



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Sarah Cummings

**Respondent:** Southern Health NHS Trust

**Heard at: Southampton**      **On: 23 to 25 October 2017**

**Before:**      **Employment Judge Fowell**  
**Mr M Richardson**  
**Mr J Evans**

**Representation**

Claimant: Ms James, lay representative

Respondent: Mr B Jones, instructed by Capsticks LLP

## JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's complaints of disability discrimination are dismissed.

## REASONS

1. By a claim form dated 8 January 2017 Ms Cummings brought claims under the Equality Act 2010 on grounds of her disability. The claims were of direct discrimination contrary to section 13 and of victimisation contrary to section 27.
2. It is accepted that Ms Cummings has a disability, Borderline Personality Disorder or BPD, and that she was a worker and so entitled to the protection of the Act.
3. This work was with a unit operated by the respondent Trust called the Consultancy and Support Team ("CAST") which is a consultancy service for mental health practitioners and service users. The team is made up partly from former service users, such as Ms Cummings, who have experienced mental health problems and undergone psychological therapy. Although those problems will not, in general, have not been entirely alleviated, the participants have - using the term preferred by the

Trust - reached a level of wellness. The treatment provided by the unit is improved by sharing personal experiences of recovery and, for its participants, it acts as a bridge between the end of treatment and gaining employment. It also aims to help staff connect better with service users. Dr Vivia Cowdrill, a consultant psychologist, has overall clinical responsibility for its activities.

4. The unit is not unique. There are national guidelines, known as the “National Personality Disorder Development Programme’s Participation and Wellness Guidelines”. These aim to assist participants to recognise when it would be better for them not to participate in CAST activities. The claims in this case arose out of a dispute with a fellow participant, and the application of these guidelines to Ms Cummings. At the request of the Respondent the other participant is referred to as AB throughout. These are not the actual initials, which had been used prior to this judgment.
5. The relevant issues were set out in the Case Management Order made on 3 May 2017:

**Direct Discrimination**

“7. The claimant complains of the following less favourable treatment as a Service User Consultant which she contends falls within section 39 of the 2010 Act.

7.1. Following a complaint by the claimant to Dr Vivia Cowdrill in March 2016 that other service user consultants were being paid more than the claimant, and that a service user consultant had breached her confidentiality on 2 occasions, Dr Cowdrill called the claimant in for a meeting on 13 July and was rude and dismissive of the claimant, refusing to consider the claimant’s work-related problems that the claimant had been experiencing since March 2016.

7.2. The claimant alleges that her employment with the respondent ended by way of dismissal by email and letter dated 19 October 2016, which indicated that from that day her contract had been terminated. The claimant contends that her dismissal was because of her disability.

8. By way of clarification of paragraph 7.1 the work-related problems concerned:-

8.1. the fact that other service user consultants... were paid more than the claimant;

8.2. that a service user consultant ... breached the claimant’s confidentiality in the following manner:-

8.2.1. the claimant contends that at a clinical supervision meeting with staff members on 17 March 2016, in answer to a question from Dr Cowdrill to the whole group as to what they particularly liked or disliked in their roles as Service User Consultants, the claimant informed Dr Cowdrill ([AB] fellow service user consultant being in attendance) that she liked being involved in the training and planning of the new service, and that she had to be mindful when working directly with service users, that it sometimes triggered an adverse effect on her mental health.

8.2.2. [AB] at a Borderline Personality Disorder Pathway meeting on 23 June 2016 involving 8 professionals (including Dr Cowdrill and [AB]) [AB] informed the meeting, when the claimant was being asked to do some future work “*Sharon does not like working with service users.*”

8.2.3. [AB] repeated the breach of confidence at a presentation meeting of “Gone Viral” on 7 July 2016 before the claimant and a number of individuals in a room.

