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EMPLOYMENT TRIBUNALS

Claimant: Ms M Walker

Respondent: The Cranfield Trust

Heard at: East London Hearing Centre **On:** 1-2 November, 4, 8-9, 15-17 November & (in Chambers) on 14 & 16 December 2016

Before: Employment Judge Jones

Members: Ms L Conwell-Tillotson
Mr C Wheeler

Representation

Claimant: In person

Respondent: Mr J Jupp (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that all the Claimant's claims fail and are dismissed.

REASONS

1. In this case the Claimant brought claims of unfair and wrongful dismissal. She also alleged that the Respondent had failed in its duty to make reasonable adjustments and that she had been subject to: discrimination arising from disability, indirect disability discrimination, harassment, victimisation as well as detriment for making public interest disclosures. She complained of unlawful deductions from her wages and that the Respondent failed to pay her holiday pay. The Respondent resisted all her complaints.

2. The Tribunal apologises to the parties for the late delivery of this judgment and reasons. The Tribunal made this unanimous decision on this case on 16 December 2016. Since then the Tribunal judge has had ill-health, bereavement and leave as well as pressure of work which have all affected the promulgation of these reasons. In addition, the volume of the documents, complaints and the complexity of the law involved also added to the delay.

Evidence

3. We had an agreed bundle of documents contained within four lever arch files. The Claimant also prepared another bundle (two lever arch files) of all the documents that she believed were relevant to her case but which the Respondent had omitted from the agreed bundle.

4. We heard from the Claimant in live evidence. We also heard from Ms Amanda Tincknell, CEO of the Respondent and the person whom the Claimant reported to; Dorothy Telfer, who provided HR consultancy advice to the Respondent; Nick Starkey, a member of the Respondent's Trustee Board who conducted an investigation into allegations of misconduct by the Claimant; Richard Lassen and Michael Anderson, members of the Respondent's Trustee Board who heard her appeal against her dismissal; and Crispin Drummond another Trustee who dealt with the whistle-blowing investigation.

5. All the witnesses produced written witness statements for the Tribunal.

6. Alice Dabrowska, Gaynor Humphries and James Parsons were all made the subject of witness orders by EJ Russell who conducted one of the two preliminary hearings in this matter. During the Hearing, the relevance of Ms Dabrowska's evidence and the need for her attendance would assist the Tribunal was discussed with the Claimant. Although the Claimant had not produced witness statements for any of her witnesses and the relevance of her evidence was still unclear, we did agree to hear Ms Dabrowska's evidence. The Hearing was adjourned for a day due to the Claimant's ill-health. Once the Hearing resumed we reviewed the timetable in conjunction with the parties. The Claimant agreed that it was unlikely that Ms Dabrowska's evidence would add anything that had not already been covered by other witnesses and she agreed that Ms Dabrowska should be released from the Witness Order. The other witnesses the Claimant indicated that she would call did not attend the Hearing.

Adjustments

7. There were two preliminary hearings in this case. In the preliminary hearing conducted by EJ Hyde on 24 June 2016 the Tribunal's decision was that the Claimant was a disabled person in the period July 2013 to November 2015 by reason of the effects on her of Ehlers-Danlos syndrome and/or her allergic conditions.

8. EJ Russell conducted the earlier preliminary hearing on 18 April 2016 at which both parties' applications to have the claim and response struck out were refused and the Respondent's application that the Claimant pay a deposit order was also refused.

9. Both Judges ordered that there should be adjustments to Tribunal Hearing to alleviate the disadvantage suffered or that the Claimant might suffer in presenting her case at trial. We implemented those adjustments at the final Hearing. The Claimant had the following adjustments:

10. There was an adjustment to the hearing times so that each day started at 10.30am and ended promptly at 4pm. There was also a lunch break for an hour at 1pm, as well as short morning and afternoon breaks.

11. There were also more frequent breaks than usual to allow the Claimant to stand or move as required.

12. The Claimant was provided with a special chair, with back and neck support and allowed to have her neck cushion and footrest with her during the Hearing.

13. The Claimant had a hot water bottle with her in the court room which was filled up with hot water by court clerks during the day.

14. The Claimant was allowed access to the medical room at the Tribunal and frequently used it during lunch breaks on hearing days.

15. The Claimant's life partner, Patrick Allenstein sat next to her while she gave evidence so that he could find documents in the bundle for her and lift the lever arch files out for her from where they were stored next to the witness table so she could access them.

16. From the evidence, the Tribunal make the following findings of fact. The Tribunal does not make findings on every bit of evidence but only on those facts that are necessary to determine the complaints in this case.

Findings of Fact

17. The Claimant started working with the Respondent as Head of Major Giving on 3 January 2013. She worked as a Consultant until May 2013 when she became an employee. The Claimant had previously done her MBA at the Cranfield School of Management and became familiar with the organisation.

18. The Cranfield Trust is a small charity employing seven part-time employees. It provides free expert management consultancy services to other charities in areas such as strategic and business planning, financial management, marketing, IT and HR advice. It has a Board of volunteer trustees. Amanda Tincknell was the Respondent's Chief Executive and the Claimant's effective line manager. She had overall responsibility for the direction and management of the Respondent and reported to the Trustee Board. The Claimant's case was that in her contract it stated that the Operations Manager was her line manager. We did not find that stated in the document, but in any event, Ms Tincknell had the most dealings with the Claimant.

19. As Head of Major Giving the Claimant's role was to target donors from the business sector and generate donations from the same. The Claimant was not responsible for a team and she was the only employee focussed on major donors. The

Claimant was based at home and had a degree of autonomy. She was employed on a part-time basis, working 22.5 hours per week, between 8am and 6pm, Monday – Friday. Her statement of terms and conditions stated that she would occasionally be required to work evenings and weekends.

20. The Claimant contacted and arranged meetings with high level donors and then attended those meetings with Mrs Tincknell. They spent a lot of time together during the Claimant's employment. On occasion the Claimant attended the office in Romsey for internal meetings. There was a dispute between the parties as to how many times during her employment she did so. Mrs Tincknell's evidence was that the Claimant attended the office in Romsey no more than a dozen times during her employment. The Claimant's case was that she went there more often than that. There was no signing-in book that we saw. On those occasions when she did go to Romsey she would stay at Mrs Tincknell's home. She became friendly with Mrs Tincknell and her husband.

21. We find that in mid-2013 the Claimant became ill with what she described to Mrs Tincknell as a 'bout of hives'. The Claimant went to the doctor and the condition cleared up reasonably quickly. The Respondent did not recall that the Claimant needed any time off for medical appointments for this condition.

22. The Claimant would enter details of her movements in the Respondent's online calendar. As she was fairly autonomous, she was able to log her own movements in the diary. She could book leave, medical appointments and sick leave directly in the online diary and did not need to clear those with Mrs Tincknell first. It is likely that the Respondent did require staff to put leave onto the Calendar before taking it so that they were aware of everyone's movements.

23. The Claimant entered many medical appointments on the Respondent's online calendar. They usually stated "Marini – physio" or "Marini – Doctor" and gave no additional information. We note that this was the general practice and did not only apply to the Claimant. We saw that the Claimant's colleagues also entered their doctor appointments in the calendar for example we saw entries such as "Amanda – Doctor" or "Alice – Dentist". The Respondent did not ask any of the employees for documentation in support of those appointments. This was a small team and the Respondent trusted the Claimant as one of its home-workers, to properly manage her time, to report in when necessary and to produce the work. The Claimant was also a senior employee.

24. The Claimant did not provide the Respondent with any other information apart from the entries in the Calendar. When the Claimant was asked about her appointments she usually told Mrs Tincknell that she was healthy and that there was nothing to worry about. She would show Mrs Tincknell video clips of her dancing with hula hoops to demonstrate her flexibility. The Claimant gave no indication that she was disabled or had a disabling condition, that she was at a disadvantage at work or was having any difficulty doing her job.

25. In December 2013 Mrs Tincknell asked the Claimant to assist in signing the Christmas cards that the Respondent intended to send out to donor contacts on its list. The Claimant declined to do so. She referred to having flexible fingers and that her

joints were 'hyper mobile' and that this prevented her from doing so. It was not the Claimant's case that she told Mrs Tincknell in this conversation that she was suffering from pain in her fingers or that she had a disabling condition. We find that she did not provide any further information. She stated that doing a lot of writing was difficult for her. The Claimant did not mention any pain or discomfort in her hands. Mrs Tincknell thought nothing more about the matter and signed the cards herself.

26. The Claimant's role did not require a lot of writing, as she mainly used a laptop computer provided by the Respondent. Mrs Tincknell did not consider that there was a problem that needed to be explored with the Claimant. The Claimant did not raise the issue of her ability to write with the Respondent.

27. In July 2013, the Claimant had been diagnosed with Ehlers-Danlos syndrome. In EJ Hyde's judgment at the Preliminary Hearing on 24 June 2016 she recorded that this is a multi-systemic condition that affects the way the Claimant's body makes collagen. It makes her joints and ligaments extremely bendy and unstable. The condition has no cure and many of the Claimant's symptoms are likely to last for the rest of her life. Another name for Ehlers-Danlos syndrome is "joint hypermobility syndrome". The Claimant also suffers from allergies which makes it difficult for her to breath especially around construction pollution and dust. The condition can sometimes lead to allergic conjunctivitis and a reduction of vision.

28. The Claimant did not inform the Respondent of this diagnosis at the time.

29. In 2014 the Respondent celebrated its 25th anniversary. A programme of activities to showcase the Respondent's work was planned and delivered by all the staff, including the Claimant. Around this time the Claimant and Mrs Tincknell met regularly, at least once or twice a week, to visit potential donors. Mrs Tincknell would travel to London to meet her and they would attend the meetings together. Those meetings would have been organised by the Claimant. The Claimant was good at her job and secured meetings with several high-profile individuals such as the head of Barclays, Aviva, and the Chair of John Lewis.

30. In general, the Claimant and Mrs Tincknell had a close working relationship. They would often spend many hours together travelling to meet donors in their offices both inside and outside London. This required them to travel all over London and other parts of the country for meetings. They sometimes attended more than one meeting in a day. Mrs Tincknell noticed that the Claimant frequently attended with a wheelie flight case. The Claimant never raised any difficulties that she had in attending those meetings.

31. In June 2014, the Claimant informed the Respondent that she had found out about Access to Work (ATW) and that she had heard that she could get support from them. The Claimant stated that this was related to her flexible joints, and that she needed support from ATW as she needed to ensure that she was sitting in the correct position while she was working. She informed Mrs Tincknell that she was awaiting an assessment at her home. Mrs Tincknell was surprised at this as the Claimant had never mentioned to her before that she had a problem with sitting. Mrs Tincknell informed her that the Respondent would be happy to follow the recommendations of the assessment. She asked her to let her know what happened.

32. The Claimant did not inform Mrs Tincknell or anyone else at the Respondent about the outcome of the assessment. On 30 June ATW wrote to the Respondent to let them know that the Claimant had requested an assessment. This confirmed what the Claimant had already told Mrs Tincknell. The letter set out who was entitled to help from ATW and what that help could entail. It used the word 'disabled' a few times but not in relation to the Claimant. It set out what would happen next and what the Respondent could expect.

33. The Respondent heard nothing further from ATW or from the Claimant about this assessment. The Respondent subsequently found out from ATW that the Claimant's work space at home had been assessed on 8 July 2014 and that recommendations were made for the Claimant to be provided with an Orthopaedic Chair and Voice Recording Dictaphone. However, the Claimant failed to sign and return the declaration that ATW sent to her and the case was eventually closed. The information about the assessment and the recommendations were not sent to the Respondent at the time. ATW confirmed to Mrs Tincknell in writing when she enquired about this in 2015 that as the Claimant had not followed up the assessment the Respondent would not have received any other letters from them apart from the initial letter dated 30 June 2014.

34. Mrs Tincknell recalled that the Claimant gave no indication of having difficulties. In 2014 she often talked about her regular attendance at the gym. She did not tell the Respondent that she attended the gym to have physiotherapy for a condition and the entries that she made in the office online calendar gave no indication of this. She regularly posted pictures of herself at the gym on social media and we had copies of those entries in the bundle. There was nothing said or done at that time that would have given the Respondent an indication that the Claimant was suffering from a disability.

35. In early 2015 the Claimant was given a pay rise and commended on her work for the organisation. At the same time, we had evidence that the Claimant was regularly late with her expense claims and in completing time sheets. She did not say to the Respondent that this was due to any condition that she had. She did not suggest to the Respondent that she could not use the Salesforce software system that the Respondent used. We saw emails in the bundle that showed her being chased for her expenses and time sheets in 2013, 2014 and 2015. The Claimant usually apologised and did these administrative tasks as she was expected to.

36. In March 2015, Mrs Tincknell noticed that the Claimant's behaviour was sometimes odd. At a meeting on 2 March with a representative of Barclays at their offices in Canary Wharf, she noticed the Claimant hunched over the table and she spoke in an incoherent manner. Later, Mrs Tincknell asked what was wrong. The Claimant stated that she had low blood sugar and that she should have eaten something before the meeting. There was also another meeting on 26 March when the Claimant appeared to be behaving very strangely and kept repeating herself. Mrs Tincknell raised this with her later at an informal meeting between them. It is likely that the Claimant told her that she was on medication and that may have contributed to her behaviour on those occasions. Also in March, 2015 the Claimant contacted ATW again and informed Mrs Tincknell that she was doing so.

37. On 18 March the Respondent received two letters from ATW. One letter informed the Respondent that the Claimant's application for an ATW grant to support her travel costs had been agreed. It set out that she could get assistance with travel costs from her home to the Respondent's offices in Romsey and with travel costs from her home to various work related appointments. The second letter detailed the recommendations for special aids and equipment that the Claimant needed. ATW were to fund the cost of the equipment apart from two items which were the headphones for the iPhone and the laptop stand which they considered the Respondent should fund. Mrs Tincknell had been in the office on the day of the assessment and had spoken to the ATW assessor.

38. Mrs Tincknell informed the Claimant that ATW had suggested some aids and that the Respondent would meet the cost of them. Also in March, it is likely that Mrs Tincknell made enquiries of one of the Respondent's HR advisers about the Claimant's health matters as there is an email from Jane Barlow to her advising Mrs Tincknell that she needed to approach the Claimant's GP to ask him how to support the Claimant, whether any adjustments to the medication is possible and if any adjustments are required.

39. In late March the Claimant was again in the Respondent's offices and placed a copy of the ATW report on Mrs Tincknell's desk and left the room. She did not speak to Mrs Tincknell about it. Mrs Tincknell began to read the report and had got as far as the words "Ehlers-Danlos Syndrome" when the Claimant came back into the room and tore that part off the report, leaving her with just the list of recommended equipment. We find that it is likely that this is what happened rather than the Claimant's version which was that Mrs Tincknell asked her to take the page away as it contained confidential information. The whole report contained confidential information. Mrs Tincknell would have needed to have all the information so that a report could be done to members of the Trustee Board so that they could understand the Claimant's needs and endorse the expenditure that ATW had recommended. By this time, the Claimant had had the diagnosis for over a year and had not told anyone at the Respondent about it and it is likely that she still did not want the Respondent to know about it. That is consistent with the action of tearing off the page/s with the diagnosis and leaving Mrs Tincknell with just the list of recommendations.

