contact with this case, it was repeatedly raised and referenced, and the slogans set out in the TRAHR motion run through the case like the lettering in a stick of Blackpool rock. I find that Ms Herdan, Ms Johnston, Ms Narici, Ms Osborne and Ms Harrington all considered (at least at the time) that Ms Young's views, regardless of how they were expressed, were incompatible with the corporate position and that, due to that, they all objected to any articulation of those views, howsoever expressed, whether or not they also objected to the silent holding of the belief.

273. It is an intrinsic part of the **Igen** formula that (once the burden of proof has shifted) an employer must demonstrate that the treatment is "in no sense whatsoever" on the grounds of the protected characteristic. There is no room for 'mixed motives' where the mixture is contaminated by discrimination. Hence the stricture in the paragraph above that the employer must be motivated only by the conduct which constitutes the manifestation, and not by the belief itself.

274. Given my findings about the corporate view adopted by the respondent, is this case, therefore, excluded from being considered as a manifestation case? I do not think so. The conceptual difficulty in distinguishing belief from manifestation in the motive of the employer should not provide a windfall victory for the claimant any more than it should provide a windfall victory for the respondent. In my judgement even where a respondent has a genuine animus against protected beliefs held by a claimant, and makes no pretence at neutrality, it cannot thereby lose the right to take action which would otherwise be proportionate when faced with egregiously offensive conduct on the part of an employee, which might go far, far beyond that demonstrated in this case.

275. On the facts of this case as I have found them, I reject Mr Roberts' submission that the respondent's actions are irredeemably tainted by the corporate view it adopted in the TRAHR motion and the Workplace Statement. I accept that there is an air in this case that the respondent had, at least by the end, decided Ms Young's employment was untenable, and was casting about for any peg that might be sturdy enough on which to hang its hat. That does not mean, however, that its reliance, ultimately, on four specific tweets is impermissible. If, applying **Bank Mellat** and **Higgs,** a misconduct dismissal was a proportionate reaction to those four tweets then the respondent did not discriminate against Ms Young by dismissing her on the grounds of those tweets, regardless of the wider canvas of issues in the case.

276. The first question, therefore, is whether the tweets were objectionable or inappropriate, such that the threshold for a justification defence is established under **Higgs**.

277. In terms of the teacher tweet, there was a debate between the parties as to whether it should properly be interpreted as expressing the opinion that transpeople should not be teachers, or expressing the opinion that teachers who share information about their own gender transition in a light-hearted tone with primary school aged children should not be teachers. In line with **Higgs**, I must establish the proper meaning of this tweet before considering whether it is objectionable. I do not doubt that Ms Young meant "people like" the teacher she was commenting on i.e. people who choose to talk about transition to children and, in doing so, and portray it as a trivial process. Ms Young is a person who is well-informed on this subject and who distinguishes clearly between transgender people generally and those people (transgender or otherwise) who promote gender identity theory beliefs, particularly to children. However, the test is not simply about what Ms Young meant, it is an objective test. The words, when seen in context, are in my view ambiguous. I do not necessarily believe that *every* Twitter

user seeing the reply would assume that Ms Young means that transgender people generally (or perhaps transwomen, as per the original poster) should not be teachers, but I do consider that that is an interpretation which, objectively, is open to a reader to reach and which some readers would reach. I reach that conclusion assessing the words used at face value in the context of the tweet to which Ms Young was replying. That is not the same as (for example) attributing likely 'transphobic' views to the author of a statement where those views are objectively not present in the statement itself. For that reason, I find that the Tweet is "objectionable" and the threshold for a justification defence is therefore established.

278. I have found the analysis of the vicar tweet particularly difficult. Broadly, I consider that referring to someone's expression of their gender identity to be something "guided by the devil" would, in most circumstances, be offensive and objectionable. Again, I accept Ms Young's explanation as to her choice of the word "devil" and the specific place of the devil in Catholic theology. Again, however, I must assess the tweet objectively. It is also relevant that the tweet is a personal attack on an individual (albeit one who has courted publicity, and who had not themselves made the post to which she was replying). Taking everything into account, I hesitate to categorise this tweet as objectionable because of the expressly theological context of the news story, and the fact that the vicar (at least according to the Daily Mail headline) had asserted that their choice was guided by God. It seems to me that this narrow exchange is properly a debate about religion itself, rather than solely about the opposing sides of the trans debate. It behoves Tribunals (and indeed employers) to be particularly cautious before branding a genuine expression of religious belief to be objectionable, however shocking it may seem from a secular viewpoint. Given the context, an objective reasonable reader would, in my view, appreciate that Ms Young was using the word "devil" in a theological sense, even if s/he did not understand that details of the Catholic church's doctrine as Ms Young has put it into evidence. Against, that context, my judgment is that this tweet is not "objectionable".

279. Turning to the trans ideology tweet. In my judgement there is nothing objectionable about saying that trans ideology is homophobic or misogynistic, however strongly other people may disagree. That view is core to the critique of gender identity theory that gives rise to the label 'gender critical'. To say that it is therefore not only "evil" but "the most evil" ideology of the last c.50 years is unnecessary hyperbole, but unnecessary hyperbole is, of course, rampant online, and nowhere more so than in the context of this debate. Had Ms Young written this Tweet, then I would not hesitate to find that it was objectionable. Simply "liking" it, however, is only a public statement in the loosest sense – her 'likes' could only be seen by someone specifically looking at her profile and choosing to scroll through the list of liked Tweets. A "like" cannot be regarded, in my view, as an endorsement of the exact degree of sentiment expressed in the underlying post. In those circumstances, I find that the claimant's actions in relation to this post were unobjectionable.

280. Finally, I turn to the Insurrection Barbie video. Ms Young commented on this video with two emojis signifying applause. This is a little more

emphatic than a 'like' – it unequivocally conveys a positive sentiment to others viewing the exchange and is also more visible than a 'like', publicly associating the person making the comment with the comment. What I (and any hypothetical observer on Twitter), would likely struggle with is what particular sentiment(s) within the wide-ranging (and garbled) transcript Ms Young is to be taken as applauding. Ms Young's submission for the final hearing sets out a reasoned and credible rationale as to her support for drag performers generally and her understanding of this as an "important part of gay sub-culture". She says that she objects to the exposure of children to sexualised performances, specifically in the context of the phenomenon of "drag queen story time" and that that objection is shared by others. Ms Young shared a link of an American drag artist expressing similar concerns in the document she prepared for Ms Osborne. None of this nuance is evident in two emojis. Overall, I consider that some of the language used in the video is offensive, provocative and unnecessary, but that the video also makes serious and unobjectionable points. I reject the respondent's case (as it appeared to be) that either the video itself or the 'applause' demonstrate support for the sentiment that 'transwomen are paedophiles'. If Ms Young had made the video, or posted similar written content, then I would have found it objectionable, not withstanding her arguments as to the legitimacy of the concerns expressed. On balance, however, the severity of the conduct is much reduced by the fact that she has endorsed this content rather than posted it. It seems to me that that severity must be relevant at the threshold stage, and not simply at the justification stage. On that basis my conclusion is that this post is also unobjectionable.

281. I then come to the question of justification. On the findings I have reached only the teacher tweet passes the threshold. Is dismissal a justifiable response to that tweet?

282. In terms of the **Mellat** test, the respondent puts forward as its legitimate aim "*upholding the Respondent's polices, values and reputation and ensuring that team members, partners and residents of Manchester maintain trust and confidence in the council and their employees*". Mr Roberts posits that this, and particularly, the reference to "values" is essentially a coded references to the TRAHR motion and that upholding that motion is not "legitimate" in view of the legal position as subsequently confirmed in **For Women Scotland**. As I have already said, I do not think that I have to go so far as to determine that argument. I am prepared to assume that this respondent, and any respondent, has a legitimate aim in safeguarding its reputation (internally and externally) from association with views which can properly be considered objectionable. That is reflected in the 'trust and confidence' part of Ms McColgan's formulation. The proportionality part of the test is therefore engaged.