8.3. The claimant does not contend that any of her work-related problems arose from her disability.

9. The claimant’s case is that these comments were hurtful and caused her distress and embarrassment.
10. By way of clarification of the behaviour of Dr Cowdrill at the meeting on 13 July, the claimant relies upon the following:—
  - 10.1. her refusal to discuss the claimant’s work-related problems;
  - 10.2. Dr Cowdrill’s criticism of the claimant for not wearing make up;
  - 10.3. Dr Cowdrill providing the claimant with the Border Personality Disorder Guidelines, and stating that the claimant needed to consider if she was well enough to continue working as a service user consultant. The claimant contending that there was nothing in her behaviour that warranted such a comment.
  - 10.4. On the following day, 14 July, Dr Cowdrill emailed the claimant informing her that under the Personality Disorder Guidelines, she was postponing all the claimant’s work because she alleged the claimant was unwell, but that the claimant could return in 3 weeks time when the claimant was well again.

...

### **Victimisation**

12. The parties acknowledge that the claimant made a protected act by way of a written grievance dated 19 July 2016 to the complaints department of the respondent alleging disability discrimination by reason of her suspension on 14 July, which grievance was subsequently sent to the respondent’s HR department 20 July 2016.
13. The claimant relies upon the following alleged detriments:
  - 13.1. The action of the respondent in rejecting the grievance initiated at stages 1, 2, and 3, and the appeal.
  - 13.2. Improperly delaying the claimant’s entitlement to ownership of her coursework “understanding your emotion” for the recovery college of the respondent during the stage 2 grievance.
  - 13.3. The claimant alleges that her employment ended by way of dismissal. She denies resigning. She does not assert a case of

constructive dismissal namely that she resigned because of the respondents conduct pursuant to section 39(7)(b) of the 2010 Act.

6. A further issue, which it will be convenient to deal with at this stage, was a time limit point. Although there was a delay in contacting ACAS, the allegation of victimisation was in time. Hence, although we might have limited the issues to the victimisation claim, it would have been necessary in any event to hear evidence relating to the background to that grievance and so no tribunal time, or cost and effort for the parties, would have been saved. We bore in mind too that Ms Cummings was again, on her evidence, in crisis in October 2016 when the deadline passed, and that the grievance procedure was still underway. As a result we concluded that it was just and equitable to extend time to consider all aspects of the claim.
7. We heard evidence over the first two days of the hearing from Ms Cummings herself, together with four witnesses from the respondent: Dr Cowdrill; Ms Louise Jones, a Senior HR manager at the Trust who was responsible in the main for the subsequent grievance procedure; Ms Kate Brooker, the Trust's Associate Director for Adult Mental Health, who dealt with the claimant's grievance appeal; and Ms Sarah Leonard, Acute Care Matron, who managed the Recovery College. The Recovery College is separate from CAST but delivers courses to service users, members of staff and carers at the Trust. Such courses are developed jointly between clinicians and those, like Ms Cummings, who have experience of the relevant condition.
8. Ms Cummings was assisted by her friend Ms James who acted as a lay representative and carried out most of the cross-examination on her behalf. Mindful of Ms Cummings' disability we allowed for regular breaks and were pleased to note that she was able to take a full and effective part in the hearing, both through her own evidence and in the questions put to the respondents' witnesses.
9. Having considered this oral evidence, supplemented by a bundle of about 500 pages, we made the following findings of fact.

#### **Findings of Fact.**

10. The claimant began working with CAST in March 2015 following an interview with Dr Cowdrill. She was given a one-page summary of the guidelines, which is at page 473 of the bundle. This condenses the two-page national guidelines at pages 474-475. The principal difference is that the national guidelines make explicit that a participant may be *required* to take a break from participation rather than making the decision for themselves. The relevant paragraph provides:

The final decision about participation will be made with as much consultation as possible but by the person with designated responsibility for the work of the committee, working group or project. If somebody has not followed these guidelines, they must be prepared to be sent home, even if they have gone to some effort to get there and come a long way.