40. On 30 March 2015, the Claimant obtained a report from a neurosurgeon into her condition. She did not share this report with the Respondent.

41. On 22 April ATW wrote to the Respondent and itemised all the aids that were recommended for the Claimant which the Respondent had to purchase. It also confirmed that it would reimburse the costs of those aids. On her return from leave, the Respondent's Finance Manager, Janice Bassett began ordering some of the equipment. However, we find that the Claimant was not in agreement with all aspects of the ATW assessment so she requested that the Respondent only purchase three items from the list. That was the voice recorder, a mouse and keyboard ordered from a company called 'Hands Free'. Also on the recommendation of ATW, the Claimant took up training for the voice recognition software. That training was also to be provided by Hands Free. ATW offered to cover the cost of two half-day sessions. The Claimant undertook the first day of that training on 19 May.

42. On 15 May Mrs Tincknell sent the Claimant an email to set up a meeting between them to discuss her health. She informed the Claimant that she had seen reference to the condition Ehlers-Danlos in the ATW papers but that she did not know anything about it. The Claimant agreed that they should meet to talk about it. The Claimant planned to be in the office between 20 – 22 May and they planned to meet on 21 May to discuss the condition further.

43. The Claimant stayed at Mrs Tincknell's house on the evening of 20 May.

44. On the following day, 21 May both Mrs Tincknell and the Claimant were working on an important document that needed to be finalised that day. The Claimant agreed that she would review the document but left the office during the lunch break before having done so. Mrs Tincknell sent the Claimant a text at approximately 12.30pm to see when her comments would be ready. The Claimant replied that she was in Boots Chemists store buying batteries and was at the same time, reviewing the document on her phone. The Claimant's evidence was that she went to Boots to buy batteries a TENS machine which was to relieve her pain. The Claimant had not informed Mrs Tincknell of this before she left the office. The Claimant then called the office and told Mrs Tincknell that she had lost her handbag and that she was worried that it had been stolen as it had quite a lot of medication in it. Mrs Tincknell left the office and went to Boots to meet her. The store was approximately 100 yards away from the office. She found the Claimant in the office of the store, with staff looking at CCTV footage to see if she had been carrying the bag when she entered the shop. It was obvious to Mrs Tincknell that there was an atmosphere when she entered the room. When Mrs Tincknell returned to the Respondent's office, she noticed that the Claimant's bag was there. She returned to Boots to inform the Claimant and to get her. The staff at Boots were angry with the Claimant as they complained that she had been rude to them. Mrs Tincknell apologised for the Claimant and they left.

45. On their return to the office, Mrs Tincknell was now quite concerned about the Claimant's behaviour and her health and suggested that they have the discussion about those issues. Mrs Tincknell informed the Claimant that she had noticed the words Ehlers-Danlos Syndrome (EDS) on the Access to Work report that the Claimant had removed from her desk in March 2015. She informed the Claimant that she had Googled the condition to find out more about it but that she had no other formal information about the disability or diagnosis. The Claimant then explained to Mrs Tincknell that EDS was a muscular skeletal problem that affected her joints. She informed her that sitting for long periods was becoming a problem and that she had problems with typing and writing. The Claimant found it difficult to let Mrs Tincknell have that information and it was clear to Mrs Tincknell that she was agitated throughout the conversation. If she was in pain, she did not let Mrs Tincknell know. The Claimant agreed to give the Respondent contact details of her consultant medical advisor so that the Respondent could get more information about her condition and her needs in relation to her work. We did not hear evidence that she ever did so.

46. During that conversation, Mrs Tincknell tried to reassure her that she and the Claimant's colleagues at the Respondent were keen to support her as far as they could and that the Respondent wanted to make reasonable adjustments so that she could continue to work with them. They agreed that the Claimant would keep her informed of

her need to attend medical appointments during working hours and any other instances in which she felt her condition was impacting her work so that they could work more effectively together. During the conversation, the Claimant's telephone rang repeatedly as the manager of Boots wanted her to return to the shop to apologise to staff as she had been rude to them. The Claimant refused to do so. Eventually, the Claimant said that she would never return to the Boots store. The Claimant then left the meeting saying that she had a physiotherapy treatment appointment.

47. The Claimant elected to stay in the office until 7pm that evening to finish reviewing the document that needed to be finalised. Mrs Tincknell left her with her keys to the office as the Claimant did not have her own keys. Once she had completed her work, the Claimant took a taxi to drop the keys off at Mrs Tincknell's home. Mrs Tincknell was concerned about the Claimant's decision to work late and referred in the email she sent the Claimant that evening to the Respondent's concern about the Claimant working outside normal business hours. Mrs Tincknell asked that whenever the Claimant was working in the Romsey office that she should keep normal business hours and therefore come in at 9am as this was necessary to maximise their time together. When the Claimant was in the office, she was expected to work on documents or pieces of work together with Mrs Tincknell.

48. The email also confirmed the things that they had discussed earlier in the day and Ms Tincknell reassured her that the Respondent wanted to do everything that they could to support her. Mrs Tincknell thanked the Claimant for providing her with further information about her condition because she appreciated that it had been hard for the Claimant to disclose that information. She also requested the Claimant's formal consent to contact her GP to obtain a medical report and attached a consent form to the letter. The Respondent were keen to monitor the amount of work that the Claimant did and the effect that her disability was having on her ability to do work. They did not want to do anything that might make her condition worse. For those reasons Mrs Tincknell reminded the Claimant that completing timesheets was important because not only was it normal practice for the Respondent's employees but because it would help the Respondent to monitor how it worked with the Claimant around her health issues including respecting the time when she was having medical appointments.

49. In that email, Mrs Tincknell set out how she intended to manage the Claimant from now on. She stated that the Claimant needed to let her know of her availability so that they could carry on working together. She did ask the Claimant to keep core office hours as had been set out in her contract.

50. We find that this letter was not a letter of discipline but was a letter to consolidate the discussion they had had earlier that day and for Mrs Tincknell to put in writing her concerns, the Respondent's intention to continue to support her and to address what she saw as the Claimant's strange behaviour that day.

51. We also find that Ms Bassett had previously stated that she would not chase the Claimant for her timesheets and that at this point, she was not doing so. Mrs Tincknell simply asked the Claimant to ensure that she did them as it would assist the Respondent in monitoring the amount of time the Claimant spent on work so that they

could ensure that they were supporting her in managing her condition. This was a legitimate request for the Respondent to make of the Claimant.

52. The Respondent had not been advised that it needed to adjust the Claimant's core hours. The Claimant never proposed to the Respondent that she should start working on the basis of a 24 hour a week clock or that this was necessary for her to 'pace' herself to alleviate the disadvantage caused by her disability.

53. Mrs Tincknell asked the Claimant to sign the consent form attached to the letter so that she could obtain a medical report. Mrs Tincknell believed that the Claimant had agreed to provide the name of a GP.

54. Mrs Tincknell stated in the letter that the Respondent was prepared to support her but that it needed the information so that it could do so.

55. On 31 May Mrs Tincknell arranged to meet the Claimant during the following week and reminded her to provide the medical consent as she had been asked to do.

56. On 1 June Janice Bassett confirmed to Amanda Tincknell that some equipment recommended by ATW had been ordered and that the Claimant had informed her that she did not want anything else at present. We find that this is what the Claimant told her. There was no reason we could see for her to fabricate that as at the time there was no issue between the parties or between the Claimant and Ms Bassett. The Respondent would have been aware that ATW would reimburse them with the costs of the equipment.

57. Also on 1 June, the Claimant stated that she was happy to secure a medical report for the Respondent. However, she wanted Amanda Tincknell to speak to her GP first so that she could ask specific questions and get more details. She considered that this would enhance the Respondent's understanding of the condition.

58. They discussed this again on 3 June. During a further discussion on the same matter on 17 June Amanda Tincknell asked the Claimant about the medical consent form as despite being asked to do so on many occasions, she had still not signed it. The Respondent explained that the purpose of the form was to enable the Respondent to get information from her GP about her condition so that it could assess what changes were required to her work and to her working conditions. The Claimant stated that she did not like to give out her medical information and informed Amanda Tincknell that she had not done so even when she was recently hospitalised in France. They also spent some time discussing whether the Claimant's medical condition should be disclosed to the Trustee Board. The Claimant did not want that to happen but Amanda Tincknell wanted to do so to ensure that the Board in its oversight role could be sure that she was doing everything she should to provide appropriate support for the Claimant. The Claimant mentioned Marfans syndrome in that meeting and Mrs Tincknell did not know how that featured in the Claimant's condition. This was even more reason that the Respondent needed the medical information and advice from a doctor to enable it to be fully informed and to comply with its duties as the Claimant's employers.

59. Mrs Tincknell advised the Claimant that if she was uncomfortable with signing medical forms she could seek advice about it from her local CAB or from ACAS or other suitably qualified advisor. The Claimant wanted to investigate whether there were any templates of consent forms that she would be happy signing and Mrs Tincknell agreed to do the same. The Claimant was clearly not obliged to sign the consent form but Mrs Tincknell did make it clear that doing so would assist the Respondent in seeing what it could do to help the Claimant manage her condition in the workplace.

60. To assist the Claimant, Mrs Tincknell agreed that the Respondent would consider removing from the form the part that allowed them to contact the GP in six months' time. The Claimant wanted to sign a personalised form rather than a template so that it could specify exactly who could see any medical information. Mrs Tincknell agreed to look at alternative forms.

61. After a few more conversations on the matter the Claimant finally agreed that the Respondent could prepare a letter to her GP, Dr Christina Romete which it would send to the Claimant, which she would then pass on. She would then obtain the report from her GP in a sealed envelope and deliver that to the Respondent. The Claimant signed written consent to this process.

62. Around the end of June Dorothy Telfer who was an HR consultant who regularly worked with the Respondent as one of the Consultants who provided advice to charities; agreed to assist Mrs Tincknell in addressing the various issues raised in managing the ATW process. Mrs Telfer was an experienced HR consultant but was unaware of the ATW process. We find that she called ATW on 26 June to find out more about the scheme. An advisor at ATW called Russell Hudson spoke to her and sent her some information. There were emails in the bundle that confirmed this. There was no indication in the email exchange that Ms Telfer had any specific personal information about the Claimant when she made the initial call to ATW. She informed Mr Hudson that she was calling from the Respondent and she gave him Mrs Tincknell's details for any further advice or contact. We know this because he emailed Mrs Tincknell to confirm that he had spoken to Ms Telfer in those terms. Mrs Tincknell spoke to him about the Claimant and her ATW assessment as when she next emailed him in July she referred to speaking to him in June about the Claimant. However, we do find that as Ms Telfer was advising and assisting Mrs Tincknell in dealing with this matter it would have been appropriate for her to have some personal information about the Claimant so that she could properly do so. It would not have been necessary for the Respondent to inform the Claimant that they were getting advice or assistance from Ms Telfer. Just as the Claimant would not have been required to give the Respondent the details of any solicitor/disability advisor/CAB advisor from whom she may have sought advice at the time. The Respondent was entitled to seek advice from whomever it chose.

63. It is likely that the Claimant met Ms Telfer for the first time In June 2014 at the Respondent's 25th anniversary event. They also spoke briefly in February/March 2015. They had not worked together on any projects so it is unlikely that either of them knew each other well. We find it likely that the Claimant was aware that Ms Telfer was an HR consultant to the Respondent. On 27 July, she emailed some confidential documents to Ms Telfer. It was not clear why she had done so. Ms Telfer emailed her

to say that it was not appropriate for her to hold those documents and that they should be kept at the Respondent's offices. The Claimant agreed and stated that she would give them to Mrs Tincknell for safekeeping as soon as she returned to work following her personal leave. In her email to Ms Telfer the Claimant stated that Ms Telfer had been a great help to the organisation and that she was delighted that she had offered guidance to it. It is likely that she meant in relation to the issues around her ATW process. Also, we find that she said to the Respondent in another email that she was glad that Ms Telfer was assisting them in responding to these issues. That would suggest that she knew who she was and had some idea of her expertise and/or reputation and the capacity in which she was involved.

64. In June the Claimant obtained a report relating to her treatment from a consultant rheumatologist. Once again she chose not to share this with the Respondent.

65. The Claimant had the second day of the voice recognition training on 11 June.

66. On 7 July Janice Bassett wrote to Mrs Tincknell by email to confirm that the Claimant had told her that what she had asked her to order was adequate for her purposes and that the physio had confirmed that this was 'ok'. She had informed Janice Bassett that if she required anything else at a future date then it would form part of a separate ATW schedule. The only outstanding item on the list was the training for use of the voice recorder which she expected to book in the following weeks.

67. On 20 July, the Claimant telephoned Mrs Tincknell to complain that the Respondent had made an error in the letter drafted to accompany the form to the GP. Mrs Tincknell has sent her a copy as well as the original for her to take to the doctor, as agreed. She stated that there were inaccuracies in the letter and she made what the Respondent considered to be vague threats of 'legal liability' arising from it. She did not specify what those would be. The Claimant later clarified that the error had been that Mrs Tincknell had made an error in her date of birth. The Claimant wrote a supplemental letter to the GP which she gave to the GP at the same time as she gave her the Respondent's letter.

68. Later, on the same day the Claimant telephoned Alice Dabrowska, the Respondent's Operations Manager and told her that there would be *tensions* within the Respondent because of an external communication containing factual inaccuracies. It is likely that this was a reference to Mrs Tincknell's letter to the GP but it was not clear what 'tensions' she was referring to. Up until that time, Ms Dabrowska had not been involved in managing the Claimant's employment or in the discussions over the content of the letter or those concerning the Claimant's health. The Claimant's case was that she telephoned Ms Dabrowska because her statement of written terms and conditions of employment stated that the Operations Manager was her line manager. We did not find that in the document in the bundle. Also, the Claimant was aware that throughout her employment with the Respondent she had always reported to Mrs Tincknell. In the Claimant's written submissions she stated something different which was that she spoke to Ms Dabrowska because she regularly confided in her. That was not the evidence she gave in the Hearing.

69. On 22 July the Claimant met with Mrs Tincknell who asked her about her work and asked her to keep the Respondent informed of when she was working and when she was not. She asked the Claimant to keep the online diary up-to-date with details of her movements so that the Respondent could be clear when she was working and when she was not. Mrs Tincknell expressed concern and stated that the Respondent did not want to bother her at inappropriate times and wanted to make sure that she had an appropriate working environment.