283. In terms of proportionality (and taking account factors (2)-(4) in **Mellat**) the following factors are relevant:
(i) She was a long-serving employee with an unblemished record;
(ii) As I have found, Ms Young had worked well on transgender provision within her EDI role, and had worked well with transgender individuals as part of that role. The only suggestion that she might discriminate within her role, came from Ms Herdan's assertions that Ms Young

was discriminatory in her approach to the Gender Report. Ms Young's emails on the subject were appropriate (as Ms Johnston admitted in evidence and as I have found) and Ms Herdan's assertions were symptomatic of her own discriminatory attitude, which Ms Johnston should have been able to identify;

(iii) The respondent had clear medical evidence that her severe and complex mental health difficulties had had a "significant bearing" on her actions online.

(iv) At the time of the impugned tweets, Ms Young had already been informed that she was under investigation due to what she (with at least some justification, as it has transpired) perceived to be a 'witchhunt' against her due to her gender critical views.

(v) Ms Young understood that her posts were entirely anonymous. Although this proved not to be the case, there was no realistic possibility of anyone outside her small team independently identifying her as the owner of the GG account.

(vi) The nature of the posts was not severe in the scheme of things. Measuring offensiveness or inappropriateness is not an exact science and people will reach different judgments. However, it is instructive that Underhill LJ in **Higgs** compared the posts in that case with comments in **Lilliendahl v Iceland (ECtHR Application No 29297/2018)** stating that the Higgs posts were "a long way from the kind of direct attack on homosexuality found…in *Lilliendahl*." I do not accept Mr Roberts' submission that the Higgs posts were objectively 'worse' than the ones in this case, but nor do I find that the GG posts are objectively 'worse' than the Higgs ones such as to put them in a category with cases such as **Lilliendahl**. They are, in my view, broadly at a similar level.

(vii) There was also no possibility of anyone conflating the views expressed on the GG account with the views of the council, given how well-known and well-publicised the council's opposing, corporate view was. There would have been no action required by the council to ameliorate the potential reputational damage outside the small team. It is also relevant (although a minor point) that Ms Young operated the GG account within the 'echo chamber' of other gender critical accounts on Twitter. She had not sought to antagonise, or even engage with, people holding opposing views – the accounts she replied to were all aligned with her own. She had sought comfort in people she understood to be sympathetic to her own views and predicament.

(viii) As to the team itself, Ms Young had expressed several times that she felt unable to return to that team and, latterly, that she felt unable to return to work at all. There were various options available to the respondent to manage the difficulty in working relations. The best or most viable option may have varied depending on exactly when, hypothetically, the respondent had decided to take a different approach to the matter, but I cannot conceive that at any point the difficulties with the team would have been such as to tip the balance in favour of the proportionality of dismissal. To the extent that the team, or some members, may themselves have held discriminatory attitudes towards Ms Young, the respondent is not entitled to adopt or be swayed by those discriminatory attitudes.

(ix) In terms of exacerbating factors, or factors pointing towards dismissal, the respondent also relies on the nature of Ms Young's EDI role. This is a double-edged sword for the respondent. I accept that it was important that the respondent be assured that Ms Young could work professionally on transgender issues and with transgender people (perhaps more so than in another area of the organisation) but I have found that she could do so and did do so. The corollary of that is that it was (or ought to have been) also the role of the EDI team to acknowledge competing rights issues and to feed an understanding of these genuinely difficult issues into the broader organisation. Ms Young appears to have been far better equipped to take on that part of the role than anyone else around her.

284. Weighing up all of these matters the respondent cannot come close to justifying Ms Young's dismissal. For the avoidance of doubt, my conclusion on that issue would have been the same even if I had concluded that all four of the Tweets relied on by the respondent in support of the dismissal met the threshold test of being inappropriate or objectionable.

Remaining detriments 6(d)-6(j)

285. It is not generally helpful for claimants in the Employment Tribunal to expand a case which is really about dismissal with a whole series of separately-pleaded detriments about the disciplinary process. I have sympathy with Ms Young's representatives for taking that approach in this case in circumstances where the dismissal process was so convoluted and, in certain places, egregiously unfair, and where the first claim was presented (understandably given time limits) prior to the dismissal having occurred. Nonetheless, I hope that both sides will understand my position that the alleged detriments arising out of the 'Galway Girl' disciplinary process can be dealt with in a fairly summary way, drawing on reasoning and conclusions I have already set out and reached in respect of the dismissal itself.

286. The fourth to tenth alleged detriments (List of Issues 6(d) – 6(j) all arise out of this disciplinary process, and are all accepted by the respondent to have taken place and to amount to detriments.

287. **6(d)** is the decision to carry out an investigation into an anonymous Twitter account with a view to ascertaining whether it belonged to Ms Young. I accept that Ms Young found the lengths gone to in the investigation to be intrusive and upsetting (when she found out about it retrospectively). It is unfortunate happenstance that the tweets that turned out to be critical in linking the Lorna Young account and the Galway Girl account were referencing matters of emotional significance to her – particularly the death of her father. It is not the case that the respondent chose to investigate those particular tweets out of malice or for some other nefarious reason.

288. The council's action in launching the investigation was prompted by the concerns of the team. Theoretically, it would have been possible for the

council to adopt the position that it didn't matter whether the account was owned by Ms Young or not, the context of the posts was not such as to make it anything other than a private expression of views. It is not realistic, however, to presume that the team members would have let it lie at that. There would also have been the possibility of the situation escalating with potential further posts from the account and conceivably even 'entrapment' by team members seeking to interact with the account to either provoke further expressions of what they perceived to be transphobia, or to substantiate the suspicion as to its ownership, or possibly both. Realistically, I accept that the council had to bottom out the issue of ownership in order to manage a dynamic and potentially volatile situation.

289. Had the relationship between Ms Young and the council not deteriorated to such a significant degree as a result of the previous round of complaints and the council's maladroit handling of them, it ought to have been possible for a cool-headed discussion to have taken place between a manager (probably Ms Johnston) and Ms Young about the suspicions raised, which might well have obviated the need for any investigation. Accepting, however, the world as it was in January 2023 when the allegations came to light, and not as it ought to have been, my conclusion is that launching a (non-disciplinary) investigation to determine ownership of the account was a very minor and proportionate interference with Ms Young's rights to freedom of expression. For that reason, under the ***Higgs*** and ***Bank Mellat*** tests it does not amount to less favourable treatment on the grounds of belief. This part of the claim therefore does not succeed.

290. The respondent's justification defence fails in respect of the decision to treat the GG Tweets as potential gross misconduct and launch a disciplinary investigation (**6(e)**). The reasons for that largely reflect the reasons I have given in respect of dismissal. There was an abject and inexcusable failure by the council to conduct any sort of analysis into how (if at all) the Galway Girl tweets went beyond a simple expression of protected beliefs and strayed into an objectionable manifestation of those beliefs. At various stages of the investigation, and even from some witnesses in the hearing, there were references to the weight of the material 'taken as a whole'. Mr Roberts dealt with this tendency in the pithy submission that "a hundred leaky buckets hold no more water than one". Whilst is right that a large number of objectionable posts would be a more serious and culpable matter than one objectionable post, I do not see that non-objectionable posts can become objectionable due to their volume (and, in my judgement, such a finding is certainly is not supported on the facts of this case). Had such an analysis been done, it may have helped the respondent to reach the conclusion that a disciplinary investigation (particularly one carrying with it the possibility of a gross misconduct finding) was not proportionate and could not be justified.

291. The decision of Ms Narici not to provide Ms Young with copies of the GG Tweets (**6f**) also most likely stems, in my view, from this failure of analysis. I accept the respondent's point that their disciplinary policy (as is usual) does not generally require the provision of material at the investigation stage but the particular facts of this case called out for the identification of the material that the respondent took exception to. Ms

Narici's refusal appeared calculated to elevate the perceived gravity of the tweets to something akin to pornography. It was a baffling decision which caused serious anxiety and upset to Ms Young (above and beyond that inherent in the disciplinary process) and for which there was simply no justification.