11. That paragraph was omitted from the local summary because, as Dr Cowdrill accepted, it was never anticipated that this would occur. The local version provides instead:

In order to participate meaningfully in this project, however, service users will be expected to demonstrate some ability to define and manage their own well-being and to judge whether they are in the “right place” to undertake the work“.
12. In both cases the guidelines apply to personality disorders in general, rather than just BPD. We heard evidence from Dr Cowdrill, and accept, that there are about ten different types of personality disorder.
13. The guidelines also make reference to service users being entitled to travel expenses, and for fees to be paid for specific tasks other than meetings of the reference group. The first significant project for Ms Cummings was one she developed with the Recovery College entitled *My Crisis Story*. As the title suggests, this was based on her personal experience and recovery.
14. Ms Cummings was one of three service user consultants in CAST and so although she had originated and developed this work, Dr Cowdrill also allowed AB, to deliver it – something which came to be referred to as the takeover issue. Dr Cowdrill’s view was that this material was developed for the benefit of the Trust as a whole and that others had relevant experience to bring to bear. So, although the work was in fact highly regarded, as a result of this Ms Cummings did not feel that her contribution was sufficiently appreciated.
15. At a CAST supervision meeting on 17 March 16 there was a discussion among the service user consultants about fees and expenses. Ms Cummings felt uncomfortable to be told that others were claiming fees for travel time and felt that this was not in the right spirit. But it was also apparent that others had been receiving more than her. This aggravated her feelings of dissatisfaction: others were delivering her work and she was not even getting the same pay.
16. During that meeting Ms Cummings happened also to remark to Dr Cowdrill that she preferred being involved in presenting, training and planning the service, rather than dealing directly with service users, since this could sometimes trigger her own issues. Dr Cowdrill thought this a reasonable comment.
17. It is not clear whether that meeting also discussed the takeover issue, but Ms Cummings told a friend two days later that she was feeling undervalued and that Dr Cowdrill was not recognising her work.
18. On 14 April 2016, Dr Cowdrill was alerted by a colleague to the fact that Ms Cummings felt that someone was taking over her work. The colleague took the view that this was not exclusively Ms Cummings’ work although it was important to validate the effort she had put into it. Dr Cowdrill was already aware of this issue however and had had a discussion with Ms Cummings about it. She took very much the same view and had told Ms

Cummings that *My Crisis Plan* did not belong to her. This was not well received.

19. We find it understandable that Ms Cummings would be annoyed to find that this work was being presented by someone else, particularly when it was about her own crises and recovery. Someone else presenting it would appear to be taking credit for her hard work. Nevertheless we accept that such training material did not ultimately belong to the author or co-author, that other colleagues had relevant experience, and that Dr Cowdrill was entitled to allow others to present it.
20. At around the same time Ms Cummings had the idea for the course on understanding emotions and approached Ms Leonard (of the Recovery College) at a meeting on 1 April about this. She had prepared some slides on her mobile phone, which she showed. Ms Leonard was positive about the idea. She offered to set up a meeting shortly to progress it having identified a suitable clinician to co-produce it.
21. The pay issue rumbled on however and on 23 April 2016 Ms Cummings emailed her line manager, Ms Durant, Area manager for Adult Mental Health Services, making pointed reference to fraudulent claims by others, and her claims not being paid. She expressed herself as feeling furious and unrecognised. She also wrote to Dr Cowdrill the same day to tell her that she felt it time for her to move on from CAST. Whether this was meant to be taken literally or not, Dr Cowdrill responded sympathetically, suggesting that they talk it through. It is clear that Ms Cummings' main concern at this time was feeling undervalued rather than the pay issue. This was in part because she felt she had outgrown CAST and was now able to develop her own valuable training materials: it was exacerbated by the takeover issue, which in turn underlay her difficulties with AB.
22. On 19 May 2016 there was the BPD "Pathway Meeting" at a hotel, attended by Ms Cummings, Dr Cowdrill, AB and other clinical colleagues, at which Dr Cowdrill overheard her tell one of these colleagues at the same table that her preference was in giving presentations and developing programmes, rather than dealing directly with service users. AB overheard this too.
23. The next such meeting was on 23 June 2016, at which AB repeated this remark, telling the group that she thought Ms Cummings did not like working with service users. Although not a breach of any confidence, that was in our view an unfair and unnecessary comment, which Ms Cummings found hurtful and embarrassing. Dr Cowdrill noticed the effect it had on her although others did not.
24. After the meeting Ms Cummings emailed AB to say that she had been embarrassed by this and that it was unjustified. She also rang Dr Cowdrill and said she felt that AB had been trying to make her look bad so she could takeover her crisis work. Dr Cowdrill was about to go on two weeks' leave for a planned operation and they agreed to meet on 15 July to discuss it further. At that point Dr Cowdrill had already taken it on herself to phone AB to speak to her about this remark, so she knew that Ms Cummings had emailed her. AB wanted to ignore it. Dr Cowdrill advised