70. The Claimant informed the Respondent that she was always available to the Respondent on a 'red/amber/green system'. The Tribunal was not clear what that meant. Later in the meeting, she stated that she was always contactable, five days a week. The Claimant was not being asked when she could be contacted but to let the Respondent know when she was doing her paid work. The Claimant became quite agitated in the meeting when she stated that she did not appreciate that she had to keep to set working times and that this was a new policy that the Respondent was trying to introduce.

71. Mrs Tincknell stated that the Respondent needed to know when she was working and in a work environment so that it could plan the work that she had to do with colleagues and outside organisations. The Respondent wanted to make sure that it did not contact her about work when she had other commitments, whether medical or otherwise and needed details in the diary so that they could be clear of her availability. Mrs Tincknell set out the Respondent's obligations to the Claimant and that it needed the medical information so that it could ensure that it complied with it.

72. The Claimant confirmed that she had given the letter to the GP together with her supplemental letter. The Claimant then informed Mrs Tincknell that she had not been able to do any work that week as she had been too busy correcting the errors in Mrs Tincknell's letter. Mrs Tincknell thought that this was an unfair statement and likely to be untrue. The only errors she was aware of was a typographical error where she had inserted the incorrect date of birth in her letter. The Claimant was also unhappy that the Respondent's letter made no reference to the first letter that the Respondent had received from ATW in July 2014. It was not clear how the Claimant could have spent all her working hours that week addressing those matters, even if she considered that another letter was required to address them.

73. The Claimant and Mrs Tincknell met again on the following day, 23 July. The Claimant was accompanied by her partner, Patrick Allenstein at the start of the meeting. They discussed the contact with ATW. The Claimant was of the belief that in 2014 ATW had conducted correspondence with the Respondent and given it a list of equipment that she needed. Mrs Tincknell confirmed that the Respondent had not had correspondence from ATW in 2014 apart from the initial letter. Mrs Tincknell made a list of the items that the Claimant stated she had asked Janice Bassett to buy for her and said that she would chase those up. She did and those items were purchased. ATW later confirmed as found above that as the Claimant had not returned the forms after their initial contact, they had closed the case and had not sent any further communication to the Respondent on the matter.

74. During the meeting Mrs Tincknell stressed to the Claimant that she needed to keep the Respondent informed of her attendance at medical appointments during working hours. Mrs Tincknell wanted to avoid contacting her at those times; she also needed to monitor the Claimant's health and to be aware in advance of the times that the Claimant was not working. The Claimant contended that as there was no policy specifying the level of detailed information that she was required to provide to the Respondent in relation to absences at work she was not obliged to do so. Mrs Tincknell also reminded her that she must also complete the Respondent's time recording system Salesforce with the details of working hours. The Claimant had never complained about the requirement to do so before and as found above, she had done so. However, around this time she was not completing it. The Claimant complained that there was no requirement for her to undertake administrative tasks as the Respondent did not have a policy on it and it had not been detailed in her employment contract. Mrs Tincknell explained to the Claimant that she needed her to do these tasks as well as inform the Respondent of her movements not only because she wanted to manage her but also because it would enable her to support her.

75. Although the Claimant's job description did not specify that she should complete Salesforce it did refer to her being able to manage her time effectively, to work flexibly, to deliver on projects, to work as part of a team and to demonstrate good reporting – both internally and externally. Those tasks and the others listed in the job description that begins on page 271 of the bundle all require the Claimant to be able to account to the Respondent for her movements, to be a good team player, in relation to both her time and her work. The Respondent chose Salesforce as the method by which it expected its employees to do so. Mrs Tincknell as the Respondent's CEO gave the Claimant a reasonable management instruction to complete Salesforce to notify the Respondent of her movements. It was also appropriate to know when the Claimant was not going to be available and when she was at medical appointments or when she was ill so that the Respondent could avoid contacting her at those times and adjust its expectations as to the amount of work she could do.

76. At the end of July the Claimant changed her mind and asked that the Respondent provide her with all the items that had been recommended in the ATW assessment in 2015. She disputed that she had earlier informed Ms Bassett that she only wanted some of the items. The Respondent purchased all the recommended items.

77. Around the same time and without consulting anyone at the Respondent the Claimant contacted Kath Sutherland, a disability awareness advisor, to arrange internal disability awareness training for all the Respondent's staff. The Respondent knew nothing about this until Mrs Tincknell received a letter requesting that the Respondent pay towards the cost of the training. It would have been appropriate for the Claimant to have asked Mrs Tincknell about this beforehand. She was committing the Respondent to an expense when she did not have the authority or permission to do so. Some of the issues that would have had to be addressed before the Respondent was committed to an expense was: whether the Respondent wanted to arrange such training for the staff, whether there was a budget for it, whether it could be done in-house, or if not, who would source the trainer and who would instruct the trainer on what training was required. Instead the Claimant made a unilateral decision to commit the Respondent to an expense when she had no authority to do so.

78. On 24 July 2015 the Claimant raised an issue with Jane Barlow of the Respondent. She expressed concern that she could see information that she considered confidential when accessing HR Net which was the Respondent's HR advice service. She sent Ms Barlow a screenshot of the information. It is likely that the Claimant could see this information because of the level of access she had to the service as a senior employee. That would not necessarily have been the same access given to other users of the service.

79. On 3 August the Claimant and Mrs Tincknell were due to meet at the Royal Festival Hall in London. It is likely that this was also meant to be a briefing meeting as Mrs Tincknell was scheduled to meet a major donor afterwards. Earlier that morning the Claimant sent an email to Mrs Tincknell which set out her achievements for the organisation to date, and gave details of the murder of a childhood friend that occurred in the United States when she was a teenager. The relevance of all of this to their meeting or to the Claimant's relationship with her manager or the Respondent was not made clear. Mrs Tincknell responded to the email to thank her for it and to clarify that she had not said that the ATW paperwork was being made a bigger deal of than it needed to be. The Claimant became upset that Mrs Tincknell did not make any comment on what she considered to be evidence of her commitment to the organisation or her disclosing personal information. It is likely that this was the reason that the Claimant decided that she could not meet Mrs Tincknell and cancelled the meeting.

80. At the time Mrs Tincknell was under personal pressure as her father was seriously ill in hospital. Mrs Tincknell was not in the office very much and was on emergency leave between 3 to 11 August. She continued to run the Respondent as well as keep an around the clock attendance with her father in hospital. The Claimant was aware of this at the time.

81. On 11 August the Claimant was given a copy of the report from her GP, Dr Romete dated 27 July 2015. Dr Romete was also a qualified Occupational Health doctor and therefore it is highly likely that she has the appropriate knowledge and expertise to comment and advise on the Claimant's condition and workplace adjustments that might be needed. The Claimant did not give this report to the Respondent until 18 August.

82. On 12 August the Claimant rang the office to report that she could not access her emails on her laptop. She circulated an email to the Chair of Trustees and other Trustees announcing that the Respondent was out of business as none of the emails or Salesforce worked. The Respondent acknowledged that there had been a problem with the server for a few hours in the morning and that by midday it was confirmed with the Claimant that all was up and running again. The Claimant did not explain why she considered it necessary to email the Trustees with this information as it was likely to have alarmed them. Trustees do not undertake day-to-day work for the charity and while it may have been necessary for someone to inform them if there was a major problem it was not clear why the Claimant considered that they needed to know about this immediately, when it had been resolved or why she considered that she was the appropriate person to inform them.

83. The Respondent did not allow the Claimant to speak to its external IT support contractor as the problem did not warrant incurring the expense of his time. The Claimant was not satisfied with that and insisted that she should be able to speak to Richard White who was the external contractor and who charged the Respondent by the hour. As a charity, the Respondent wanted to keep its costs down and so did not allow any member of staff to call him. The Respondent confirmed that Janice Bassett had responsibility for IT in the office and problems were only referred to Richard by her if it was a matter that she could not resolve. The Claimant had never had an IT problem before this, so it is unlikely that she had been told this. However, that was not a reason to disbelieve the Respondent.

84. Ms Bassett logged on to the Claimant's work email account and sent her a screen shot to demonstrate that it was working normally. The Claimant became extremely upset by this and claimed that this breached her confidentiality. Ms Bassett had not opened any of the emails but took a screenshot of the Claimant's work email account. She did so to address a problem with IT that the Claimant had reported. The screenshot displayed an email identifying a potential donor. Ms Bassett made some enquiries of another IT support person who confirmed that the error occurred as the Claimant had tried to access the internet via an unsecure internet connection in a hotel. When the Claimant first reported the fault she did not advise the Respondent that she was trying to access the system using the internet at a hotel.

85. We find that the Claimant continued to report problems with access to her emails and to Salesforce. At the same time the Claimant was sending emails in to the office. For example, on 17 August the Claimant sent five emails to the office from her work email account. She confirmed that she could access the account from her iPad. The Respondent operated a webmail system which meant that if the Claimant could access her email account on one device she should be able to access it on other devices. The Claimant escalated her complaints so that a few days later, she emailed to say that she did not want to be contacted via her Cranfield Trust email address. She refused to use Salesforce. The Claimant refused to use any of the Respondent's systems and appeared to have stopped working. She asked that her name be removed from all the Respondent's programs and email addresses. This was an extreme reaction to an issue with internet access.

86. Ms Bassett asked her to bring the laptop into the office so that it could be defragmented and updated and so that the Respondent could have an opportunity to identify the problems that she appeared to be having. The Claimant refused to do so.

87. The Claimant continued to refuse to deliver her laptop to the Respondent for the rest of her employment despite written requests and then clear instructions from Mrs Tincknell and then Mr Drummond to do so.

88. On 12 August the Claimant had a pre-arranged meeting with one of the Trustees, Mrs Gaynor Humphries. During that meeting she gave Mrs Humphries a copy of Dr Romete's report. It was no clear why she did so as, even though she was a Trustee, Mrs Humphries had no line management responsibilities for the Claimant.

89. As Ms Tincknell was away from the office on emergency leave, Dorothy Telfer who had been engaged by the Respondent to provide it with HR support arranged a meeting between herself, Ms Tincknell and the Claimant on 18 August. On 11 August the Claimant sent an email to Kath Sutherland the independent disability advisor to inform her that "Dorothy a top HR expert is helping regarding reasonable adjustments in for me. She is great!"

90. Just before the meeting, on the same day, Mrs Tincknell sent a text to the Claimant asking her to bring her computer to the meeting so that the issues that she had with it could be resolved. Also that morning, one of the Claimant's colleagues complained to Mrs Tincknell that the Claimant had contacted her while she was on annual leave.

91. The Claimant attended the meeting held in Romsey in the afternoon of 18 August. The Claimant recorded the meeting. During the meeting the Claimant gave the Respondent a copy of the medical report from Dr Romete. It was not clear to us why the Claimant took so long to disclose it to the Respondent.

92. In her report Dr Romete confirmed that the Claimant had been diagnosed with a long-term health condition which she does not name but which is likely to be Ehlers-Danlos Syndrome. She confirmed that the condition affects only the Claimant's physical health and not her mental abilities. She confirmed that the condition would affect her musculoskeletal system, that there is no cure to the condition and that it could interfere with some of the Claimant's daily activities. She stated that the Claimant may experience deterioration/flare ups or the condition could stabilise for many years.

93. Although the Claimant's condition required her to take medication daily, Dr Romete did not expect it to interfere with her work. Whereas earlier in the year the Claimant may have experienced problems when there were some changes to her medication, it was not expected to happen again. The Respondent was advised that provided the Claimant paced herself and avoided triggers for flare-ups such as prolonged sitting or standing/immobilisation in a position; the doctor expected her to be able to perform the duties required of her job. She considered the Claimant to be fit for travel for work if the frequency of travel remained as it was, she avoided busy times and made use of taxis as needed. The Respondent was advised to work with the Claimant to plan her work activities to ensure she continued to do a job she said that she loved and to avoid triggering any flare-up which might result in her doing a lot less work than she could. If her advice was followed, the doctor expected the Claimant to be able to perform her work duties and even work more hours as needed by her job. Dr Romete made no other recommendations. The Respondent had no other medical report in relation to the Claimant's condition.

94. During the meeting, the Claimant's conduct was, what the Respondent described as difficult and challenging. The Claimant was argumentative. She demanded that Ms Telfer provide identification even though it is clear from her emails before the meeting that she knew who she was. She refused to accept Dorothy Telfer's credit cards, photo ID and photo information on the Cranfield Trust website as appropriate identification. She refused to share confidential information during the

meeting unless Ms Telfer left the room. This was so even after she was shown a copy of the Respondent's consulting agreement with Ms Telfer which covered confidentiality.

95. The Claimant alleged that Mrs Tincknell's husband may have behaved fraudulently in relation to her computer. Also, in that meeting they discussed the reasonable adjustments that the Claimant wanted. The only adjustment that she put forward was that she should be given 48 hours notice for any deadlines for the completion of work. As the medical reported stated that the Claimant needed to pace herself in relation to work, Mrs Tincknell agreed that the Respondent would provide a minimum of 48 hours between requesting a piece of work from the Claimant and the time at which it is required. She stated that there might be exceptional circumstances when 48 hours notice cannot be provided but that the Respondent would ensure that those are kept to an absolute minimum.

96. Although the Claimant stated that she was still experiencing IT problems, she failed to bring the laptop with her to the meeting despite clear requests/instructions to do so from Ms Bassett and from Mrs Tincknell. This was also her opportunity to resolve any issues she had with access to the internet and to the Respondent's systems on the laptop so that she could do her work.

97. The Claimant argued with the Respondent that they had known of her condition for some time and she related back to the discussion that she had with Mrs Tincknell around Christmas 2013 when she refused to write Christmas cards. Mrs Tincknell recalled that the Claimant informed her that she had never been good at writing and found it difficult as she had very mobile finger joints. The Respondent did not understand the Claimant to be informing it of a health issue in the conversation about signing the Christmas cards.

98. They discussed the history of the Claimant's interaction with ATW and the communication that the Respondent received from it in 2014 as well as more recently. When they came to discuss the medical report from Dr Romete, the Claimant agreed that Mrs Tincknell could read the report but asked for Ms Telford to leave the room. Later, she agreed for Ms Telfer to remain in the room but not read the report. She was not prepared to give Mrs Tincknell a copy of the report. This seems odd as we know she had given a copy of the report to Ms Gaynor Humphries a few days earlier when Ms Humphries was not her line manager but simply a Trustee.