292. The 6 June 2023 letter from Sharmila Kar (**6g**) was the letter informing Ms Young of the respondent's intention to proceed to a disciplinary hearing on the GG posts only and (subject to her ability to participate in a meeting) to proceed by way of writing. I have already noted that Ms Young was upset both by the substantive decision and by the implication that she was willfully failing to participate. I have already said that the decision to launch the disciplinary procedure and the eventual dismissal were unjustified, and therefore discriminatory. In my judgment this letter does not add anything substantive to those conclusions. It can be criticised only in the sense that it is an expression of discriminatory decisions already identified. Whilst I appreciate that the tone upset Ms Young, I also understand that it is difficult for a respondent to progress investigations in the face of long-term absence. The error here was not that the respondent chose to proceed in this way, but that the underlying investigation was not justified. I am not prepared to find a separate act of discrimination in relation to this letter, and so this part of the claim also fails.

293. The letter of 19/20 December 2023 (**6(h)**) was the letter communicating the decision to proceed to a dismissal meeting on the grounds of "some other substantial reason". The respondent took that decision in the face of occupational health advice that mental illness had had a "significant bearing" on Ms Young's actions in posting the impugned Tweets. It considered it was no longer appropriate to proceed with a misconduct process. I accept Mr Roberts' submissions that misconduct processes proceed every day with incomplete evidence and, in particular, where the subject employee is unable to participate through illness. The employer must reach a decision as best it can on the information available. What it cannot do, is jettison a misconduct process in favour of an SOSR label, as a means of seeking to strip the employee of the procedural safeguards that a misconduct process entails. This decision was seriously detrimental to Ms Young, and it is difficult to see that it was done due to the manifestation of the Ms Young's beliefs (accepting the manifestation had prompted the misconduct process). It seems to me that the decision instead reflected the fact that the respondent felt that Ms Young's return to the organisation was simply unsustainable, at least in part due to her beliefs being perceived (unlawfully) as being incompatible with her role in EDI and is therefore not susceptible to justification in any event. Even if I am wrong, and justification is open to the respondent, I would find that that change to SOSR was not open to the respondent in any event. This part of the claim is therefore upheld.

294. I find also that the delivery of this letter on 20 December, when Ms Young, had specifically requested not to receive bad news before Christmas was particularly callous. There was no urgency given that the respondent then failed to progress the process for many weeks subsequently.

295. The email of 17 April (**6(i)** and letter of 18 April **6(j)** both communicated the respondent's decision to proceed to a termination meeting. The letter of 18 April was an invitation letter setting a date for this meeting (albeit the date was later changed) and informing Ms Young that reliance was now being placed solely on the GG Tweets. In my judgement the decision to move to a termination meeting on the grounds of these tweets was discriminatory on the same basis as the ultimate decision to dismiss was discriminatory. The gravity of the tweets, taken in context and against all the background circumstances, did not justify convening a termination meeting any more than it justified the ultimate decision to dismiss. That balance is not changed by the respondent's decision to style the process as an SOSR process rather than a misconduct process.

296. Although, technically, I am content that each of these letters represents a separate act of discrimination, I do recognise that they were also a necessary (or, at least, natural) procedural step towards the dismissal. It is difficult to see that they caused any separate damage (of whatever nature) which is not already encompassed in the damage arising out of the dismissal. I do not identify anything additional about these letters (such as, for example, the respondent writing to Ms Young directly) which adds anything of substance to the discriminatory dismissal.

The disputed detriments – 8(a) and 8(b)

297. Paragraph 8 in the List of Issues sets out two alleged detriments which the respondent disputes as a matter of fact.

298. The first is the assertion that the claimant was removed from the EDI team in February 2023. The removal of the claimant's managerial responsibilities the previous September, about which there is no distinct complaint, was actually the subject of more focus in evidence. In my findings of fact (above) I have accepted Ms Young's evidence that on her return to work on 6 February 2023 Ms Johnston informed her that there had been another complaint and that 'HR' had decided to remove Ms Young from EDI altogether until the investigation was concluded. I accept that this felt like a "punishment" from Ms Young's perspective, because at the time she was unaware of the discovery of the GG Tweets. I do not, however, conclude that it was an act of discrimination. The respondent was in a difficult position (albeit largely of its own making) where it was essentially impossible for Ms Young to be left to act freely in managing the team until the respondent had resolved the issue around the GG Tweets in some form. The respondent's action were, in my judgment, driven by that dilemma, and were procedural rather than ideological. I am satisfied that the respondent would have acted in the same way towards a comparator who was in a managerial role where their team had become deeply exercised about them expressing gender identity theory beliefs online. (I accept that scenario is deeply unlikely, but the comparison is obviously hypothetical). This is not a case of the respondent bowing to pressure to discriminate from its staff, it is a 'holding the ring' step which could equally well have presaged a robust analysis of alleged wrongdoing by the respondent, and, following that a restorative process to rebuild relationships within the team.

299. The second disputed detriment is expressed as follows: "*R decided to proceed with the disciplinary proceedings against the Claimant which, in R's words, could lead to her dismissal for some other substantial reason, and carry out the process that followed that decision*." The reason that this detriment is disputed is due to a dispute between the parties as to whether the re-labelling of the process in December 2023 represented a genuine change from a misconduct process to an SOSR process (on the respondent's case) or whether (on the claimant's case) this remained a misconduct process (and, ultimately, a misconduct dismissal) all along and the re-labelling was simply an attempt by the respondent to obscure the fact that it had no good grounds for a misconduct dismissal, and therefore no good grounds for dismissal at all.

300. For reasons set out further below, I accept the claimant's argument. Whilst the characterisation of the dismissal in ERA terms has little bearing (if any) on whether the dismissal was discriminatory, I accept that the recharacterisation can properly be seen as a detriment – it was unwelcome to Ms Young and it was reasonable for her to take that view. I am satisfied that the respondent was determined to continue with a process which would (or at least could) lead to termination, because it considered the claimant's employment potentially untenable. It reached that decision prior to the discovery of the GG Tweets, and there is sufficient evidence from the surrounding narrative (which I have laid out at length above) to infer that the reason the respondent considered Ms Young's continued employment untenable (or at least potentially untenable) was her gender critical beliefs. I have made no finding that any manifestation of those beliefs outside the GG Tweets can properly be considered "objectionable" and no such case was put forward by the respondent. The burden of proof shifts to the respondent in respect of this detriment. The respondent's evidence, that the shift to SOSR was prompted by the difficulty in obtaining Ms Young's engagement with the investigation due to her ill-health does not satisfy me. As Mr Roberts submitted, misconduct processes are regularly adjusted to take account of ill-health and/or refusal to participate. That may ultimately include making a decision without input from the employee, where they have been given an appropriate opportunity to respond to the allegations but have been unable or unwilling to take it up. Defaulting to an SOSR process is not a usual step in these circumstances and I am not satisfied that the respondent has discharged the burden of proof. I therefore find that this is a further discriminatory act. I would again, caution, however, that it is an act which is very much part of the chain of events which led to dismissal and bound up with the findings I have already made that the dismissal was discriminatory.

Direct discrimination – additional points and time limits

301. Before moving onto the remaining heads of claim, I wish to record two final points in relation to my findings on direct discrimination.

302. Firstly, much was made in Mr Roberts' cross examination and, to some extent, in his submissions, about social media activity by Barry Young and

Sharmila Kar which was in support of gender identity theory and was said by Mr Roberts to be expressed in a way which was objectionable. The respondent did not take any disciplinary action in respect of this activity, despite Ms Young drawing it to their attention. There seemed to be a suggestion, at times, that it was Ms Young's case that disciplinary action ought to have been taken. In fact, Mr Roberts clarified more than once that it was Ms Young's case that no disciplinary action ought to have been taken against Mr Young/Ms Kar, but that she ought to have received consistent treatment with them. Mr Roberts made clear that he was relying on Mr Young and Ms Kar as evidential comparators, rather than actual comparators.