her to respond but took no further action herself, taking the view that it was for them to sort out between them.

25. AB did not respond however, and so no progress was made in resolving things. Ms Cummings continued to be preoccupied with this, and on 26 June emailed a list of concerns to Dr Cowdrill in an attachment, to form the basis for their discussions on 15 July adding that she was unhappy with their last conversation. Unfortunately, Dr Cowdrill did not see this. It was perhaps overlooked as she was off work or it may have gone into a junk folder but in any event we are satisfied that it was not deliberately ignored.
26. On 7 July 2016, while Dr Cowdrill was still away, there was a further meeting, a presentation to CAST members for what was referred to as the "Gone Viral" launch. Ms Cummings was concerned about seeing AB and so before attending she contacted Dr Cowdrill's deputy, Ms Morente, to say that a big issue had been left up in the air between them, and she did not know how she was going to feel if she saw AB there.
27. Ms Morente called AB who told her she was not going, so Ms Morente passed this on to Ms Cummings; she felt reassured and decided to go, taking her daughter with her. But AB was there. Seeing her, Ms Cummings decided to tackle her about the remark she made and the fact that she had not even replied to her email.
28. According to AB's subsequent written account, Ms Cummings came over to her and gave her a tirade of abuse, waving her finger at her and shouting so that she felt physically threatened. This harangue lasted five minutes, a fact confirmed by Ms Cummings' daughter who led her away. Ms Cummings admitted in her grievance letter that she had been shaking and pointing her finger so we find that this was an upsetting incident for AB, regardless of any provocation, and occurred very much as she described.
29. Ms Cummings emailed Dr Cowdrill (although still absent) that day to say that after what had happened she had to leave CAST. But she still blamed AB, stating "I would never expect a colleague to do that again to me." The next day she emailed Ms Morente to say that she was still going to be doing other work through her own limited company.
30. Having had (understandably) no response from Dr Cowdrill, on 12 July Ms Cummings emailed her again to say she had been in crisis for the last five days and felt angry and upset, in large part with herself. Ms Cummings takes considerable pride in her ability to problem-solve – as she felt she had on this occasion by checking that AB would not be there - and to manage her emotions; so allowing herself to become provoked in this way meant that all her good work had been undone. She asked to speak to Dr Cowdrill as though she was in therapy (p334) and said how much she loved working with her.
31. Dr Cowdrill emailed back the next day, her first day back, clearly very concerned by this turn of events. They were due to meet on 15 July and she was extremely busy but offered Ms Cummings 20 minutes that day if she wished, and Ms Cummings responded promptly to say that she would pop in.