99. When they discussed the medical report, the Claimant stated that one of the aspects of her condition could mean that she works different hours and had different sleep patterns. However, this was not stated in the medical report. The Claimant was working flexibly on three days a week. Other members of staff work fixed days each week. The Claimant was asked if she would prefer to change to fixed days if that would assist in managing her condition. The Claimant refused as she wanted to continue to work flexible working hours. However, she wanted to work nights and early mornings. It was not agreed that she could do so. This was not an adjustment that had been recommended by ATW or by the Claimant's GP who we are reminded was also an Occupational Health doctor. Because of the complaints that Mrs Tincknell had received from others about the Claimant's communications with members of staff and the Board out of hours; the Claimant was asked to ensure that except in an emergency all phones calls, texts or emails to the Trust staff, Board of Trustees and Project

Managers, should take place during the Trust's normal working hours of 8am to 6pm, Monday to Friday. Mrs Tincknell instructed the Claimant to ensure that her communications were within those times. If she needed to contact anyone if there was an emergency outside normal working hours, she was to contact Mrs Tincknell. This was a clear instruction given to the Claimant during that meeting.

100. The Claimant raised the following matters during this meeting which she relies on in this case as whistle-blowing complaints:

101. She stated that everyone at the Trust was using the same IT password. From the evidence at the Hearing, we find that when the computers were first set up, it is likely that there was one password and then every member of staff would have been instructed to change their passwords once they logged in. Also, in or around 2014, individuals were given separate passwords for their work email account and for Salesforce. As the Claimant has been using the Respondent's email and Salesforce for a number of years she would have known that she had her own individual password and it was likely that everyone else had theirs as well.

102. She complained that Ms Bassett had remotely accessed her email account and sent her a screenshot displaying confidential details of potential donor. This occurred when Ms Bassett was attempting to assist the Claimant in her role as the person responsible for IT.

103. The Claimant complained that she had discovered on her work laptop, confidential material relating to a former employee who had previously used it. Mrs Tincknell accepted that this was something that ought not to have happened.

104. The Claimant also stated in the meeting that Ms Tincknell's husband had access to the IT server and to the Claimant's computer when the Claimant had left it at Mrs Tincknell's house for a few days. There was no evidence of this and the Claimant did not tell us what reason she had for making this accusation. This was a totally unfounded allegation against someone who had nothing to do with the Claimant's employment or her line management.

105. Mrs Tincknell agreed with the Claimant that her IT complaints would be investigated.

106. In the meeting the Claimant was asked whether it was acceptable to continue to send mail to her by regular post. She responded that it was and that she would put things to the side and read them at her leisure.

107. As the Claimant left the meeting she handed to Ms Telfer a copy of the GP's report dated 27 July 2015. We find this odd given that she had spent the meeting raising concerns about confidentiality disputing Ms Telfer's right to be there.

108. Later that evening and in the early hours of 19 August, the Claimant sent emails to the Respondent's employees and/or Board members in which she gave details of her medical condition, apologised to them, attached her GP report and the Access to Work list of recommended items. It was unclear to us why the Claimant felt that it was

necessary to do so. Also, this was in direct contravention of the clear instructions that she had been given at the meeting to keep contact to office hours.

109. On 19 August, Mrs Tincknell sent everyone an email attempting to explain why the Claimant felt it necessary to communicate directly with Board members and other employees about her personal matters and to reassure those Board members that she had the situation under control and was dealing with it.

110. On 24 August, Ms Bassett told the Claimant that the rest of her equipment had arrived and would be sent to her. The Claimant worked mostly at home and the Respondent concluded that the equipment would be needed by her there.

111. In an email on 27 August 2015, Mrs Tincknell again expressly instructed the Claimant to return her work computer to the Romsey office so that it could be defragmented and secured and then returned to her.

112. During August, Ms Bassett also corresponded with the Claimant to give her more information about the security of the password that she used for her computer and how to address the issues that she was having with it. Ms Bassett asked her to bring the computer in on 17 August 2015. On 8 September, Mrs Tincknell gave the Claimant a direct instruction to return her computer to Romsey for examination and repeated this on the following day. The Claimant continued to refuse to do so.

113. On 2 September 2015, the Claimant completed her last update on Salesforce. She made no further entries.

114. Kath Sutherland gave some clarification to Dorothy Telfer about the training that the Claimant needed to be able to perform the duties of her job. On 8 September Ms Telfer confirmed to Ms Sutherland that the Respondent would be prepared to release the Claimant entirely from her usual workload to work on the accuracy and functionality of the voice recognition software. She would have two weeks leave on full pay. In relation to when this leave was going to occur, and because she had some outstanding work items which the Respondent needed to have completed, Ms Telfer detailed in an email the outstanding work items that the Claimant was required to complete before having the two weeks training leave. The matters that the Claimant had to do were: completing ATW travel claims for March and April which were clearly outstanding for some considerable time given that this was August; sending her laptop by DHL to the Romsey office, submission of timesheets for the second half of July and for August, providing any comments on the summary notes of 18 August meeting, retrieving the letter sent by the Respondent to her home address in early August that she had failed to retrieve from the post office where it was being held because of inadequate postage. The Respondent agreed that it had failed to put the correct postage on in error. Mrs Tincknell also needed to discuss with the Claimant a report on individual donor giving which she needed to give to the Board in September. The Respondent expected the Claimant to be able to complete those items within the next week which would mean that she could undertake the training on the following two weeks.

115. We had the notes of the meeting of 18 August. Those do not show that the Respondent had agreed that the Claimant was not to return the computer until an investigation had been completed. The Respondent continually asked the Claimant to return the computer to Romsey for examination. The Claimant refused to do so. Mrs Tincknell had agreed to undertake an investigation of the IT issues but had not agreed that this was a precursor to her returning the laptop.

116. It was the Claimant's case in the Hearing that she had personal data on the computer and it was also her submission that if she got her data professionally deleted from it that may have also deleted the information that would reveal how security had been breached. She also submitted that the Respondent had given her no information as to how they would ensure that her data was not recycled too. It was not clear to the Tribunal or to the Respondent at the time, why the Claimant could not have had her data taken off the computer before returning it.

117. In early September, the Respondent agreed with Kath Sutherland that she would provide disability awareness training.

118. On 11 September 2015 at 9:29am, Mrs Tincknell emailed the Claimant and requested her attendance at a meeting on 17 September as it was expected that by then the Claimant would have returned from leave. At 9:34, the Claimant said she would check the diary. What she did instead at 10:56 was to go on to the online diary and book holiday between 14 September to 18 September. We find it likely that the Claimant did this deliberately to avoid the meeting. By doing so, she ensured that she would not be available to attend a meeting with Mrs Tincknell on 17 September. The Claimant's case is that the system took some time to show the leave she booked but the evidence was that this was a live system and the time recorded is an accurate record of when the Claimant booked the leave on the system.

119. By email on 12 September, Mrs Tincknell tried to arrange a further meeting with the Claimant on 22 September. She offered to hold this meeting in London or Romsey to suit the Claimant. The Claimant replied to say that she could meet Mrs Tincknell in London on 22 September.

120. On 13 September, the Claimant wrote to Mr Drummond to inform him that she considered her iPhone and Yahoo account had been compromised by a security breach that day. She asked him to no longer contact her. It was not clear to the Tribunal what she was referring to by the term "*security breach*".

121. Mrs Tincknell wrote to the Claimant on 16 September to confirm the meeting and reminded the Claimant to bring her computer to the meeting. The purpose of the meeting was to discuss the donor report for the forthcoming Board meeting on 24 September and any IT issues that the Claimant raised. The Claimant denied receiving this email.

122. However, on the same day, 16 September, the Claimant sent a lengthy letter of claim to all members of the Respondent's Board of Trustees. She informed them of her condition; she alleged disability discrimination and a failure to make reasonable adjustments. She also alleged breaches of personal privacy and data protection relating to Dorothy Telfer and Janice Bassett's work. She complained that private

details of her health had been disclosed by ATW to Ms Telfer. The Claimant stated that she felt she had no choice but to take legal action against the Respondent and informed them that she had registered an Employment Tribunal claim on the same day. The Claimant stated that she had been advised by solicitor that an Employment Tribunal would be costly, timely and public for both parties and indicated that she would be willing to come to a settlement agreement and withdraw the claim to save the reputation of the Trust as well as allow all parties to move on in a timely manner. She attached a draft agreement between her and the Respondent in which she inserted that she would be prepared to accept a total sum of £120,000 for loss of employment. She made provision in the agreement for a termination date of 1 December 2015. We find that in this document the Claimant was not raising a grievance but was threatening the Respondent with legal action unless they complied with the suggested agreement and payments that she attached.

123. In the letter, she referred to correspondence that she had sent to various Board members including Richard Kwiatkowski from which she had not had a response. Mr Kwiatkowski was not responsible for managing the Claimant but was simply a member of the Respondent's Board of Trustees.

124. The Respondent was not expecting this letter and in the Hearing Mrs Tincknell described it as a *"bolt out of the blue"*. In her submissions, the Claimant has referred to the letter as a cry for help. It is difficult to see how it could be viewed as a cry for help given the threatening nature of its contents. The Claimant relies on this letter as a further qualifying disclosure, a whistle-blowing complaint and a protected act in relation to her complaint of victimisation.

125. On 18 September, Mrs Tincknell sent the Claimant a further reminder for the meeting on 22 September and the Claimant was also informed by email that the delivery company were trying to deliver an ergonomic chair to her, which the Respondent had purchased in accordance with the ATW recommendations.

126. Given the Claimant's habit of writing to Board members personally and giving them her confidential and personal information; the Respondent sought to contain matters so that from then on, only a few named people would be involved in managing the situation with the Claimant.

127. On 21 September, in preparation for the Board meeting on 29 September, Crispin Drummond wrote to the other Trustees and advised them of the Claimant's situation and the steps that the Respondent had so far taken to address it. He informed them that Dorothy Telfer had been retained as a specialist HR consultant to advise the Respondent, about the interactions with ATW and the Claimant's GP. He referred to the Claimant's recent letter to the Respondent announcing her formal claim to the Employment Tribunal and the suggested compromise settlement. As the Claimant had now notified the Respondent that she had issued proceedings, Mr Drummond confirmed that they had notified the Respondent's insurer of a potential claim and were in the process of appointing specialist legal advice. In the meantime, he reassured colleagues that the Claimant continued to be employed and that the Respondent was continuing to work with her as normal. The Trustees and the Respondent's employees were all requested to ensure that all communications on this matter should be directed through Mrs Tincknell or Mr Drummond. At the same time,

everyone was advised that they should continue to work co-operatively with the Claimant in the usual way.

128. Also on 21 September, the Claimant wrote to Nick Starkey and Richard Kwiatkowski. They were both Trustees on the Respondent's Board. The Claimant had never met Mr Starkey and so it was unclear why she chose to write to him about this matter. She enclosed a transcript and recordings of the 18 August meeting. Although the Claimant had been asked to confirm the accuracy of the Respondent's minutes of that meeting as one of the matters that she needed to resolve before going away on the two weeks training, the Claimant had not given this to the Respondent before this time. She informed Mr Starkey that the Employment Tribunal notification might be delivered automatically to the offices within the next 28 days which was an indication that she had issued an Employment Tribunal claim.

129. Mr Drummond wrote to the Claimant on 21 September. He acknowledged the letter of claim and asked for details of solicitors acting on her behalf so that the Respondent could contact them directly.

130. The Claimant was unable to attend the meeting arranged for 22 September as she was ill. The Respondent rearranged the meeting for 1 October.

131. On 29 September the Claimant wrote to the Board stating that she would no longer correspond by post, email, phone or in person with both Amanda Tincknell and Crispin Drummond due to what she described as "*ambiguities around several correspondences*" which she considered to be intimidating and pressurising. She also stated that she could no longer correspond with Janice Bassett, Dorothy Telfer and Vanessa Longman.

132. Lastly, the Claimant stated that due to "*security concerns*" she was no longer going to use the Respondent's systems. She stated that she was going to retain the Respondent's laptop and files for legal proceedings and investigations. In her evidence, the Claimant described this as taking a "*hiatus*" from the Respondent's systems.

133. It is likely that this letter was in response to earlier emails that day from Crispin Drummond and Mrs Tincknell in which they both sought to set out the items that would be discussed with the Claimant at the meeting which was now scheduled for 1 October. The items that they wished to discuss with the Claimant was her work with major donors and the information that the Respondent needed from her to enable it to continue that work. The Tribunal is not aware of anything else that was scheduled to be discussed at that meeting that could have caused her concern.

134. The Respondent booked a room in London for the meeting on 1 October to ensure that the Claimant would be able to get to it without much difficulty. Mrs Tincknell reminded the Claimant of the meeting by email on 30 September. She also reminded the Claimant that Mr Drummond would be attending the meeting. Mrs Tincknell had previously informed the Claimant in her letter dated 16 September that Mr Drummond, the Treasurer and one of the Respondent's Trustees would attend the meeting.

135. The email of 22 September is the one that the Claimant does not recall receiving.

136. On 1 October, the Claimant wrote to the members of the Respondent's Board of Trustees and advised them that due to growing security concerns she will only be accepting and responding to communications sent to her home address by registered post. She also requested that there should be confirmation by SMS text sent to her prior to posting. The Claimant referred to Mr Kwiatkowski's action in forwarding information that she had sent to him to Mrs Tincknell at the Respondent. She considered this action to be hostile. We find that it was appropriate for him to do so, as Mr Kwiatkowski had not been responsible for her line management or involved in resolving the issues she had with the Respondent. It was appropriate for them to forward correspondence from her to those who were responsible for dealing with the situation so that they could be properly addressed. The Board of Trustees work for the Respondent on a voluntary basis. Crispin Drummond had already written to the Board to advise that all matters concerning the Claimant should be passed to him and to Ms Tincknell for action.

137. The Claimant did not attend the meeting on 1 October. She did not give the Respondent any explanation for her non-attendance. She also failed to inform them beforehand that she was not going to attend so the Respondent incurred the cost of the room hire and the travel expenses of those who attended the meeting.

138. On 2 October, the Claimant contacted the Head of Cranfield School of Management and give details of the complaints that she had against the Respondent and how she perceived her treatment. Mr Kwiatkowski was employed by the School of Management at the time. The Claimant did not explain at the Tribunal why she considered it necessary to involve Mr Kwiatkowski's employer in this matter. She appeared to want to cause trouble for him.

139. She stated that she considered the Trustee's actions in forwarding correspondence from her to the Respondent as a "threat to her security". She stated in this letter that she would no longer be corresponding with Crispin Drummond by phone, email, post or in person. The Tribunal were not clear how Crispin Drummond, Richard Kwiatkowski or Nick Starkey's actions in forwarding her mail to the Respondent threatened her security. The Claimant failed to explain this.