303. Whilst evidential comparators are often very helpful to a tribunal seeking to determine s.13 cases, I did not find that to be the case here. The **Higgs** analysis requires determination of (1) the objective meaning of what was said (2) whether that was something to which the respondent could reasonably take objection and, if so, whether (3) the action taken by the respondent in response was justified and proportionate applying the **Mellat** test. At times, it appeared I was being invited to conduct that analysis not only into the GG Tweets relied on by the respondent as grounds for dismissal, but also into the posts made by Mr Young and Ms Kar. Questions were posed such as whether the use of the term "terf" is to be regarded as a slur (which would go to point 2 above). The analysis of proportionality would also be necessarily different, in my view, when the potentially objectionable views expressed align with the respondent's corporate view, as against when they do not. For all those reasons the attempted introduction of evidential comparators in this case did not assist me in determining the issues I had to determine in relation to Ms Young and the claims she had brought. That being the case, it would be invidious to make extraneous findings about the conduct of Mr Young and Ms Kar and I decline to do so.

304. Secondly, I recognise that Ms Young does not rely on exactly the same protected beliefs in respect of each allegation of detriment. (See List of Issues). I am satisfied that the Ms Young's gender critical beliefs (which are common to the dismissal and all detriments) played a part in each of the acts of discrimination I have found to be made out. I have found it unnecessary to consider separately whether the other protected beliefs also played a part.

305. Turning to time limits, to the extent that the detriments I have found to constitute direct discrimination occurred at a date which makes the complaints prima facie out of time, I find that all of these matters were part of the respondent's course of conduct in dealing with the complaints raised against the claimant, whether initially in relation to the Herdan/Sultan complaints, or latterly in relation to the GG tweets. The same group of managers, receiving advice from the respondent's corporate HR and legal functions made consistent decisions throughout this process. The length of the process was, as I have said, caused to a large extent by the respondent's failings (although I also acknowledge it was partly attributable to Ms Young's ill-health). The actions the respondent took at each step of the disciplinary process were connected and fell to be considered together.

For that reason I find that s123(3)(a) EqA is engaged – the impugned conduct is properly classified as conduct extending over a period of time, which is to be treated as being done at the end of that period. In this case, the conduct ended with the dismissal and, as that complaint is in time, I find that the entirety of the complaint as it relates to these detriments is also in time. For the avoidance of doubt, even if I am wrong as to conduct extending over a period, I would extend time for the presentation of these claims on a just and equitable basis, having regard to Ms Young's illness and the length of time the internal process took to complete.

Harassment related to religion and belief

306. As is common, Ms Young's complaints of harassment are put in the alternative as s212(1) EqA excludes from the definition of detriment acts which amount to harassment.

307. The detriments are all pleaded in the alternative as acts of harassment. I have considered only those detriments in respect of which I have not already made a finding of direct discrimination. In fact, the wording of s212(1) seems to require the opposite exercise – identifying acts of harassment and then excluding those acts from consideration as detriments. However, both parties focused their submissions very clearly on the direct discrimination complaints, and I consider I am entitled to follow their lead on that. In any event, it would seem to make no difference for the purposes of remedy whether any of the acts I have found to be acts of direct discrimination could (alternatively) have been found to be acts of harassment. Any injury to feelings award, in particular, will be based on the substance of the acts the respondent has been found to have subjected the claimant to, rather than the legal label applied.

Detriment 6(a) Adiba Sultan

308. I accept that Ms Sultan's complaints were 'unwanted conduct' as far as Ms Young was concerned. The unwanted conduct must be 'related' to a protected characteristic (not necessarily one held by the claimant). As I have noted above, Ms Sultan only made complaints related to the trans debate in an interview of 28 November 2022, after she had left employment and only when asked. The respondent cannot be liable for Ms Sultan's actions after she left employment. I find that Ms Sultan's unwanted conduct, at least prior to her resignation, was not 'related to' Ms Young's protected beliefs. For that reason the harassment claim must fail.

Detriment 6(d)

309. This was the decision to investigate the GG Tweets. I accept that it was unwanted conduct, albeit that Ms Young was not aware of that conduct at the time. I accept that this is conduct 'related' to the claimant's protected beliefs for the purpose of s.26. However, in my view, it fails the final part of the test, relating to violating the claimant's dignity or creating the sort of environment proscribed by s.26. I reject any suggestion that the respondent's purpose in investigating the GG Tweets was to do that. The respondent was placed in a difficult situation by team members raising a

complaint about a Twitter account that they believed, but did not know, belonged to Ms Young. As I have already said, some sort of investigation was inevitable. Conversely, I accept that from the claimant's perspective the investigation *did* have the effect of violating her dignity and creating the proscribed environment. I say that in full acknowledgment of the guidance in the authorities (e.g. **Grant** and **Dhaliwal**) that tribunals must not "cheapen" the strong words of the statutes. The use of the claimant's father's death, in particular, in the investigation, had a profoundly negative effect on her. The final consideration is whether it was reasonable for it to have that effect. This was a finely balanced Judgment, but in my view, although the claimant's upset was understandable (particularly in view of the mental health difficulties she was experiencing at that time) it was not, in objective terms, reasonable. An objectively reasonable employee would have appreciated that the respondent had to investigate, and that the facts that the tweets used to link the accounts related to personal matters was merely unfortunate happenstance, and not the result of something more targeted or vindictive.

Detriment 6(g)

310. I repeat my findings in relation to this detriment under the head of direct discrimination. This is a letter which was essentially a procedural step taken by the respondent in pursuit of its discriminatory decisions. It is 'related' to the claimant's protected beliefs only in that tangential sense. It does not satisfy the statutory test for harassment.

Detriment 8(a)

311. Detriment 8(a) was the complaint about removing Ms Young from her team on her return to work in February 2023. My reasoning in relation to this point is analogous with my reasoning in relation to detriment 6(d) above. I am satisfied that the conduct did not have the proscribed purpose, nor could it reasonably have that effect on the claimant.

Issue 17

312. There is an additional alleged act of harassment which is not also pleaded as an act of direct discrimination – as per the list of issues this has been referred to as "Issue 17". Issue 17 is a complaint about Ms Kar's conduct during the AMR meeting of 17 May 2023. Specifically, the claimant's case is that Ms Kar should not have raised the subject of the disciplinary proceedings at all during this meeting and that to do so was an act of harassment. The context of this meeting is described fully above but, by way of summary, it took place around three months after Ms Young's attempt to take her own life in circumstances where the respondent had occupational health reports emphasising that her mental health remained very fragile and that engaging with work generally, and the investigation in particular, was triggering further anxiety and low mood.

313. I do have sympathy with Ms Kar for seeking to open a discussion as to how the investigation could be moved to closure, given that that had been identified as a block to the claimant's return to work. Although this was an

AMR (Absence Management Review) meeting the two things were clearly closely related. It is equally clear, with the benefit of hindsight, that Ms Kar raising the subject of the investigation had a profoundly disturbing effect on Ms Young, something which Ms Kar recognised at the time.

314. Applying the statutory test for harassment, this was clearly unwanted conduct. Was it related to Ms Young's protected beliefs? In my assessment it was not. The only relationship is that the subject matter of the investigation related to those beliefs. That is not a sufficient relationship, in my judgement, to bring Ms Kar's actions within the ambit of s.26. This is an employer proceeding with a complex HR case in a clumsy manner, it is not an employer engaging in harassment.

315. Even if I am wrong about the question of 'related' then I would again, for similar reasons to those set out in relation to 6(d) and 8(a) above, find that this was not an act of harassment. Ms Kar did not have the purpose of violating Ms Young's dignity nor of creating the proscribed environment. Her conduct did have an effect on Ms Young – and a significant one – she was extremely upset and immediately triggered into a profound psychological reaction. However, that is qualitatively something different from an offence against dignity or creating an environment which is intimidating, hostile, humiliating, degrading or otherwise offensive. The environment was one which was challenging, in a way which Ms Young was psychologically unable to cope with, but, in my judgment, none of the statutory descriptors properly fit this situation. To the extent that Ms Young genuinely felt those things, it was not objectively reasonable for her to do so.

Failure to make reasonable adjustments

316. The complaint as it relates to 'PCP 1' in the List of Issues was not pursued.

317. 'PCP 2' was defined as follows: "*providing the employee whose conduct was being investigated with copies of the complaints, rather than setting out which aspects of those complaints were being investigated*".