32. That meeting did not go well. It began with the comment on the way in by Dr Cowdrill that Ms Cummings looked terrible and was not wearing any make-up. That was however meant in a concerned way, in the sense, "Are you alright, you look terrible?"
33. The meeting in fact lasted about 30 minutes. Ms Cummings was crying at the outset and clearly wanted Dr Cowdrill to take her side. She still felt strongly aggrieved by AB and that she was justified in her anger. The underlying problem perhaps is that there was some confusion on Ms Cummings' part about the purpose of that meeting. Despite the earlier reference to therapy, Dr Cowdrill was not her therapist, and she also later complained that it was like the worst mental health assessment she had ever had, and that as Dr Cowdrill was not her therapist she should not have evaluated her mental health by making reference to the guidelines; the reality was that Dr Cowdrill was in a management position, attempting to resolve a dispute between two colleagues, and had to see both sides. She was concerned that Ms Cummings was not listening to her, that expressing a justified sense of anger was not enough, particularly given the length and intensity of her anger, which were excessive. Ms Cummings was not in her view able to recognise that she had been abusive towards AB, and that she had to take some time to calm down and to use her emotional coping skills; hence the reference to the guidelines.
34. Ms Cummings reacted badly to the idea that she was not coping and managing the situation, no doubt in part because she felt that she had already outgrown CAST, but in fact the guidelines do appear to apply squarely to this situation. At page 475 they state:

Cross with somebody or something – feeling a bit angry, hostile, rejected or rejecting? Finding it hard to listen to people or things you disagree with?... Probably not a good idea to make things worse by coming into a situation that is often confrontational. Talk it over and come back when things are more settled for you.

35. Although with hindsight, given her sensitivity, it might have been better to leave this document until the Friday meeting, but Dr Cowdrill introduced it out of concern, to ensure that she took the time she needed. There was also no discussion of Ms Cummings leaving CAST at that stage, despite her earlier email, since plainly her real wish was to have this situation resolved to her satisfaction and Dr Cowdrill wanted her to stay.
36. The meeting ended with Dr Cowdrill asking her to take away the guidelines and, if she felt able, to come to the meeting on 15 July, but Ms Cummings was by this time rather angry, raising her voice and saying that Dr Cowdrill would not be treating her this way if she was a member of staff.
37. There was an exchange of emails the next day. Dr Cowdrill consulted with colleagues and responded in the following terms:

With your past history comes difficulties which from time to time may interrupt your progress. I understand that and that is why the National PD



development programme service came up with guidelines which state that it is not expected that you will be well all of the time. We sometimes work with others that wind us up or are rude or arrogant but as members of staff, how we respond to that is really important. At this time, you admitted yourself, that this issue with your colleague has sent you into crisis and when you are in this state it is best to postpone things for awhile until you feel able to comply with the guidelines.

I am suggesting that all your work in Southern Health is postponed for now until we can meet together with my manager to discuss a way forward and how we can support you when these difficulties arise. ...

I will contact you by phone or email in a few weeks time to see how you are doing.

**This action in no way affects the incredible work that you have done for the Trust nor will it impact on the work you do in the future for us, should you wish to continue.** [Original emphasis]

You are a valued member of CAST and I wish to see you back when you are well.

38. Despite this reassurance Ms Cummings emailed the next day claiming to have been pushed aside because of her mental illness and stated that she would be taking it further. She also emailed Ms Durant complaining that she had being classed as mentally unstable.
39. On 27 July, not having had any personal response to her email, Dr Cowdrill sent a letter to Ms Cummings repeating her reassurances. She stated that Ms Cummings was a valued member of the team and referred to her "amazing input." She proposed a meeting to resolve things. Most unfortunately, it appears that this letter was never received, or at least not for several months, by which time events had moved on. And in the mean time, not having received any response to either communication, Dr Cowdrill assumed that Ms Cummings did not wish to return.
40. Ms Cummings too was feeling rather ignored. The earlier email from Dr Cowdrill said that she would ring in a few weeks but no call came. Dr Cowdrill explained that having had the short email from Ms Cummings threatening legal action, and having received no response to her letter either, she was advised to make no further approach.
41. So it was that on 29 July Ms Cummings submitted a lengthy formal grievance, raising a number of issues including pay, the takeover issue, the breach of confidence (as she saw it) and of being suspended. An investigation then took place, although it is unnecessary to describe in any great detail the grievance process. The first stage of the process is to see if the matter can be resolved informally, but given the unfortunate delay or misunderstanding at the beginning of the process Ms Cummings preferred to move straight to a formal or Stage 2 grievance. This led to a hearing with Ms Guy, the Area Manager, who has since retired. The outcome letter was conciliatory in tone and made an offer to meet to discuss a return to work, on the basis that Ms Cummings has expressed a wish to do. It found in her favour on the pay issue but avoided any specific findings about discrimination.