140. On 4 October, the Claimant wrote to Mr Starkey at his professional address at the Cabinet Office. The Claimant was unable to explain to the Tribunal why she felt it was appropriate to write to Mr Starkey at his work office. Again, she appeared to be seeking to cause embarrassment or problems for Mr Starkey at work. There was no connection between his paid employment and his voluntary work with the Respondent. She was aware that all members of the Board of Trustees act in a voluntary capacity. Mr Starkey, Mr Kwiatkowski and Mr Drummond act as Board members with the Respondent in a personal capacity. The Claimant had still not met Mr Starkey at this point. In this letter, the Claimant informed Mr Starkey as she had already done in her letter to the Board that she would only be receiving correspondence by registered post, preceded by SMS text. She repeated her allegation in this letter that she had suffered disability and whistle-blowing discrimination, harassment and victimisation while at the Respondent. She stated that she had no choice, since as she perceived it, the

Respondent was not interested in settling the matter in a private way, but to proceed to the next stage of the legal proceedings. She ended the letter by stating that she would be unavailable between 8 and 13 October 2015 inclusive. The Tribunal did not understand why the Claimant would inform Mr Starkey about her dates of absence when the usual procedure was to inform Mrs Tincknell and/or enter it on to the Respondent's online diary system.

141. Mr Starkey had no line management responsibility for the Claimant. It is likely that because of procedures for handling mail at the Cabinet office Mr Starkey did not receive the letter until 7 October.

142. There was a conflict between the parties as to whether the Claimant did the voice recorder training. The Claimant stated that she did but the Respondent had correspondence from the providers that indicated that the Claimant told them that although she was available, she was not going to take up the training as she believed that she had been pressurised into doing it. We saw the email in the bundle and in it the Claimant asked Hands-Free to contact her again in three months.

143. On 7 October, Mr Drummond notified the Claimant that he was going to start a whistle-blowing investigation into the Claimant's concerns over the security of the Respondent's IT systems and the data contained in it. He confirmed that he was aware that the Claimant believed that her laptop had been hacked and that the Claimant was making that allegation as a form of whistle-blowing disclosure. The Respondent stated that it took all whistle-blowing disclosures seriously and that it was committed to resolving the issue. Mr Drummond informed the Claimant that the Respondent wished to review her company laptop for possible security breaches. He recorded the Claimant's refusal to return the company laptop to date and informed her that in doing so, she was making the investigation process difficult. He also considered that she was refusing to follow a reasonable management instruction which could be deemed as an act of misconduct. The Claimant was asked to set out what her concerns were in attending an investigation meeting or returning her laptop so that those could be alleviated. In the interim, the Claimant was reminded of her ongoing duty of confidentiality towards the Respondent and to ensure that matters that are confidential to the Respondent are not disclosed to any third parties.

144. On the same day, Mr Starkey wrote to the Claimant to invite her to an investigation meeting to be held at Central Hall, Westminster. The Claimant was asked to contact Mr Starkey if she was unable to attend the meeting - giving her reasons for non-attendance. She was informed that the purpose of the meeting was to investigate possible breaches of her contract as follows:-

- (i) "Failure to attend the meeting with your line manager, Amanda Tincknell and the Trust Treasurer, Crispin Drummond on Thursday 1 October without any prior notice.
- (ii) Refusal to return the Trust's laptop, to enable the same to be checked for a reported hacking.
- (iii) Refusal to communicate with your line manager, Amanda Tincknell, or the Trust's Treasurer, Crispin Drummond; and

- (iv) Apparent failure to follow the Trust normal processes (such as completion of diary and notifying your line manager of whereabouts) in relation to absences from work.”

145. It was made clear that this was not a disciplinary meeting and that it did not form part of the Trust’s formal disciplinary procedure but was a fact-finding meeting. The Respondent intended to consider the results of the meeting and, if there is any evidence of potential misconduct then decide whether to invite the Claimant to a formal disciplinary hearing.

146. The investigatory meeting was to be chaired by Mr Starkey with Dorothy Telfer attending to assist him and take notes.

147. In the invitation letter, the Respondent set out the adjustments that it would make to assist the Claimant at the meeting. The Respondent intended to record the meeting in addition to having a note taken and supply the Claimant with a copy. The Claimant was also free to make her own recording. The Claimant had a right to be accompanied to this meeting but the Respondent was prepared to consider any request from her to be accompanied by a work colleague, trade union representative or another companion of her choice.

148. Mr Starkey asked that she let him know by return if she required any additional adjustments to assist her in attending the meeting. He promised that the Respondent would let her know the outcome of the investigation as soon as practicable after the meeting. The Claimant was informed that if she failed to attend the meeting without good reason or without prior notice and failed to return her laptop immediately then disciplinary action could follow which could result in her summary dismissal from the Respondent.

149. The Claimant wrote to Mr Starkey indicating that she would be unavailable on the date set and the meeting was moved to 23 October.

150. Mrs Tincknell wrote to the Claimant on 20 October to notify her of the location of the rescheduled investigatory meeting. Mrs Tincknell asked the Claimant that if she considered that communicating to her by email was in breach of Data Protection Act that she ought to set out details of the relevant breaches so that the Trust could investigate the matter further. In her letter, Mrs Tincknell also reminded the Claimant that she was required to return her laptop to the Trust’s offices by 21 October. She attempted to reassure the Claimant that all information contained on company laptops will remain confidential within the Respondent. Also, that if any external party is required to inspect the laptop they too shall be required to keep any such information confidential.

151. The letter ended by informing the Claimant that failure to attend the meeting on 23 October and failure to return her laptop by 21 October may result in disciplinary action which can result in her summary dismissal from the Respondent.

152. On the same day, 20 October, the Claimant addressed a letter to the Board but posted it to another Trustee, Richard Lassen, at his home address. In this letter, she stated that she considered an investigation meeting with Dorothy Telfer present to be inappropriate. She felt that investigation meeting was unnecessary as she had kept the Respondent abreast of most of her points in earlier letters. She mentioned that she had not received response to her letter of 16 September with its amendments and enclosures. She asked that the Respondent should text the day before posting the letter to her to give her an opportunity to ensure that she is at the door to receive post. She stated that because of her bad knees she could not rush downstairs to make it in time to receive the post and this was the reason for that request.

153. She did not say that she could not pick up post from the floor. She also did not say why she was continuing to refuse to return her laptop despite being told by Mr Drummond that the Respondent were not considering this as a refusal to follow a reasonable management instruction.

154. Mr Lassen received this letter on 23 October which was the day of the disciplinary investigation meeting.

155. On 23 October, Crispin Drummond wrote to the Claimant at her home address to notify her that the first meeting of the whistle-blowing investigation was going to take place on 30 October. The Respondent engaged an independent IT consultant, Jim Parsons, to assist with the investigation. The letter formally requested the Claimant to attend the meeting so that she could explain the whistle-blowing claim she was making as the Respondent was still unclear of the detail of her allegations. It would be helpful to the Respondent to have that clarity at the start of the investigation. Although Mr Drummond confirmed that he had seen notes and the transcript from the meeting on 18 August the Respondent decided to give her an opportunity to provide clarity about what she was complaining of, in a meeting set up specifically for that purpose.

156. At the Tribunal Hearing the Claimant repeatedly stated that she had never claimed that her computer had been hacked. If she considered that the Respondent had misunderstood her complaints and her reasons for refusing to return the company laptop – this was her opportunity to explain her concerns to Mr Drummond and the Respondent.

157. Also on 23 October, the Claimant wrote to the members of the Board informing them that she had “genuine fear in communicating further with the Cranfield Trust”. She referred to “scary emails” and “humiliating treatment” that she had received while employed at the Respondent. She did not set out what those were. She also stated that she was deeply scared and that it has greatly affected her wellbeing. The Claimant stated that she was *“reserved to meet or correspond with any member of the Cranfield Trust staff or Board under these current conditions”*. It is likely that what she meant to say in the letter was that she was reserved *not* to meet or correspond with any member of the Trust as she refused to attend any further meetings with anyone from the Respondent. However, she did say in the letter that she was prepared to meet with the Respondent’s legal representatives to discuss the issues brought up in her letter of 16 September 2015.

158. The Claimant also said in this letter that she was prepared to record answers to questions sent to her by audio or video, in relation to the public interest and data protection matters. The Claimant asked that any meeting that is arranged should be arranged after 4 o'clock so that she can be accompanied.

159. The Claimant did not attend the investigation meeting on 23 October.

160. Ms Telfer texted her beforehand but she did not respond. The Respondent has not paid the Claimant's wages between 8 and 19 October. As far as the Respondent is aware, the Claimant was well and had not booked annual leave for this period. She simply refused to attend meetings when requested or to cooperate with it as her employer. This accorded with her decision to take a hiatus from her work which was without authorisation. The Respondent considered this to be unauthorised absence.

161. The Respondent considered that it was appropriate that Mr Starkey chaired the investigatory meeting with Ms Telfer's assistance. Mr Starkey was appropriate because he had not been involved in these issues with the Claimant, apart from being copied into her correspondence. Although the Claimant did not attend the investigatory meeting, Mr Starkey was informed by his wife that he had further correspondence from the Claimant at his home that day. That correspondence confirmed her non-attendance. Mr Starkey and Ms Telfer held the meeting in the Claimant's absence. The Claimant had been advised in the letter of invitation that if she chose not to attend, the meeting would go ahead. Mr Starkey was clear that the Claimant had been given ample opportunity to attend the meeting. He examined all the information before him - including all the correspondence from the Claimant and from Mrs Tincknell. He considered the Claimant's representations and concluded that there was sufficient evidence to indicate that there was a case to answer on six counts of potential misconduct. These were allegations set out in the letter: i.e. that she had failed to attend the meeting with her line manager, Amanda Tincknell and the Trust's Treasurer Crispin Drummond on Thursday 1 October without prior notice; that she had repeatedly refused to return the Trust's laptop to enable the same to be checked for reported hacking and that she had refused to communicate with Mrs Tincknell or Mr Drummond and lastly, she had failed to follow the Trust's normal processes such as completion of diary and notifying the line manager of her whereabouts in relation to absences from work.

162. On 27 October, Mrs Tincknell wrote to the Claimant inviting her to a disciplinary meeting. Mrs Tincknell set out the Respondent's case against the Claimant in relation to the four matters over which she was being disciplined. She was informed that the outcome of the hearing could be dismissal for misconduct or gross misconduct and in the event of a misconduct dismissal; she would be paid her contractual notice. Alternatively, if she was dismissed for gross misconduct she would not receive any notice pay. The Claimant was informed that in the meantime, she was suspended on full pay and that during the period of her suspension she should remain available within reason for contact by Mr Drummond in relation to the whistle-blowing investigations or by Dorothy Telfer as the Trust HR consultant or by Mrs Tincknell as her line manager. She was advised that apart from those three, she should not contact any work colleagues, Board of Trust Members, donors or funders or log onto Salesforce. The Claimant's Cranfield Trust email would continue to remain available to her. The disciplinary procedure was attached for her attention. Mrs Tincknell sent a text

message to the Claimant advising her of the letter, as the Claimant had requested whenever the Respondent corresponded with her. As the letter did not set out the date of the hearing, another letter was sent to the Claimant notifying her that the hearing was to take place on 5 November 2015.

163. On the same day Crispin Drummond wrote to notify her of the location of the first whistle-blowing meeting on 30 October. Also, he sent her a letter from his P & G Wells email account which was his personal business account to which he attached the process of the whistle-blowing investigation that the Respondent's Trustees had set up. In that email, he repeated his invitation to the Claimant to attend the meeting on 30 October and gave the details of the time and address of the place in which the meeting would take place.

164. On 29 October, the Claimant acknowledged receipt of the disciplinary hearing invitation but complained that Mrs Tincknell was involved in the process. She wrote to the Board on 30 October stating that any disciplinary investigation with Mrs Tincknell or Ms Telfer would be inappropriate. The following day she confirmed that she would not attend but did not say that this was due to any matter related to her health.

165. The Claimant accused Amanda Tincknell of discrimination, victimisation and harassment either directly or through her management and the cultural practices of the organisation. She did not say how she had been discriminated against, victimised or harassed. She refused to attend any meeting with either Mrs Tincknell or Ms Telfer. She wrote to Mrs Tincknell on 1 November and stated that she could not attend any meeting with her and asked that Mrs Tincknell should cease writing to her.

166. On 2 November, she wrote to a colleague, Katherine Perrin. It is not known why the Claimant chose to write to her as she had not been involved in any matters up until this point. She contacted Ms Perrin in direct contravention of Mr Drummond and Mrs Tincknell's instructions that she should not contact anyone from the Respondent apart from them. She informed her that she had been suspended from her post and was being investigated for gross misconduct by the Respondent. She stated that she thought it was imperative that she should let her know that she had decided to take legal action against the Respondent. She stated that she was deeply sorry that Ms Perrin may have to be involved in a legal action. It was not clear what this was a reference to, as Ms Perrin had not been involved in the Claimant's line management or in any of the matters she complained of. She was not involved in our Tribunal Hearing. The Claimant went further and asked Ms Perrin to mention to other colleagues about the contents of her letter. The Tribunal can see how the Respondent came to the belief that this letter was sent to apply pressure to its employees. Even if that was not the Claimant's intention, such communication was unhelpful, was likely to have frightened Ms Perrin and was in direct contravention of management instructions not to contact fellow employees.

167. The Claimant continued this conduct when she wrote to Richard Kwiatkowski at his work address on 3 November and personally threatened both and the Cranfield School of Management with litigation. The Claimant did not deny in the Hearing that she knew that the School of Management is a separate organisation from the Respondent. She confirmed in the Hearing that she had been a student to the School of Management and Mr Kwiatkowski had been one of her lecturers. She alleged that

he had ignored her wellbeing, potentially breached the Data Protection Act and caused her pay to be stopped and her suspension for gross misconduct which she stated were leading to health implications. The Claimant failed to explain how she came to that conclusion since Mr Kwiatkowski had taken no action against her in a personal capacity.

168. The Claimant had previously stated that she wanted no communication from the Board members or from Mrs Tincknell or Mr Drummond. However, when Mrs Tincknell informed her in writing of her suspension and instructed her not to contact anyone employed by or on the Board; she wrote on 21 October to complain about this and alleged that it was tantamount to censorship and a serious infringement of her rights. She stated in her letter that as she is a former student of the School of Management if she were to follow Mrs Tincknell's instructions this would deprive her of the opportunity to contact her former teachers and friends. Mrs Tincknell's letter was clear that it was an instruction issued to her while the disciplinary proceedings took place. The Tribunal took judicial notice that it is standard practice for an employee who is subject to disciplinary proceedings to be instructed not to contact colleagues or management at their place of work while those proceedings are ongoing. The purpose of such an instruction is usually to contain the investigation process and ensure that it cannot be contaminated by conversations or communications that may occur between the person under investigation and colleagues at their place of work. It was even more appropriate in this instance as the Claimant had already breached an earlier instruction not to contact anyone by writing to a colleague who had not been involved in her line management and was not a friend from her time at the School of Management.