318. The respondent's position is that it operated no such PCP. Ms McColgan points to excerpts of the disciplinary procedures providing that the investigating officer "*will write to the employee explaining the allegations and invite them to an interview*" and that it is the responsibility of officers to "*ensure there are no surprises*" and keep subject employees updated "*where these allegations change*". Ms McColgan does not go so far as to say that Ms Narici was in breach of these procedures, instead suggesting that it would be open to different investigating officers to pursue different approaches. It is clear to me that Ms Narici was in breach of the procedures, that the procedures say what they do for good reason, and that that respondent's conduct in continually failing to particularise the allegations in this case is to be deplored.

319. In some circumstances, the fact that an employer took an action during a particular disciplinary process which was against its procedures would point away from that act being properly described as a PCP. (On the

assumption that the employer's usual practice can be discerned from the procedures it has chosen to adopt). I am mindful that not every act which the respondent takes in its conduct of proceedings involving an employee will be susceptible to categorisation as a PCP (**Ishola v Transport for London [2020] EWCA Civ 112**). However, **Ishola** specifically concerns a one-off act. Whatever this respondent's practice may be in relation to other disciplinary cases, *this* case, over its almost two-year duration, was marked by a repeated failure by Ms Narici and others to specify the allegations Mr Young was facing in any comprehensible way that would allow her to respond, right up until the point immediately before the dismissal hearing when the respondent dropped everything save for the GG Tweets and identified seven specific acts on the GG account which were said to comprise misconduct. The failure was sustained in the face of many attempts by Ms Young herself to point out the unfairness of this approach and the difficulty it was causing her, and, initially, in the face of intervention by her solicitors. The approach taken by the respondent in this respect has been a particular hallmark of this case, and, in my judgement, has had much to do with what has gone wrong in this case. I have no hesitation in accepting that it can properly be characterised as a 'practice' and therefore as a PCP.

320. I also accept that this PCP put Ms Young at particular disadvantage due to her eye condition, which meant that it was even more difficult for her to read and respond to the voluminous material provided than it would have been for a non-disabled employee who held the same beliefs and faced the same investigation. That did not simply involve engaging with the material provided, but also searching her own email records to attempt to assemble evidence to address the complaints without knowing which of the scattergun selection of matters raised by Ms Herdan and Ms Sultan were actually of concern to Ms Narici. It would have been a reasonable adjustment for the respondent to set out clearly the specific allegations that were being investigated and why they were said to constitute potential misconduct (albeit that that is what the respondent should have done in any event for any employee).

321. The respondent ought to have made that adjustment from the outset when Ms Young was first notified of the detail of the complaints in 2022. The complaint is *prima facie* out of time. However, I find that this act of discrimination forms a continuing act with the acts of direct discrimination which relate to the respondent's conduct of the disciplinary procedures, and that the claim is therefore presented in time. Even if I am wrong about that, it is just and equitable to extend time for reasons analogous to those I have already given.

322. On that basis the claim of failure to make reasonable adjustments in relation to PCP2 succeeds.

Discrimination arising from disability

<u>Detriments/dismissal already considered</u>

323. The claimant's dismissal, as well as most, but not all of the detriments, are alternatively pleaded as acts of discrimination arising from disability.

324. The respondent accepts that the claimant's social media use (in relation to the GG Tweets) arose as a result of her disability of depression and anxiety.

325. In a claim of discrimination arising from disability, potentially discriminatory conduct can be justified where the respondent's actions were a proportionate means of pursuing a legitimate aim.

326. Again, it is convenient to start with the dismissal. The 'legitimate aim' asserted in relation to dismissal is "*to ensure that [the council] can be confident that its employees comply with Council polices and values, uphold the council's reputation and ensure that team members, partners and residents of Manchester maintain trust and confidence in the council and their employees*." Although the wording is not identical, this is substantively the same as the aim relied on in the respondent's justification defence for the complaint of direct discrimination on grounds of religion or belief. Again, I am prepared to accept it as a legitimate aim for the reasons set out in relation to that complaint.

327. Again, however, I conclude that the actions of the respondent in dismissing the claimant were obviously disproportionate, for all of the reasons already enumerated. The proportionality assessment does not change (at least not in this case) whether viewed through the lens of a s.15 complaint or a s.13 (manifestation of belief) complaint.

328. Similarly, equivalent reasoning applies in respect of each of the detriments. The nature of the objectionable conduct and the extent of the impact of the disability are both going to be relevant factors whether the assessment is carried out under s.15 or s.13. It would be artificial to separate out one from the other and to suggest a different result can appropriately be reached. On that basis, and without setting out and discussing the individual alleged detriments again, my conclusions in respect of each of the alleged detriments set out in the list of issues is as follows:

Detriments 6(a)-(c), 6(f) – not pursued under s.15 (referenced for completeness)

Detriments 6(d), 6(g) and 8(a) – did not succeed under s.13. These also do not succeed under s.15. In the case of 6(d) the claim fails on the proportionality exercise, in the case of 6(g) the respondent's submission that this is not properly to be regarded as unfavourable treatment is accepted in that the letter simply communicated the underlying decision which is dealt with elsewhere, and in the case of 8(a) the claim again fails on the proportionality exercise.

Detriments 6(e), 6(h), 6(i), 6(j), 8(b) – succeeded under s.13. The respondent has disputed that 6(j) amounts to unfavourable treatment. I repeat my conclusion above that it is unfavourable treatment, albeit that it adds little to the dismissal itself. Again, I am satisfied that the proportionality

argument is not made out in relation to any of these matters, and the s. 15 complaint must therefore also succeed in respect of each of them.

The pay complaint – Issue 37

329. Ms Young makes an additional complaint under s.15 in relation to the reduction and eventual cessation of her sickpay, recorded at paragraph 37 of the List of Issues.

330. As per the List of Issues, it is accepted that Ms Young's absence from February 2023 arose in consequence of her disability of anxiety and depression; it is accepted that the respondent initially reduced her pay and then ceased to pay her altogether and it is accepted that that reduction/cessation amounted to unfavourable treatment. (I would question whether the respondent's concession as to unfavourable treatment is necessarily correct in view of **Trustees of Swansea University Pension and Assurance Scheme v Williams [2019] ICR 230** but point was not taken.)

331. The question for the Tribunal is whether that unfavourable treatment was a proportionate means of achieving a legitimate aim (issue 30). The legitimate aim put forward is expressed as follows:

> "*Manchester City Council is a 'best value' authority and must have regard to a combination of economy, efficiency and effectiveness, and ensure that they use their resources effectively. The Claimant advised that she was unable to attend meetings under the Respondent's Attendance Management Policy and as there was no reasonable prospect of the Claimant returning to work, continuing to pay the Claimant on full pay, after she had exhausted her entitlement to contractual sick pay would not be an effective or justifiable use of resources*."

332. That is a long-winded way of saying that the legitimate aim relied upon is the aim of saving money. The reliance on cost alone as a justification for discriminatory treatment is well-known to be problematic in view of the authorities, in particular **Woodcock v Cumbria Primary Care Trust [2012] ICR 1126**. The parties' submissions on this aspect of the case were sparse, Mr Roberts merely asserting that the burden was on the respondent and it had failed to advance a positive case and Ms O'Coglan making brief submissions as follows:

> The caselaw makes clear that only in a a rare and exceptional case would making more generous provision as to the pay of a disabled employee amount to a reasonable adjustment: O'Hanlon v Comrs for HM Revenue & Customs [2007] EWCA Civ 283, [2007] ICR 1359; Meikle v Nottingham County Council [2004] EWCA Civ 859, [2005] ICR 1. As the Court of Appeal remarked in O'Hanlon, the purpose of the disability discrimination provisions is to assist disabled people to obtain employment and integrate them into the workforce, rather than to put more money into their wage packets. The same principle applies here.

333. In a case as factually and legally complex as this, it is not unusual for certain matters to fall out of focus. I believe I am entitled to take a pragmatic view in relation to this complaint. The respondent's legitimate aim is

probably not expressed exactly as it should be. It is uncontroversial, though, that employers will generally be entitled to limit the availability of sick pay and that the approach taken by the respondent in this case was entirely conventional. There are multiple ways in which the policy considerations behind that statement can be framed as legitimate aims, which are not solely based on cost, including the necessity to encourage workers to attend work (and reward them for doing so).