42. Ms Cummings was not happy to leave matters on that basis and so she appealed. However, she chose not to attend a further appeal hearing. That hearing nevertheless went ahead in her absence and Ms Brooker appears to have to have conscientiously examined the whole matter. She did not uphold the findings of discrimination or any other aspect of the grievance. With regard to any return to work, her outcome letter stated:

The panel were not explicitly clear regarding your resolution to the grievance. However, the information provided did not suggest that you wished to re-engage with CAST as a team. As confirmed in the stage 2 outcome, there is nothing prohibiting you from entering into a future relationship with the Trust under commercial terms.

43. This appears to us to be a reasonable conclusion in the circumstances, i.e. Ms Cummings' unwillingness to attend a further grievance hearing, the length of time which had passed and the clear previous statements that she was leaving CAST. Accordingly we conclude that she was not dismissed and chose instead to leave.
44. There was no real criticism during the hearing of the process followed, and we note that various concerns raised by Ms Cummings during the course of the process were addressed. There was a change of manager at her request, she was allowed to claim a fee for the time spent attending the hearing and the location was changed to be near her home. We are satisfied therefore that the process was thorough and conscientious.
45. During all this, work continued on the *Understanding Emotion* course, although Ms Cummings had no further active involvement. The slides which she had on her phone in April 2016 were not subsequently provided to Ms Leonard although the Recovery College went on to develop this programme. Ms Leonard was friendly with Ms Cummings and invited her to further meetings in July and October 2016, by which time the grievance procedure had run its course. Throughout this series of exchanges she was dealing directly with Ms Cummings and was reliant on her for information about her working arrangements. Ms Cummings was at first under the impression that she was excluded by the terms of Dr Cowdrill's email of 14 July from any involvement with the Recovery College too, but that was not Ms Leonard's view, and we concluded from their subsequent exchanges that Ms Cummings knew that it was open to her to take part if she wished.

### **Applicable Law**

46. Turning to the applicable law, the claim of direct discrimination requires the Claimant to show that the respondent has discriminated against her "because of" her disability. By section 6(3)(a) of the Act, a reference to a person who has a particular protected characteristic is a reference to a person who has "a particular disability". And by section 23(1) on a comparison of cases for the purposes of section 13... "there must be no material difference between the circumstances relating to each case".
47. The first step therefore is to identify an appropriate hypothetical comparator. This is a matter of law. This Tribunal is bound to apply the

law as it has been interpreted by the Employment Appeal Tribunal (EAT) and higher courts. Mr Jones for the respondent referred us to a number of cases on the question of the appropriate comparator, all of which were under the Disability Discrimination Act 1995, although there is no difference in this instance in the relevant wording.