169. On 3 November, Mr Drummond wrote to the Claimant to inform her of the progress of the whistle-blowing investigation. He confirmed that the first meeting had taken place on Friday 30 October. He confirmed that the investigation was being conducted in accordance with government guidelines. In the Tribunal Hearing he confirmed that he had downloaded some information from the Government's Data Protection website which informed him how such enquiry should be undertaken. He was therefore unable to change arrangements to suit the requirements that the Claimant indicated in her letters to Nick Starkey and Jim Parsons the previous week. Mr Drummond recorded that despite four letters of invitation the Claimant did not attend the meeting on 30 October and that because she refused to return her laptop, the Respondent had been deprived of the opportunity to investigate it as part of their investigation. He restated the Respondent's intention to continue with the investigation using the information that it had.

170. On 3 November Mrs Tincknell wrote again to the Claimant to confirm that she was aware that the Claimant had made allegations that she had discriminated, victimised and harassed her but that to date, those allegations had not been particularised. Mrs Tincknell confirmed that the disciplinary meeting was scheduled for Thursday 5 November and that it would continue as scheduled. The meeting had been arranged to take place at a London venue for the Claimant's convenience. Mrs Tincknell informed the Claimant that this was her opportunity to provide submissions in response to the allegations set out in the earlier letter and attached again a copy of Trust's disciplinary procedure and a copy of the document outlining the details of the alleged misconduct. The letter concluded by reminding the Claimant that

if she chose not to attend the disciplinary hearing the meeting could proceed in her absence and a decision would be made in the absence of any submissions from her.

171. On 4 November, the Claimant wrote to Nick Starkey threatening legal action against him, the Cabinet Office and the Board.

172. On the morning of 5 November, Mrs Tincknell sent the Claimant an additional allegation of gross misconduct concerning her contact with Katherine Perrin.

173. The Claimant failed to attend the disciplinary hearing.

174. The Respondent did not record the disciplinary meeting as arrangements had been made to record it as an adjustment for the Claimant. As she failed to attend the Respondent simply took minutes of the meeting. Mrs Tincknell delayed the start of the meeting to give the Claimant an opportunity to attend but when she had not attended by 4:10pm Mrs Tincknell started the meeting.

175. At the beginning of the meeting, Mrs Tincknell addressed the issue of whether it was inappropriate for her and/or Ms Telfer to be involved in the Claimant's disciplinary hearing. She reviewed both her and Mrs Telfer's involvement in the disputes that the Claimant had with the Respondent. Mrs Tincknell noted that she had not authorised Janice Bassett to remotely access the Claimant's laptop to address the Claimant's security concerns. Mrs Tincknell had not hacked the Claimant's laptop or accessed it in any way that was improper or inappropriate. She recorded that she had requested on more than one occasion for the Claimant to bring her laptop into the office so that it could be checked by someone from IT security. The Claimant appeared to take offence to those repeated requests and had then refused to communicate further with her or anyone else from the Respondent. As far as Mrs Telfer was concerned - it was noted that she had contacted ATW on behalf of the Respondent in relation to its processes and procedures and the Claimant had criticised this as a breach of confidentiality. Also, it was noted that Ms Telfer had been present at the meeting of 18 August and that the Claimant had taken offence at her presence. As far as the Claimant's correspondence had provided any clarification – it appeared to Mrs Tincknell that this was the extent of the issues that the Claimant had raised in relation both women.

176. Having considered those matters, Mrs Tincknell concluded that neither she nor Ms Telfer had acted unreasonably or oppressively towards the Claimant and on that basis, and because the Respondent is a charity with limited resources, it was concluded that it was appropriate for Mrs Tincknell to chair the disciplinary hearing with Ms Telfer present to advise her on HR matters.

177. Mrs Tincknell then went on to consider each of the disciplinary allegations against the Claimant. The Tribunal finds that she considered all these matters in detail. The notes were set out over nine pages. She came to the following conclusions on the allegations:

178. In relation to allegation 1 - it was noted that the Claimant failed to attend the meeting on 1 October with Crispin Drummond even though she had been given prior notice in writing. The letter of invitation set out exactly what the meeting would cover.

The meeting had originally been scheduled for 22 September and had been rearranged when the Claimant stated that she had not received the letter notifying her of that date. The meeting was rescheduled for 1 October but she failed to attend. The Respondent concluded that this was a case of serious insubordination.

179. Mrs Tincknell considered allegation 2 which was the Claimant's continued refusal to return the Trust laptop to enable it to be checked for hacking or potential security risks. Although at the Tribunal Hearing the Claimant maintained that she had never claimed that her laptop had been hacked, this was the term the Respondent used to categorise the issues the Claimant had raised around security and her laptop. In this note of this meeting, it is further defined by the words "*all potential security risks*". The Claimant raised security risks from the day she tried unsuccessfully to log on in the hotel lobby. Despite this, she refused to bring her laptop to the Respondent on 18 August, 22 September, 1 October, 21 October, or at all. The Claimant did not give the Respondent a valid reason for her failure to do so. When Mr Drummond asked her to give her reasons for refusing to return the laptop so that any concerns could be alleviated, she failed to respond. It was noted at the Hearing, that the Claimant had still not returned the laptop to the Respondent.

180. Mrs Tincknell found this ground to be proved and made a finding of serious insubordination.

181. She next considered allegation 3 - the Claimant's refusal to communicate with personnel at the Trust. In the minutes Mrs Tincknell listed the correspondence with the Claimant and concluded that the Claimant had refused to communicate with the Respondent when written to. The Claimant only conducted communication when she decided she wanted to communicate with staff as per her letter to Katherine Perrin or with Trustees as per her letters to Nick Starkey, Richard Kwiatkowski or Richard Lassen. The Claimant also refused to communicate with Crispin Drummond even when he was conducting the whistleblowing investigation into her concerns. Mrs Tincknell considered the Claimant's conduct in relation to this allegation to be serious insubordination and in breach of clause 12 of her contract of employment.

182. Mrs Tincknell then looked at was allegation 4. This was that the Claimant had failed to follow the Trust's normal processes such as completion of the online diary and ensuring that she kept her line manager informed of her whereabouts. She failed to keep the Respondent informed as to whether she was ill, working or absent for some other reason. Again, Mrs Tincknell set out the history of this matter. The Respondent had not had timesheets from the Claimant from 20 July onwards or sickness absence or holiday records from the Claimant from the same date. It was noted that the Claimant had entered the leave on 14 to 18 September into the diary after Mrs Tincknell had emailed her to ask her to attend the meeting on 17 September.

183. Her absences from 9 September onwards had not been authorised by Mrs Tincknell. The Respondent did accept that the 22 September was a day of sickness for the Claimant but it was still the Respondent's conclusion that the Claimant had been on unauthorised absence between 9 and 21 September inclusive and from 23 September to 26 October inclusive. The Claimant had been on suspension from 27 October. Mrs Tincknell considered that this allegation was proved and was unauthorised absence.

184. At allegation 5 Mrs Tincknell considered that the Claimant had failed to carry out her duties and responsibilities as the Respondent's head of major giving. That related to her unauthorised absences from work, mentioned above, her failure to attend the 1 October meeting and her communication to Mr Kwiatkowski of 29 September indicating that she would not carry out the work requested, her refusal to communicate with Trust personnel as part of her normal working relationship with the Respondent and her failure to update SalesForce for work purposes. The Claimant had not been continuing her work for the Respondent. Mrs Tincknell concluded that this allegation was proven and was serious insubordination and unauthorised absence from work.

185. In relation to allegation 6, which was the Claimant's failure to attend the investigation meeting with Nick Starkey and Dorothy Telfer on Friday 23 October without giving him prior notice that she would not attend, it was noted that this meeting had been postponed from 12 October after the Claimant stated that she was unavailable between 8 and 19 October. That conduct was considered serious insubordination and in contravention of clause 12 of her employment particulars.

186. In relation to the final allegation that the Claimant had refused to follow Mrs Tincknell's instructions not to contact work colleagues or Board members while on suspension, it was noted that the Claimant had written to members of the Board on 29 October and 30 October and written to the Chair, Michael Anderson, on 2 November. On the same day, she also wrote to Alice Dabrowska and to Katherine Perrin at her home address. On 4 November the Claimant wrote to Janice Bassett at her home address. It is not known why the Claimant chose to write to colleagues at their home addresses or how she came to discover Katherine Perrin's home address since although they had been colleagues, Ms Perrin had not given it to her. She appeared to have written to them simply to threaten legal proceedings or to threaten to involve them in such proceedings. This was inappropriate. Mrs Tincknell concluded that this was again an act of serious insubordination and potential gross misconduct in relation to the use of Katherine Perrin's personal information.

187. On 6 November, Mrs Tincknell sent the notes of the disciplinary hearing to the Claimant. On the same day, the Claimant wrote to Richard Kwiatkowski and Nick Starkey. Although the letter is dated 4 November, it was amended and sent out on 6 November. The letter was headed *for Cranfield Trust Board Member's eyes only*. In that letter, the Claimant raised a complaint against Mr Drummond for using his P & G Wells email address to communicate with her. Mr Kwiatkowski received this letter on 10 November and Mr Starkey received it on 12 November. They did not pass the correspondence on to Mrs Tincknell. Mr Kwiatkowski found the Claimant's position contradictory. In this letter, which had attachments of over 20 pages and was sent to him at work at the School of Management, she made allegations that he had behaved inappropriately by passing materials that she sent to him to the Trust. However, in earlier emails also referred to in these reasons, she had used Mr Kwiatkowski and Mr Starkey as a conduit to pass information on to the Trust and therefore by implication was expecting them to pass on her faxes and letters to the Respondent. Since they had no line management responsibility for her it was appropriate for them to have done so.

188. In this latest letter to Mr Kwiatkowski she threatened to take legal action against the School of Management and sent a copy to the Director of the School of Management. The Claimant would have been aware that to do so was likely to have caused some discomfort or embarrassment to Mr Kwiatkowski and that may have been her intention. She did not tell the Tribunal why it was necessary to copy letters to the Cranfield School of Management.

189. Although the Claimant makes complaint about Mr Drummond's use of his P & G Wells email address we note that the only emails in the bundle that he sent from that address were simple emails communicating with her about the investigation he was conducting. He did not divulge any of her personal information in them. There was also no indication that anyone else had access to that email address even if they could access the computer. Mr Drummond's email account is likely to be password protected..

190. On 13 November, the Claimant was dismissed for gross misconduct. Mrs Tincknell set out her reasons in detail in her letter of the same date. As set out above in these reasons, Mrs Tincknell found all 7 allegations against the Claimant proven.

191. Mrs Tincknell's decision was that the Claimant was guilty of serious insubordination in relation to allegations 1, 2, 3, 5, 6 and 7 and unauthorised absence in relation to items 4 and 5. In particular, Mrs Tincknell considered that even if there was some confusion about whether or not the absence before 9 September had been properly authorised, she was clear that between 9 September and 26 October the Claimant had been on unauthorised absence apart from 22 September when she had notified the Respondent that she was unwell.

192. Having considered all the Claimant's actions, the Respondent concluded that they amounted to acts of gross misconduct whether considered individually or collectively. Summary dismissal can be an appropriate sanction for gross misconduct. Mrs Tincknell considered what was the appropriate sanction in this case. She concluded that when taken collectively, the Claimant's actions had irreparably destroyed all trust and confidence between her and the Respondent. She had threatened colleagues so it would be difficult for her to restore a positive working relationship with them. She had also written many letters directly to Trustees at home without good reason. She had resolutely failed to follow management instructions and been repeatedly insubordinate. It was Mrs Tincknell's decision that the Claimant should be dismissed with immediate effect without payment in lieu of notice.

193. The Claimant was advised of her right to appeal against the decision to dismiss her summarily. If she wished to appeal, she was to write to Richard Lassen Trustee, care of the Trust's office address in Romsey. The Claimant was advised that her letter to Mr Lassen should set out the reasons for her appeal and should be received at the Trust's offices no later than noon on Friday 20 November. The Claimant was advised that she would have a right to be accompanied by a work colleague or trade union representative at any appeal hearing.

194. The Claimant was also requested to immediately return all property belonging to the Trust including the laptop together with any information or documents belonging to the Trust whether these were held in hard copy or electronic format. The Claimant was informed that her salary would be paid between 1 and 13 November inclusive together with any outstanding holiday pay.

195. In November, following her dismissal, the Claimant wrote to Nick Starkey, Richard Kwiatkowski, the Head of Cranfield School of Management and Richard Lassen and Michael Anderson on many occasions.

196. The Claimant issued her Employment Tribunal complaint on 28 November 2015.

197. On 27 November, Mr Lassen wrote to the Claimant to inform her that her appeal against dismissal would be heard on 9 December. The Respondent had secured space in London to conduct the appeal hearing and the Claimant was informed that Mr Lassen and Michael Anderson as Acting Chair of the Trust would also be present. Mr Lassen confirmed that he was aware that the Claimant had requested that meeting should start at 4pm but he stated that he did not believe that a 4pm start would give the Respondent sufficient time to hear the appeal and consider it. He therefore set the hearing time at 1.30pm so that the Respondent would have more time to conduct the hearing. He reassured her that an HR adviser would be present at the appeal hearing to take notes and advise the panel on HR protocol and procedures. As the Claimant had previously objected to the involvement of the Trust's adviser, Dorothy Telfer, although he was not acceding to those request, he was prepared to engage an alternative HR adviser to attend the appeal hearing. Also, because of the Claimant's medical condition, the Respondent were prepared to record the hearing as a reasonable adjustment for her. The Claimant was advised that she could attend and make her own recording. The Claimant was also advised that she had a right to have a colleague or trade union representative attend with her and that again as an adjustment, he was prepared to allow her to have another companion that she should reasonably wish to propose. She was asked to let the Respondent know who that companion was going to be and the capacity in which they were attending and to do so within two working days of the hearing. A legal representative was not going to be a suitable companion from the Respondent's perspective. The Claimant was advised that if she could not attend the appeal hearing she should inform the Respondent as soon as possible.

198. On 1 December, Mr Lassen sent copies of the letter again as it was not clear that the original letter had been delivered to the Claimant. He also texted the Claimant to inform her that the first letter had gone astray and that he was sending her a copy again which would reach her on Wednesday. He asked her to text the Respondent back, if she did not receive the letter.

199. On 4 December, the Claimant confirmed that she had received the letter. The Claimant wrote on 4 December to reiterate her desire that the meeting should be held later to allow her companion to complete their work day before coming along with her. She also stated that she was waiting to hear from the Trust's legal advisers. The Respondent took that to mean that the Claimant's preference was to not attend any meetings unless its legal advisers were present. The Claimant was informed that the meeting would go ahead and that the Respondent was not prepared to rearrange the

meeting after 4pm since it was not clear that she would attend in any event. In the Hearing Mr Lassen confirmed that it was unlikely that they would get through everything that they needed to discuss if they started at 4pm.

200. On 8 December, the Claimant wrote to Mr Lassen making it clear that she would not be attending and the following morning she sent a fax saying that she had a “pressing need” to see her physician.

201. On 11 December, Mr Lassen wrote to the Claimant and asked her to provide by 18 December further details of why she was unable to attend the appeal hearing. The Claimant refused to do so and because of this, on 16 December she was notified that she had no further right of appeal.