334. Assuming that I can then embark on the proportionality assessment, the ratio of **O'Hanlon** as set out by Ms McColgan is relevant here. **O'Hanlon** is now a case of some vintage and it has remained as a touchstone ensuring that disability protections do not overreach into the realm of social welfare. There is an argument to be made here that it would have been proportionate to extend Ms Youing's sick pay, particularly in view of the observations in **Meikle** (which survive **O'Hanlon**) that, in the context of reasonable adjustments, it may be relevant that it is a pre-existing failure by the respondent to make reasonable adjustments which has led to (or lengthened) the absence.

335. However, the question of whether the employer's discriminatory actions (as I have found them) in fact caused Ms Young to take sick leave which she would not otherwise have required to have taken will be a question for a remedy hearing. If they did, and that resulted in financial loss, that loss will be compensatable. That possibility of compensation weighs against Ms Young in the proportionality argument. There are many further reasons why it might be difficult, or simply ill-judged, to require an employer to extend paid sick leave in circumstances such as this. These include (1) it would create a tendency to entrench disputes rather than resolve them (2) it would create a disincentive for employee to return to work and reintegrate (I am not suggesting that this disincentive was operating on Ms Young's minds, but the possibility is something the Council is, in my view, entitled to weigh into the balance) (3) it would require the employer to be able to assess when it was at fault and (4) it ties up money with a commensurate impact on the services the council is able to provide to residents.

336. Overall, having weighed these matters in the balance, I find that the respondent's decision not to extend that claimant's sick pay was justified, and that this complaint therefore fails.

Harassment on the grounds of disability

337. There are a small number of allegations relied on as a complaints of harassment on grounds of disability:

(1) The complaint about Ms Kar's actions in raising the disciplinary proceedings at the AMR meeting (Issue 39, referred to above as Issue 17, in the context of the complaint of harassment on the grounds of religion and belief).
(2) Detriments 6(h) (the 19 December 2023 letter) and 6(i) (the 17 April 2024 email)
(3) The contents of the dismissal letter

338. Although I have consistently referred to the allegations short of dismissal as "detriments" for the purposes of the s.15 claim they are, technically, examples of "unfavourable treatment". I do not understand the bar in s212(1) to preclude the claimant from asserting that s.15 "unfavourable treatment" is also treatment amounting to harassment. Notwithstanding that I have found a technical bar to the harassment claim on the grounds of religion and belief, it seems that there is no such bar to this harassment claim. (Whether there is any tangible gain in pursuing the allegations simultaneously as allegations of harassment and under s.15 is a different point.)

339. Dealing first with issue 39/17, the respondent accepts, in this instance, that Ms Kar's behaviour was related to Ms Young's disability. It disputes that the act had the purpose or effect of violating Ms Young's dignity of creating the proscribed environment. I repeat my discussion and conclusions in respect of Issue 17 above. I do not consider it was objectively reasonable for Ms Young to consider that this action violated her dignity or had the proscribed effect.

340. In relation to 6(h) and 6(i), these were not considered as potential acts of harassment on the grounds of belief, as they had been found to be detriments. The respondent accepts that they were unwanted conduct and related to disability.

341. I am satisfied that the respondent did not have the proscribed purpose. Its purpose in both instances was to progress this difficult matter towards a conclusion.

342. Equally, I am satisfied that both letters had the proscribed effect on Ms Young. Was that response on her part objectively reasonable?

343. In relation to the December 2023 (**6(h)**) letter there was absolutely no reason why this had to be sent just before Christmas. In another case this might be simply unfortunate, but in this case the impact on the claimant was profound. She had legitimate hopes that the investigation would be discontinued entirely, she was in very poor health and she was spending time with her family over Christmas who were usually based in Australia. From the respondent's perspective, there was no gain in sending it before Christmas, as no steps were planned or taken for weeks afterwards. I have already described this as callous, and I find, in the particular context of this case, it was an act which can properly and reasonably be described as creating and intimidating and hostile environment for Ms Young.

344. In relation to the **6(i)** letter, this was largely a procedural development. The context in which (as I understand) it is said to be harassment is that it was sent to the claimant, rather than to her sister (as had been agreed). I have already said that I consider it reasonable of Ms Kar (or those speaking through her) to reply directly to an email sent by Ms Young herself. The content of this communication went beyond a simple reply to Ms Young. Whilst I accept that that was upsetting for Ms Young, it was a procedural misstep which I find did not reasonably have the effect of

creating the proscribed environment, bearing in mind the gravity of the terms used in the statute.

345. I decline to make a separate finding that the contents of the dismissal letter amounted to disability-related harassment. Unlike the letters discussed above, I do not understand in what sense the letter itself is said to be harassment (as opposed to simply conveying the decision to dismiss, which I have already found was unlawful). This was not addressed in Mr Roberts' submissions.

Unfair dismissal

Reason for dismissal

346. The reason for Ms Young's dismissal, ultimately, was the four GG Tweets I have discussed extensively above. That dismissal obviously took place against a much broader and more detailed canvas, but those were the matters on which the respondent chose to hang its hat. This was not a sham dismissal concealing a different reason altogether, and in those circumstances the dismissal falls to be judged on the (factual) reason adopted by the respondent.

Was this a potentially fair reason?

347. I agree with Mr Roberts that the correct label for this dismissal was conduct. There is no 'SOSR' reason which exists separately to Ms Young's conduct. Of course, a reason relating to conduct is a potentially fair reason for dismissal within s.98(2). It is not fatal to the respondent's case that I disagree with the label that has been applied.

348. Ms McColgan's submissions emphasised that two employees had left employment, one had complained of bullying, and the existing team at the time of dismissal refused to work with her. She relied in her submissions on cases relating to breakdowns in employment relations as being potentially SOSR reasons for dismissal. The primary problem with this submission is that it was not what the respondent was saying at the time of dismissal. There is a secondary problem, which is that it strays dangerously close to permitting the employer to adopt or hide behind discriminatory attitudes on the part of its staff. Those factors place this case in an entirely different category from **Ezsias** and similar authorities.

Did the respondent act reasonably in treating [the reason] as a sufficient reason to dismiss the claimant?

349. Resoundingly, no.

350. Mr Roberts' submissions attack the dismissal under each limb of the **Burchell** test, which requires the respondent to show it had a genuine belief that the claimant had committed the misconduct, that the belief was

reasonable, and founded on a reasonable investigation, and that the sanction was within the band of reasonable responses.

351. Mr Roberts is right to say that there were chaotic and unjustifiable procedural failings throughout the narrative I have set out above, which led ultimately to dismissal. However, by the time of dismissal the respondent had (finally) narrowed the issues to rely only on a handful of Twitter replies/likes, with the result that many of the criticisms of the earlier parts of the process lead nowhere when it comes to assessing the fairness of the dismissal.

352. The respondent evidently had a genuine and reasonable belief, backed by a reasonable investigation, that Ms Young had undertaken the activity on the GG account. By the time of the dismissal, that much was admitted. The power of Mr Roberts' critique is that the respondent did not investigate (perhaps, more accurately, did not *analyse*) whether these likes/replies could properly be considered to be misconduct at all. That included analysing the proper interpretation of the claimant's online statements or activity and putting that interpretation to her for a response. Mr Roberts' criticisms in that respect are justified.

353. The most fundamental failure, however, is in relation to the sanction applied. I find that the dismissal was substantively unfair because no reasonable employer, paying proper regard to the fact that the claimant's gender critical beliefs were protected by the EqA, and to her rights under Articles 9 and 10 ECHR, could have reached the conclusion that the Twitter likes/replies relied on, posted in response to activity by others, from an anonymous account, amounted to misconduct nor that, if it did, dismissal was an available sanction.