48. In **High Quality Lifestyles Ltd v Watts [2006] IRLR 850** the claimant had HIV and was ultimately dismissed as a result. Having such a disability and being dismissed for having it was not however sufficient to establish direct discrimination. The company said that the reason for that action was because of the risk of transmission to other members of staff. The EAT concluded that the proper comparator was an employee with a condition involving the same risk of infection to other members of staff. Otherwise, all the material circumstances would not be the same.
49. The Court of Appeal in **Ayllot v Stockton on Tees Borough Council [2010] IRLR 994** endorsed this approach and emphasised that the purpose of the comparator was no more and no less than to address the fundamental question of whether the less favourable treatment was caused by the disability or some other factor, whether a feature of the disability or not.
50. In assessing the appropriate comparator in this case it appears to us that the guidelines play a central role. They were not criticised in themselves and are part of a national model for application in this very unusual and restricted field of work. They are therefore part and parcel of the material circumstances in this case. It would be quite mistaken to attempt to compare the situation of Ms Cummings with that of another employee, not working under such an arrangement, just as it was a mistake to compare Mr Watts with another employee without HIV.
51. Since the guidelines only apply in the limited case of an ex-service user, who has some risk of a relapse, those are also material circumstances.
52. It is of course likely that a service user consultant of this sort would have an existing disability, but that is not inevitable. Their condition may have resolved to the stage where it no longer has a substantial adverse effect on normal day-to-day activities, as required by the Equality Act, and yet the individual's wellness may still be at risk. In any event, the hypothetical comparator may have a different form of disability, something expressly contemplated in section 6.
53. And having identified the personal characteristics of the appropriate comparator it is also necessary to set him or her in the appropriate context, which in this case involves having had a serious row with a colleague, then attending a meeting with the manager in a state of personal appearance so as to attract comment - what Mr Jones described as an unkempt state – to then be confrontational in that discussion and to have expressed the intention to leave. The question then resolves itself into whether this hypothetical person would be treated any differently.

### **Victimisation**

54. By section 27 of the 2010 Act, a person victimises another by subjecting them to a detriment for making an allegation (whether or not express) that they have contravened that Act, i.e. that they have made an allegation of discrimination in some way. It was accepted in the present case that Ms Cummings' grievance did imply some such contravention, and certainly the surrounding correspondence makes mention of discrimination.

### **Conclusions**

55. Starting with the allegation of direct discrimination, and having identified the appropriate comparator, we can find no basis to conclude that such a person would have been treated any differently. Despite some unfortunate misunderstandings, particularly the fact that the letter of 27 October went missing, we are satisfied that Dr Cowdrill was at all times motivated by concern for Ms Cummins' well-being, even though Miss Cummings did not or could not then see matters in that light. The guidelines applied squarely to the circumstances with which she, Dr Cowdrill, was dealing and it was entirely understandable that she would feel that Ms Cummings would benefit from a period away from CAST. Equally, in view of her reaction to this message, the decision to confirm that postponement in writing on 14 July rather than to go ahead with the meeting on the 15<sup>th</sup>, was also appropriate and did not in our view involve any less favourable treatment because of her disability.
56. Similarly, in line with our earlier findings, we conclude that there was no dismissal in this case answer that cannot amount to less favourable treatment of any sort. If that conclusion is mistaken for any reason and there was a dismissal by the Trust, again this was the result of the surrounding circumstances rather than her disability.
57. As for the allegation of victimisation, we found some difficulty in applying the statutory framework to the facts of this case since the protected act was that of submitting a grievance and the alleged detriment was the refusal to uphold the grievance. This is a circular argument, unless the refusal was caused by the nature of the complaint. We have given consideration to the possibility that the respondent, an NHS trust with a specialist unit dedicated to treating such disabling conditions may have been stung in some way into overreacting or given short shrift to this grievance simply on the basis that it alleged discrimination. This was not in fact suggested to any of the witnesses for the respondent and we found no such indication. As already mentioned, it appeared to us a thorough and conscientious exercise, and these those involved were anxious to achieve a return to work and a genuine resolution. We did not find therefore that there was in fact any detriment, let alone any detriment because Ms Cummings submitted a grievance.
58. A specific detriment referred to in the case management summary above was the failure to return to Ms Cummings her course materials for the *Understanding Emotion* course. On this issue, just as with the *My Crisis* presentation, we have to conclude Ms Cummings had no proprietary interest in this material, and in fact no specific material of hers had been used. In any event, this exercise was independent of and unaffected by the grievance process.

59. Accordingly, the complaints of direct discrimination and victimisation must be dismissed.

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Employment Judge Fowell

Date 20 November 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON

7<sup>th</sup> December 2017

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FOR THE TRIBUNAL OFFICE