202. The Respondent did not conduct an appeal hearing and the matter ended there.

203. On 30 November, the investigation into the Claimant’s whistle-blowing matters regarding security was completed. Crispin Drummond and Jim Parsons, the independent IT consultant, presented a report to the Board. The report stated that they followed the procedures and guidelines of the Department for Business, Innovations and Skills, including the guidance note dated March 2015. The Respondent had also had guidance and support from its solicitors, Brown Jacobson, in conducting the investigation.

204. Because the Claimant did not attend any meetings with the investigators, the investigation only had the allegations she made in the meeting of 18 August to work from.

205. The investigators spoke to six members of the Respondent’s staff, looked at additional written material and direct communication with the Respondent’s IT suppliers. The investigation looked at the following six matters:-

205.1 On 17 August 2015, Janice Bassett had on her desktop computer, for all the office to see, the private correspondence and personal details of her clients.

205.2 Also on 17 August, Ms Bassett opened a private and confidential email addressed to the Claimant by one of her clients and he found out about it.

205.3 Passwords at the Respondent are widely known and commonly held.

205.4 The Claimant’s laptop was once at Mrs Tincknell’s home for a couple of days where Mrs Tincknell’s husband could have modified it.

205.5 In or about June 2015, the Claimant discovered her laptop held the work files of her previous user.

205.6 Since mid-August 2015, the Claimant has noticed that her email accounts both the one at the Cranfield Trust and her personal one have one by one been hacked and become unsafe.

206. The investigation found that although there may have been failings on behalf of the Respondent in relation to data protection, none of those general failings identified amounted to serious or damaging or systemic breaches IT security standards to the degree envisaged by the whistle-blowing regulations.

207. The investigation found that the Respondent had well established procedures in place to provide a secure data environment. The information being created, held and communicated was well understood, responsibly handled and conscientiously managed. However, it was noted that there were some weak links in the chain of data management. The report concluded that the Respondent could improve its IT security policies. The Respondent should also consider introducing suitable confidentiality agreements for all personnel within the Trust who are likely to encounter the Trust's confidential information; including information related to donors.

208. The investigation report recommended that the Respondent should adopt the Information Commissioner's Office useful guidelines for small businesses. That would entail appointing an IT manager with specific powers and responsibilities and reviewing the needs for different kinds of data to be created held and access. It was also recommended that the Respondent should adopt a whistle-blowing policy.

209. The report concluded that the fourth and sixth allegations made by the Claimant were unproven. There was no evidence to support the Claimant's allegation that Amanda Tincknell's husband had tampered with the laptop and the Claimant failed to provide any such evidence to support such a serious allegation. There appeared to be no basis at all for this allegation.

210. The investigation found no evidence to indicate that her email accounts had been compromised or hacked. No other employee of the Respondent's employees had experienced any difficulties with their emails. The investigation found that although the Claimant notified the Respondent that her email account was unusable, she then proceeded to send emails from that account.

211. The allegation that employees at the Respondent shared the same password was found to be untrue. The investigation confirmed that the computers may have had the same password when they were new but that soon after individuals had usernames and passwords that are separate and secret. Ms Bassett had access to usernames and passwords which were held in a central secure place. This was because she was the IT manager and had the responsibility to maintain the security of that information. This was held in case employees forgot their password or the company needed to gain access to a laptop in an employee's absence.

212. The rest of the allegations the Claimant made in relation to data handling were found to be true or partly true although in Mr Drummond's opinion, nothing he found amounted to serious malpractice. It was true that Ms Bassett had gained remote access to the Claimant's work email account on 12 August after the Claimant had reported that her emails were not working. Ms Bassett did not actively look at any emails. The email that she displayed in a preview window when she sent the screenshot to the Claimant was work related. Her actions were therefore deemed appropriate. No confidential information was disseminated outside the Respondent

and she only did so to solve the Claimant's IT problem which was well within her responsibility.

213. It was also true that the Claimant had been given a laptop containing files of an ex-employee. It is likely that those files were work related although because the Claimant never returned the laptop to the Respondent, the Respondent could not be sure of this. Whilst laptops would normally be cleaned before being passed to a new user, it is possible that this did not happen on this occasion. As the Claimant's laptop was never investigated as part of the organisation the investigators could not confirm what was on it. The investigators found this to be an isolated incident. Mr Drummond did not believe that this gave rise to any data security issues. All employees and volunteers at the Respondent are required to sign confidentiality agreements which would prevent them from disclosing any confidential information outside of the Respondent. The Respondent was advised to review its policy in this area to ensure greater clarity amongst staff.

214. It was therefore the investigator's conclusion that the failings identified did not amount to any serious or damaging breach of IT security standards. Mr Drummond in his live evidence confirmed that he understood that all his recommendations had been implemented by the Respondent soon after receiving his report.

215. Mr Drummond confirmed in his live evidence that he used his P & G Wells account to communicate with the Claimant on two occasions. He sent emails to her inviting her to attend a whistle-blowing investigation meeting and set out the Respondent's process for investigating the whistle-blowing complaint that the Trustees had established. This was not therefore highly sensitive information. Mr Drummond tended to access his P & G Wells email account from the PC on his desk. His evidence was that the computer was closed whenever he was absent. There was no evidence that the email account was used by anyone else.

Law

216. The first issue the Tribunal had to determine was when the Respondent knew or could reasonably have been expected to know that the Claimant had a disability.

Knowledge of disability

217. In relation to the complaint of discrimination arising from disability contrary to section 15 of the Equality Act 2010 the question is when the Respondent knew or could reasonably have been expected to know that the Claimant had a disability.

218. In relation to the complaint that the Respondent failed to comply with a duty to make reasonable adjustments, the question is when the Respondent knew or could reasonably have been expected to know that the Claimant had a disability and that she was likely to be placed at a substantial disadvantage by the provision, criterion or practice.

219. The Respondent conceded that from late March 2015 it knew that the Claimant had a disability. The Claimant submitted that the Respondent had constructive knowledge of her disability since 2013.

220. The Claimant does not make any complaint of discrimination arising from disability on dates before March 2015. However, she does complain of a failure to make reasonable adjustments before that date as she refers to dates in 2013 and 2014 in her Scott schedule.

221. The Respondent conceded in its submissions that the Respondent would have known from its receipt of the Access to Work assessment on 24 April 2015 that the Claimant was at a substantial disadvantage in respect of writing and typing and that she needed special seating. The Respondent disputes that before that date the Claimant was at any other substantial disadvantage.

222. The Respondent submitted that nothing that occurred or was said before the end of March 2015 that would have put the Respondent on notice or that the Tribunal can conclude that the Respondent could reasonably have been expected to have known that the Claimant was at a substantial disadvantage as alleged.

The duty to make reasonable adjustments

223. The Claimant complained that the Respondent had failed to comply with a duty to make reasonable adjustments (section 20 Equality Act 2010[EA]) and that they had treated her unfavourably because of something arising in consequence of his disability (section 15 EA).

224. The issue of the Claimant's status as disabled within the meaning of Section 6 and Schedule 1 to the EA was decided by EJ Hyde at a preliminary hearing on 24 June 2016. The Claimant is disabled by reason of the effects on her of Ehlers-Danlos syndrome and/or her allergic conditions.

225. She complains that the Respondent failed to make reasonable adjustments to alleviate the substantial disadvantage she says she was put to by the requirements of provisions, criterion or practices (PCP's) of the Respondent. The Claimant prepared a Scott schedule of the alleged failures to provide reasonable adjustments and the PCP's she relies on. That document was in the bundle at pages 69 – 73. They span a period from 2013 – November 2015.

226. The law is set out at Sections 19, 20 and 21 of the EA. Section 19 states that:-

- “(1) A person (A) discriminates against another (B) if A applied to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's If –*
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

- (c) *it puts, or would put, B at that disadvantage, and*
- (d) *A cannot show it to be a proportionate means of achieving a legitimate aim.”*

227. Disability is listed as being one of the protected characteristics.

228. Section 20 sets out the duty to make adjustments as follows:

- “(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...*
- (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 provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.”*

229. Section 21 deals with the consequences of a failure to comply with the duty:

- “(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of ... another provision of this Act or otherwise.”*

230. In the case of *Environment Agency v Rowan* [2008] IRLR 20 the EAT set out Guidance on how an Employment Tribunal should approach a complaint of a failure to make reasonable adjustments under what was then section 3A(2) of the DDA by failing to comply with the Section 4A duty. The Tribunal must identify the following factors relevant to this case; (amended since the Equality Act 2010):-

230.1 the provision, criteria or practice applied by or on behalf of an employer, or;

230.2 the identity of non-disabled comparators (where appropriate); and

230.3 the nature and extent of the substantial disadvantage suffered by the employee in comparison to non-disabled persons.

231. The EAT held that an Employment Tribunal cannot properly make findings of a failure to make reasonable adjustments without going through this process. Unless it has identified the matters set out above it cannot go on to judge if any proposed adjustment is reasonable.

232. A tribunal must be careful when identifying the 'provision, criterion or practice' as a failure to identify this correctly risks invalidating, for the purposes of the duty to make reasonable adjustments, any findings of substantial disadvantage by comparison to persons who are not disabled. A provision, criterion or practice could include such matters as the rules governing the holding of disciplinary or grievance hearings or the non-payment of allowances such as sick pay. In the case of *HM Prison Service v Johnson* [2007] IRLR 951 Mr Justice Underhill in the EAT stated that a tribunal must identify with some particularity what 'step' it is that the employer is said to have failed to take in relation to the disabled employee. In that case the court held that the Tribunal had failed to set out the specific step the employer had been required to take: merely suggesting that she should have been moved to a 'non-hostile environment' or offered 'other employment' in a non-prison environment, without finding that suitable jobs were available, was insufficient.

233. In relation to the burden of proof in a disability case it was stated in *Johnson* above that it would be an error to regard the fact that a disabled person had been treated badly as fully disposing the question whether his disability (or something related to it) was, or was part of, the reason for the treatment complained of. If it was not, then, however reprehensible the treatment, it was not discrimination.

234. In assessing discrimination complaints tribunals would be expected to go through a staged process to determine whether the claim was proven in relation to the burden of proof. In the case of *Project Management Institute v Latif* [2007] IRLR 579 Mr Justice Elias expressly approved guidance on the application of the burden of proof in reasonable adjustment cases as contained in the Disability Rights Commission Code of Practice. He stated that:

"The key point is that the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it

provides no basis on which it could properly be inferred that there is a breach of duty. There must be evidence of some apparently reasonable adjustment which could be made we do think it would be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not”.

235. If the Tribunal concludes, following application of that process, and with the burden on the Claimant, that there were steps which it would have been reasonable for the employer to take in order to prevent the Claimant from suffering from the disadvantage in question; then the burden would shift to the Respondent to seek to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that another reasonable adjustment had been made or the adjustment identified by the Claimant was not a reasonable one to make.

236. The Claimant relies on the following six PCP's. The requirement to attend meetings, the requirement to attend the Romsey offices fortnightly, the requirement to use Salesforce, the requirement to stand at fundraising events; the requirement to comply with the deadlines in the Respondent's expense policy and lastly, the policy applied by the Respondent for dealing with incoming post.

237. The Respondent agreed that these were requirements of the job. However, the Respondent submitted that it either had made reasonable adjustments to the requirement or that the requirement did not put the Claimant at a substantial disadvantage.

238. One of the adjustments suggested by the Claimant was that the Respondent should have provided disability training for staff. The Respondent submitted that this would not have been a reasonable adjustment that the Respondent had a duty to provide. Such training would not have avoided the Claimant being put to a substantial disadvantage compared to a non-disabled person (*Rider v Leeds City Council* UKEAT/0243/11/LA)

239. The Tribunal was aware of the case of *Fareham College Corporation v Walters* [2009] IRLR 991 in which the EAT held that (as was suggested in the *Rowan* list) it is not always necessary for the Tribunal in a reasonable adjustment claim to specify the identity of the non-disabled comparator and that the identity of the non-disabled comparator will be clearly discernible from the provision, criteria or practice found to be in play.

240. The Claimant submitted that all her claims were in time or that if she was out of time with any of her complaints, the matters she complained of constituted a continuing act. She also submitted that the Tribunal should extend time on a just and equitable basis, if it found that there was no continuing act as she had been hospitalised twice on an emergency basis in 2015 which would have made it difficult for her to issue proceedings. The Respondent submitted, relying on the law as set out in the case of *Matuszowicz v Kingston upon Hull City Council* [2009] ICR 1170, in which it was held that the time limit for bringing a section 20 disability discrimination claim started to run at the end of the period during which the employer might reasonably be expected to make the adjustment. Therefore, insofar as any reasonable adjustment ought to have been

undertaken before 28 August 2015 (being three months from the issue date of the ET1 of 28 November 2015), the claim would be out of time.

Discrimination Arising from Disability

241. Section 15 of the Equality Act states that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

242. The Tribunal was aware of the case of *Basildon & Thurrock NHS Foundation Trust v Weerasingh* UKEAT/0397/14 (19 May 2015, unreported) in which it was confirmed that there are two stages to the process that a tribunal must follow in assessing a complaint under this section. Firstly, it should focus on the words "because of something" and identify the "something"; and secondly, upon the fact that that "something" must be "something arising in consequence of B's disability" which constitutes a second causative link. If a tribunal gets to this point the employer would be able to defend the complaint if it was able to show that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

243. The Claimant submitted that "something" that arose in consequence of his disability was:-

243.1 Between June and September 2015 – criticism of her performance and her department by her line manager.

243.2 April to November 2015 – chastising and disciplining the Claimant for not using normal administration processes (i.e. diary management and Salesforce usage).

243.3 April 2015 – November 2015 – chastising and then disciplining the Claimant for not working regular hours and her productivity.

244. The Claimant submitted that the unfavourable treatment she received as a result of the above was:-

244.1 The Respondent's Board meeting in June 2015 contemplated her dismissal/redundancy and elimination of her role for lower than expected performance;

244.2 The Claimant's dismissal for gross misconduct; and

244.3 The decision to take disciplinary action against her and to dismiss her.

245. The Respondent submitted that the Claimant was dismissed for repeated insubordination and her failure to follow reasonable management instructions. The Respondent submitted that the decision to dismiss her had nothing to do with her disability. The Respondent also refuted the suggestion that the Claimant was criticised or that she was ever chastised for not working regular hours.

246. The Respondent contended that there was no evidence that the Claimant's disability prevented her from following the reasonable management instructions that led to the disciplinary proceedings or contributed to the others matters of conduct for which she was disciplined.