354. For those reasons the unfair dismissal claim also succeeds.

Next steps

355. This is a liability Judgment only. Unless the parties can resolve the matter between themselves (which they are encouraged to do) the Tribunal will convene a remedy hearing in due course. The parties were notified at the conclusion of the hearing of the date of a provisional preliminary hearing for case management to make arrangements for a remedy hearing if necessary. In view of the conclusions I have reached that preliminary hearing will go ahead as listed. It is a private hearing and observers are not entitled to attend. Any substantive remedy hearing which is subsequently required will be held in public.

Anonymity

356. Having substantially completed this Judgment, and conscious that it is likely to receive a degree of public attention, I was somewhat troubled by the prospect of naming Ms Herdan, in particular, given that she had not (as I understood) had chance to respond to the criticisms made of her on the claimant's case, which I have broadly upheld. It is not unusual for the Tribunal to refer to non-parties in Judgments by ciphers, in order to protect

their privacy, a common example being where reference has to be made to students in a case with an education setting, or patients in a case with a healthcare setting. No separate "anonymity order" is made in those cases. It is, however, unusual for the Tribunal to anonymise names of key individuals within its Judgments, particularly where those individuals have found to have been responsible for acts of discrimination that the Tribunal has found to have taken place. That is in line with the basic principle of open justice, which generally requires hearings and the names of those involved in them to be public knowledge.

357. In those circumstances, I considered it appropriate to circulate a draft Judgment to the legal representatives for both parties. I invited them to make written submissions as to the question of anonymity in relation to Ms Herdan. I also indicated that I was considering anonymising Ms Sultan, as she appeared to be in the same position vis-à-vis the hearing, albeit that any criticism of her is relatively mild. Both counsel did so at the end of the two-week period provided. Neither of them had given any previous indication that more time was required.

358. The claimant's submissions opposed the suggestion of anonymising the Judgment, relying on the principle of open justice, and discussing various authorities, including **TYU v ILA Spa Ltd [2022] ICR 287** as to non-parties.

359. The respondent's submissions revealed that Ms Herdan had been in contact with the respondent in September, concerned about the impact of the proceedings and that the respondent had offered her support. Ms McColgan stated that the respondent was not in a position (given the embargoed nature of the draft Judgment) to put forward evidence from Ms Herdan or Ms Sultan at the present time, and asked for permission to share limited details of the Judgment with them, in order for evidence to be gathered and for a formal application to be made. The respondent's submissions also raised a similar point in respect of one of their witnesses, anticipating that an application for anonymity may be made on their behalf too.

360. I was surprised to learn about contact between the respondent and Ms Herdan. My concern arose specifically from my understanding that Ms Herdan may be unaware of the proceedings. Given that Ms Herdan clearly *is* aware of these proceedings, and has been since at least September, and is being supported by the respondent, I struggle to understand why no application for anonymity was made in anticipation of the Judgment if it is considered that that is an appropriate application to make. The respondent's legal team could not have anticipated being given the limited opportunity they have been given, as it is unusual for the Employment Tribunal to circulate draft Judgments. Whilst the respondent could not be certain of the detail of the criticism that would be made, it would have been clear, at the very least, that there would be a detailed account of Ms Herdan's involvement in the matters giving rise to the claim.

361. I took the view that it would be very unwise to delay the promulgation of the Judgment and embark on an interlocutory process which could prove

to be quite lengthy and involved, in circumstances where a draft Judgment was in circulation. My choice was therefore between promulgating a non-anonymised version of the Judgment and inviting anyone affected to make a retrospective application for anonymisation if they wished to do so, and promulgating an anonymised version with some sort of provision that anonymisation would lapse unless an application to continue it was made within a certain period. Whilst the second option was superficially attractive in terms of 'holding the ring' the reality, as Mr Roberts has pointed out, is that the identities of all the participants are already known through online reporting of the case, specifically due to the live-Tweeting of the hearings by Tribunal Tweets which was done with the consent of the Tribunal and without objection from any party (or non-party).

362. In those circumstances, I am left in a position where no application has actually been made and where there could well be confusion as to whether reporting of the Judgment was permitted to refer to any anonymised individuals by their full names or not. To promulgate an anonymised Judgment, essentially of my own volition, in those circumstances, would be to go against the principle of open justice and to interfere with the Article 10 rights of anyone wishing to comment or report on it. The interference with the Article 8 rights of Ms Herdan is limited because she could have had no expectation of not being named in the Judgment, her identity is already in the public domain. (I accept that Mr Roberts is probably right to say there is no material interference with Ms Sultan's Article 8 rights at all, given the findings and discussion in respect of her involvement.)

363. For the avoidance of doubt, I leave it open to any individual who wishes to make an application, supported by evidence, for the anonymisation of the version of this Judgment which appears on the public register to do so. Those applications will be considered when and if they are made, but I am not prepared to delay the publication of this Judgment further to enable applications to be made and determined.

Approved by: Employment Judge Dunlop

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Date: 12 November 2026

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

23 November 2026

FOR EMPLOYMENT TRIBUNALS

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

ANNEX
AGREED LIST OF ISSUES

1. The Claimant has brought two claims against Manchester City Council, case numbers 2402779/2024 ("GoC1") and 2404951/2024 ("GoC2"). This List of Issues relates to both claims.

Religion and belief

2. The Claimant pleads the following:

   a) Her Catholic faith (para 27 GoC1)
   b) Gender critical beliefs (para 28 GoC1)
   c) A belief that surrogacy is a moral wrong akin to human trafficking, the "surrogacy belief" (para 30 GoC1);
   d) A belief that gender identity theory, specifically the belief that a person's "gender identity" trumps their biological sex such that transwomen are women and transmen are men, is dangerous and has caused serious social harm (para 4 GoC2).

3. The Respondent admits that the Claimant's gender critical beliefs, her surrogacy belief and her Catholic faith are protected under the Equality Act 2010 ("EA"). There is no such admission about the Claimant's belief about the harms of gender identity theory.

4. It being accepted that the Claimant held the belief at all material times that gender identity theory is dangerous and has caused serious social harm, is this belief about gender identity theory protected under s.10 EA?

Disability

5. The Respondent admits that at all material times the Claimant was disabled for the purposes of s.6 EA in relation to her depression and anxiety and her eye conditions. The Claimant no longer argues that her other physical conditions were disabilities.

Direct discrimination because of religion or belief

6. The Respondent admits that the following acts occurred:

   a) Sarah Herdan and Adiba Sultan made complaints against the Claimant (paras 49 – 51 and 82a) GoC1);

b) Manchester City Council decided to treat the allegations in Ms Herdan's and Ms Sultan's complaints as potentially constituting gross misconduct and a disciplinary process followed that decision, including the letter of 3 November 2022 described in paras 47-48 GoC1;

c) Manchester City Council decided to include in the allegations of gross misconduct against the Claimant and in the subsequent disciplinary process a charge of making inappropriate and discriminatory comments related to gender reassignment (para 82b) GoC1);

d) Manchester City Council carried out an investigation into an anonymous Twitter account with a view to ascertaining whether it belonged to the Claimant;

e) Manchester City Council decided to treat the Claimant's tweets on the GalwayGirl account as potential gross misconduct and commenced a disciplinary process related to that decision, including the email and letter from Sarah Narici of 16 February 2023;

f) Manchester City Council declined, by way of an email from Sarah Narici on 17 February 2023, to provide the Claimant with copies of the GalwayGirl tweets;

g) Manchester City Council wrote and sent the letter of 6 June 2023 from Sharmila Kar to the Claimant, described in paragraph 64 GoC1;

h) Manchester City Council decided to email the Claimant the letter dated 19 December 2023 from Sharmila Kar on 20 December 2023, and attached the letter to an email with the subject, "*OH Assessment Review Next Steps*" (para 68 GoC1);

i) Manchester City Council sent an email from Sharmila Kar to the Claimant on 17 April 2024 in which Ms Kar referred to a meeting to consider the Claimant's employment (para 77 GoC1);

j) Manchester City Council decided to pursue the allegations in relation to the Claimant's social media use and wrote and sent the letter of 18 April 2024 inviting the Claimant to a meeting on 13 May 2024 which could result in her dismissal.

7. In carrying out the acts at paragraph 6(a), (b) and/or (c), did the Respondent treat the Claimant less favourably than it treated, or would have treated, others because of the Claimant's gender critical beliefs?

8. Did the Respondent do the following as set out at para 83 GoC1?

a) Remove the Claimant from the EDI team in February 2023;

b) Decide to proceed with disciplinary proceedings against the Claimant which, in the Council's words, could lead to her dismissal for some other substantial reason, and carry out the process that followed that decision.

9. If so, in carrying out the acts at paragraph 6(d) – (j) and/or paragraph 8 above did the Respondent treat the Claimant less favourably than it treated, or would have treated, others because of the Claimant's gender critical beliefs and / or because of her Catholic beliefs and / or because of her surrogacy beliefs?

10. In relation to the Claimant's dismissal on 6 June 2024 (paras 8-10 GoC2), did the Respondent treat the Claimant less favourably than it treated, or would have treated, others because of the Claimant's gender critical beliefs and / or because of her Catholic beliefs and / or because of her surrogacy beliefs and / or because of her beliefs about the harms of gender identity theory?

The issue of comparators

11. The Claimant notes the Court of Appeal's judgment in *Page v NHS Trust Development Authority* in which Underhill LJ said at paragraph 79: "*It is trite law that it is not necessary in every case to construct a hypothetical comparator, and that doing so is often a less straightforward route to the right result than making a finding as to the reason why the respondent did the act complained of: see the very well-known passage at paras. 8-13 of the speech of Lord Nicholls in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] ICR 337*."

12. The Claimant's primary case is that the reason why the Respondent acted as it did was her gender critical beliefs and / or her Catholic beliefs and / or her surrogacy beliefs and / or her beliefs about the harms of gender identity theory ("the protected beliefs"), and that it is not necessary to construct a hypothetical comparator.

13. In the alternative, the Claimant relies on a hypothetical comparator who was employed in the same role as the Claimant and whose output on an anonymous personal social media account was comparable to the Claimant's, save that it expressed a gender identity perspective (specifically the perspective that transwomen are women, transmen are men and non-binary people are neither men nor women).

14. In the further alternative, the Claimant relies on a hypothetical comparator who was employed in the same role as the Claimant, whose output on an anonymous personal social media account was comparable to the Claimant's

save that it expressed a gender identity perspective, and whose colleagues had made complaints about her.

15. In the further alternative, the Claimant relies on a hypothetical comparator who was employed in the same role as the Claimant and who held the protected beliefs, but who did not express them.

16. In the further alternative, the Claimant relies on a hypothetical comparator employed in the same role as the Claimant who neither held nor expressed the protected beliefs.

Harassment related to religion and belief (in the alternative to direct discrimination)

17. It is accepted, as alleged in para 62 of GoC1 that, on 17 May 2023 during an absence review meeting via MS Teams attended by the Claimant and her mental health crisis peer support worker Tina Wardle, Sharmila Kar and Hella Monroy Dominguez, the disciplinary proceedings were raised by Ms Kar.

18. Were the acts at paragraph 6(a), (b) and/or (c) and/or paragraph 17 above, related to protected gender critical beliefs? Were the acts at paragraph 6(d) – (j) above related to protected gender critical beliefs and / or to Catholic beliefs and / or to protected surrogacy beliefs?

19. Did the acts at paragraph 8 above occur and, if so, were they related to protected gender critical beliefs and / or to Catholic beliefs and / or to protected surrogacy beliefs?

20. Was the Claimant's dismissal related to protected gender critical beliefs and / or to Catholic beliefs and / or to protected surrogacy beliefs and / or to protected beliefs about the harms of gender identity theory?

21. Were the acts referred to in paragraphs 17-20 above unwanted?

22. Did the acts have the purpose of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

23. Did the acts have the effect of violating the Claimant's dignity or of creating an intimidating, hostile, humiliating, degrading or offensive environment for her, taking into account the factors set out at s.26(4) EA?

Failure to make reasonable adjustments

24. Did the Respondent apply a provision, criterion or practice ("PCP1") of communicating with employees about allegations of misconduct and

disciplinary processes by sending emails and attachments to the employee in question?

25. If so, did PCP1 put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with people who are not disabled, in particular in comparison with people who do not suffer from depression and anxiety? The Claimant's case is that her depression and anxiety caused her to suffer acute distress when she received emails from the Respondent relating to disciplinary processes against her.

26. If so, did the Respondent fail to take such steps as it is reasonable to have to take to avoid the disadvantage? In particular, was a practice of sending emails relating to disciplinary proceedings to a trusted third party of the Claimant in the first instance, rather than to the Claimant, a reasonable step to avoid the disadvantage, and did the Respondent fail to take this step?

27. When conducting disciplinary investigations relating to complaints, did the Respondent apply a provision, criterion or practice ("PCP2") of providing the employee whose conduct was being investigated with copies of the complaints rather than setting out which aspects of those complaints were being investigated?

28. If so, did PCP2 put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with people who are not disabled, in particular in comparison with people who do not suffer from the Claimant's eye condition? The Claimant's case is that her eye condition made it difficult and painful for her to read the complaints and to try to work out what allegations were being pursued by the Council under which category of alleged misconduct.

29. If so, did the Respondent fail to take such steps as it is reasonable to have to take to avoid the disadvantage? In particular, would an explanation of which allegations in the complaints were being investigated and for what reason have been a reasonable step to avoid the disadvantage, and did the Respondent fail to take this step?

Discrimination arising from disability

30. The Respondent admits that, on the balance of probabilities, the nature and extent of the Claimant's social media use arose in consequence of her depression and anxiety.

31. Did the Respondent carry out the following acts:

    a) Remove the Claimant from the EDI team in February 2023;

b) Decide to proceed with disciplinary proceedings against the Claimant which, in the Council's words, could lead to her dismissal for some other substantial reason, and carry out the process that followed that decision.

32. If the acts in paragraph 31 happened (which the Respondent denies), the Respondent accepts that they, the acts set out at paragraph 6(d), (e), (h) and (i) above, and the Claimant's dismissal, were unfavourable treatment of the Claimant. It is not accepted that the acts set out at paragraph 6(g) and (j) above were unfavourable treatment of the Claimant.

33. If the acts in paragraph 31 happened (which the Respondent denies), the Respondent accepts that they, the acts set out at paragraph 6(d), (e), (g), (h), (i) and (j) above were done because of the Claimant's tweets.

34. Were the above acts a proportionate means of achieving a legitimate aim (as set out in the document of 3 December 2024 at **1/146-150**)?

35. It is accepted that the Claimant's absence from February 2023 arose in consequence of her depression and anxiety.

36. It is accepted that Respondent reduced the Claimant's pay and then ceased to pay her altogether.

37. It is accepted that the reduction and cessation of the Claimant's pay from February 2023, as a result of her disability-related absence from work, was unfavourable treatment because of the Claimant's absence.

38. Was this treatment a proportionate means of achieving a legitimate aim (as set out in the document of 3 December 2024 at **1/146-150**)?

Harassment related to disability

39. It is accepted that the action of Sharmila Kar at the meeting on 17 May 2023 in raising the disciplinary proceedings, the acts set out at paragraph 6(h) and (i) above and the contents of the dismissal letter dated 6 June 2024 amounted to unwanted conduct.

40. It is accepted that the above acts related to disability.

41. Did the acts have the purpose of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

42. Did the acts have the effect of violating the Claimant's dignity or of creating an intimidating, hostile, humiliating, degrading or offensive environment for her, taking into account the factors set out at s.26(4) EA?

Unfair dismissal

43. What was the reason for the Claimant's dismissal?

44. Was the reason a potentially fair reason?

45. If there was a potentially fair reason for dismissal, did the Respondent act reasonably in treating it as a sufficient reason for dismissing the Claimant?

Jurisdiction – Limitation

46. Have any or all of the claims been presented within the time limits as extended by the Early Conciliation provisions?

47. Do any or all of the relevant acts constitute conduct extending over a period within the meaning of section 123(3) EA and, if so, have the relevant claims been presented within the time limits as extended by the Early Conciliation provisions?

48. Have any or all of the claims been presented within such period as the Tribunal thinks just and equitable?