247. The Claimant also made a complaint of indirect disability discrimination.

Indirect disability discrimination

248. Section 19 of the EA refers (see above).

249. The only PCP relied on by the Claimant in this part of her case is the Respondent's practice of sending post to her home without forewarning. The Claimant submitted that this put persons with Ehlers-Danlos hyper-mobility type disability at a disadvantage and that it put her at a disadvantage as she could not pick up post from the floor. She submitted that it resulted in there being delays in her being able to read her mail and she missed invitations to meetings and did not see the contents of documents in time. The Respondent disputed that the Claimant had difficulty picking up post and that she was put to the substantial disadvantage claimed.

250. The Claimant made complaints of victimisation and of harassment. The law applied in making a judgment on those complaints is as follows.

Harassment

251. The law on harassment is contained in section 26 EA 2010:

- “(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 purposes or effect of –
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B”.
- (2) A also harasses B if –
- (a) A engages in unwanted conduct of a sexual nature, and
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b).”

252. Section 27(4) states that in deciding whether conduct has the effect referred to in subsection (1)(b) set out above, each of the following must be taken into account:-

252.1 The perception of B.

252.2 The other circumstances of the case.

252.3 Whether it is reasonable for the conduct to have that effect.

253. The Tribunal was aware of the case of *Land Registry v Grant* [2011] EWCA Civ. 769 in which Elias LJ focused on the words “intimidating, hostile, degrading, humiliating or offensive” and observed that:

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

254. In the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 the EAT stated that the conduct that is treated as violating a complainant’s dignity is not so merely because he thinks it does. It must be conduct which could reasonably be considered as having that effect. The Tribunal is obliged to take the complainant’s perspective into account in making that assessment but must also consider the relevance of the intention of the alleged harasser in determining whether the conduct could reasonably be considered to violate a complainant’s dignity.

255. It is also important where the language used by the alleged harasser is relied upon, to assess the words used in the context in which the use occurred.

256. The Respondent disputed that it had harassed the Claimant at all.

Victimisation:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

257. The first question for the Tribunal was whether the Claimant did a protected act.

258. The Respondent accepted that a protected act was contained in the letter dated 16 September 2015 in which the Claimant made an allegation of discrimination on the grounds of disability. The Respondent did not accept that the other alleged protected acts were so.

259. The Respondent also disputes that the Claimant was subjected to any detriment because she did a protected act.

260. Generally, as with all discrimination complaints the Tribunal is aware that the burden of proving discrimination complaint rests on the employee bringing the complaint. As this will sometimes rest on the drawing of inferences from the evidence the courts have developed the concept of the reversal of the burden of proof in discrimination cases. This is discussed in a number of cases and is set out in section 136 of the Equality Act which states that:

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

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

261. This means that if the Claimant proves facts from which the Tribunal can infer that her treatment by the Respondent amounted to harassment and/or victimisation and was less favourable in the ways she has pleaded and that there is something more that links that treatment with her disability— then the burden shifts to the Respondent to show that the treatment was in no way related to her gender. In that case the claims would fail.

262. In the case of *Laing v Manchester City Council* [2006] IRLR tribunals were cautioned against taking a mechanistic approach to the burden of proof provisions. The focus of the Tribunal’s analysis must at all times be the question whether they can properly and fairly infer discrimination and sometimes it will be possible on the facts found to exist for the Tribunal to reach a conclusion that the protected characteristic was not the explanation – without formally going through the two-stage process.

263. In every case the Tribunal has to determine the reason why the Claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 “this is the crucial question”. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

264. In assessing the facts in this case the Tribunal is also aware of the comments made in the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* [2006] IRLR 865 that an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He only has to establish that the true reason was not discriminatory. Obviously, if unreasonable conduct occurs alongside other factors

which suggest that there is or might be discrimination, then this could be the something more which leads the Tribunal to conclude that the Claimant had made a prima facie case and shift the burden on to the Respondent to show that its treatment of the Claimant had nothing to do with the Claimant's disability.

Protected disclosures

265. The Claimant's case was that she suffered detriment because she had made protected disclosures.

266. In order for disclosures to be considered as protected in accordance with the Employment Rights Act 1996 (ERA) three requirements need to be satisfied. In order to be a 'qualifying disclosure' there needs to be a disclosure of information, which is made in the public interest and is made by the worker in a manner which accords with the scheme set out in the ERA sections 43C-43H.

267. Whether or not the disclosure qualifies depends on the nature of the information being revealed. The worker making the disclosure must have a reasonable belief that it tends to show one of the following statutory categories of failure. It is not necessary for the information to be true. However, determining whether they are true can assist the Tribunal in their assessment of whether the worker held a reasonable belief that the disclosure in question tended to show a relevant failure. (*Darnton v University of Surrey* [2003] IRLR 133.) The Claimant relied on eight potential disclosures in her case. The Tribunal will refer to both parties' submissions in relation to the alleged disclosures in its judgment on the matter.

268. The ERA sets out six categories of failure to which the information must relate if the disclosure is to be one qualifying for protection. Out of those six only one could possibly apply to the facts of this case. That is (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. The question for the Tribunal is whether the Claimant has identified the legal obligation on which she relies.

269. The Claimant has to do two things: firstly – she has to establish that there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on; and secondly – she has to show that the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (*Boulding v Land Securities Trillium (Media Services) Ltd* UKEAT/0023/06/RN).

270. The Respondent disputed that the Claimant could do either of those things in relation to the alleged disclosures and submitted that the Claimant had failed to identify a legal obligation that she stated had been breached and that therefore, it would be impossible for the Tribunal to say whether or not the information contained in the disclosures tended to show that the Respondent had failed, was failing or was likely to fail to comply with it.

271. The Respondent also disputed that the Claimant could have had any reasonable belief in her alleged disclosures.

272. The Claimant submitted that cumulative disclosures could amount to a qualifying disclosure under section 43B(1) ERA even if when taken separately each one was not a disclosure. The Claimant referred to the case of *Norbrook Laboratories GB Ltd v Shaw* UKEAT/0150/13/RN where the EAT confirmed that this was possible.

273. The Tribunal considered the case of *Cavendish Munro Professional Risks Management Ltd v Geduld* [2011] IRLR 38 where the EAT stressed the requirement that in order for the disclosure to fall within the statutory definition there must be disclosure of information. The court made a clear distinction between the provision of 'information' which would satisfy the test; and making an 'allegation' which would not be covered. A mere allegation against the employer or a simple expression of dissatisfaction would not be sufficient to warrant the protection of the ERA.

274. Although there is no longer a requirement that a disclosure be made in good faith in order to qualify for protection the Tribunal still needs to consider that aspect in relation to the issue of remedies. In a successful case if it appears to the Tribunal that the protected disclosure was not made in good faith the Tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%. The Tribunal would need to consider the law in cases such as *Street v Derbyshire Unemployed Workers' Centre* [2004] IRLR 687 in determining the meaning of the term 'good faith' in each case.

275. The Tribunal were also mindful of the decision of the EAT in *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4 in which the EAT gave guidance on 'reasonable belief'. Although the test is objective this has to be considered taking into account the personal circumstances of the discloser. The question is whether it was reasonable for her to have that belief. Further, where an employee relies upon multiple alleged protected disclosures (as is very common), reasonable belief must be made out in relation to each of the disclosures and a general belief in the broad gist of the content of the disclosures is not enough.

276. The Claimant submitted that she suffered detriment as a direct consequence of making the protected disclosure. Section 47B ERA prohibits an employer from subjecting a worker to any detriment by any act or any deliberate failure to act that is done on the ground that the worker has made a protected disclosure.

277. The Respondent submitted that the disciplinary action and the Claimant's dismissal had nothing to do with any of her complaints. It also disputed whether the other matters that she alleges were detriments could accurately be described as detriments and submitted that they were, in any event, nothing to do with any qualifying disclosures she made.

278. Consideration of the meaning of 'subjecting to a detriment' has been given by the EAT in the case of *Abertawe Bro Morgannwg University Health Board v Ferguson* [2014] IRLR 14 where the EAT held that the employer does not have to be able to control the circumstances giving rise to the detriment. The court also gave guidance on the concept of a deliberate failure to act by the employer.

279. The Tribunal also considered the case of *Fecitt v NHS Manchester* [2012] ICR 372 in which the Court of Appeal stated that it is not necessary for the protected disclosure to be the sole or principal reason for the treatment. Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.

Unfair and Automatically Unfair Dismissal

280. The Respondent has the burden of proving the reason for dismissal and that it is a potentially fair one. The Respondent submitted that the Claimant was dismissed for a reason related to her conduct.

281. The Claimant did not accept that and submitted that she was dismissed because of her disclosure/s, because of disability discrimination and/or that the Respondent's decision to dismiss fell outside the range of reasonable responses. In her submissions she stated that there were mitigating circumstances regarding gross misconduct. It was not clear to us whether she accepted that she had committed gross misconduct and her complaint is that the Respondent chose to dismiss her rather than accept her mitigation as reason to impose some other sanction or whether she disputed that she had committed gross misconduct.

282. The Respondent's case is that the disciplinary action and the Claimant's subsequent dismissal had nothing to do with any complaints that she made.

283. The approach to unfair dismissal cases where there are competing reasons advanced for dismissal is that set out in the case of *Kuzel v Roche Products Ltd* [2008] IRLR 530. The approach is as follows:

283.1 the employer must establish the reason for dismissal;

283.2 the Tribunal will decide having regard to all the circumstances of the case what was the reason or principal reason for the dismissal;

283.3 if the Tribunal rejects the employer's reason it does not necessarily mean that it must have been the reason asserted by the employee. The Tribunal may determine the reason was not one advanced by either the employer or the employee.

284. The Respondent submitted that it was clear from the evidence that the Claimant was dismissed because of her gross misconduct, which was a potentially fair reason under section 98(2)(b) of the ERA. It was submitted that during her cross-examination of Mrs Tincknell the Claimant did not explore her motivation for the Claimant's dismissal or suggest that the reason was not genuine or that Mrs Tincknell did not genuinely believe it. Mr Jupp submitted that having not challenged the reason for dismissal in the sense of not putting an alternative reason to the decision maker, it is not open to the Claimant to suggest to the Tribunal that Mrs Tincknell had some reason, other than conduct in mind when she dismissed her.

285. If the Tribunal concludes from all the evidence that the reason for the dismissal was conduct then the next step for the Tribunal is to decide whether, taking into account all the relevant circumstances, including the size of the employer's undertaking and the substantial merits of the case, the employer has acted reasonably in treating it as a sufficient reason to dismiss the employee. In determining this, the Tribunal has to be mindful not to substitute its own views for that of the employer. Whereas the onus is on the employer to establish that there is a fair reason, the burden in this second stage is a neutral one. The Tribunal must ask itself whether what occurred fell within "the range of reasonable responses" of a reasonable employer. The law was set out in the case of *Iceland Frozen Foods v Jones* [1982] IRLR 439 where Mr Justice Browne-Wilkinson summarised the law by pointing to the words of section 98(4) themselves and then stated that the Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (members of the Tribunal) consider the dismissal to be fair as the Tribunal must not substitute its decision as to what was the right course to adopt for that of employer. He stated that in many (though not all) cases there is likely to be a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another and the function of the Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable response which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

286. The Respondent submitted that the dismissal in this case was both procedurally and substantially fair. It was also submitted that even if it were found to not be procedurally fair the Claimant would have been dismissed in any event. The Claimant was in a 'stand off' with her employers of her own making and she had no intention to return to work for the Respondent which it was submitted, could be seen from her letter of 16 August to which she had attached a draft settlement agreement demanding £120,000 for loss of employment.

287. The Respondent also submitted that she had contributed 100% to her dismissal.

Unlawful deduction of wages

288. The Claimant claims that she was not paid for the period between 8 October and 19 October 2015. The Respondent's case is that this period was considered unauthorised absence and that the Claimant was therefore not entitled to be paid.

289. This was a matter that the Claimant omitted from her written submissions.

290. In the agreed list of issues the matters for the Tribunal were in relation to a complaint of unauthorised deductions in relation to the period set out above and a complaint of a failure to pay holiday pay.

291. The Claimant wrote to the Tribunal on the morning of 16 December when she was aware that we were in chambers, to raise a new issue of a complaint that the Respondent had failed to pay her travel expenses. This was not something that was in the agreed list of issues. It was not a matter that was explored during the Hearing. The Claimant failed to copy her letter to the Respondent and the Tribunal did so on

16 December. The Respondent wrote to the Tribunal on the same day to dispute whether the claim had been properly pleaded. It was also submitted that the Claimant had failed to produce any evidence or make any submission to the Tribunal at the Hearing to support her assertion that she is entitled to unpaid travel expenses. It was also submitted that it was too late for her to do so now.

292. The Tribunal was reminded that the burden of proof in a complaint of breach of contract is on the Claimant and the Respondent's position was that she had not discharged that burden.

293. Although the box marked "other payments" is ticked in the ET1 no details are provided in the narrative and the only money claim discussed is that for unauthorised deductions in relation to the unpaid wages referred to above. 'Non payment of expenses' is referred to in section 12 of her further and better particulars under the heading 'Breach of Contract' but no clarification is provided and it is not clear what expenses or what periods are being referred to.

Applying law to facts

Knowledge of disability

294. The first issue for the Tribunal was when the Respondent knew or could reasonably be expected to know that the Claimant was a disabled person for the purposes of the Equality Act 2010.

295. It is our judgment that the Respondent had actual knowledge of her disability from March 2015 when the Claimant gave Mrs Tincknell a copy of her ATW assessment report, although she did not let her read the whole report. Mrs Tincknell caught sight of the words 'Ehlers-Danlos syndrome' and looked it up on the internet. The Claimant makes no complaint of discrimination before March 2015.

296. The Claimant submitted that the Respondent should have had knowledge or that it could reasonably have been expected to know of her disability before that date. In our judgment, there was nothing that occurred before that date that should reasonably have led the Respondent to know that the Claimant was disabled. The Respondent was aware in 2014 that the Claimant had asked for an ATW assessment but the Respondent did not receive any report or further communication from ATW after the assessment. The assessment had been carried out at the Claimant's home. In our judgment, the Respondent had no further information, feedback or reports from ATW following that first assessment. The fact of an enquiry to ATW does not mean that the person is disabled. The mere existence of an ATW enquiry/assessment is insufficient notice of any disability or of any condition. The Claimant failed to return the forms and there was no follow up. There was no conclusion and no diagnosis of any condition as far as the Respondent was aware.

297. The Claimant failed to inform the Respondent of her disability when she was first diagnosed with Ehlers-Danlos syndrome. It is possible that the Claimant did not want the Respondent to know about her condition. She did not tell Ms Tincknell when she was first diagnosed. She did not share with the Respondent the medical reports that she received about her condition.

298. Although the Claimant had entered her medical appointments in the online calendar in accordance with the Respondent's practices, those entries did not provide sufficient information to the Respondent to notify them of a disability or to give an indication that the Claimant was suffering from a condition that caused a substantial impairment in her ability to carry out day to day activities. The information provided in the calendar was limited and the Claimant did not have conversations with anyone about them or about her condition and how they related to it. The most the Respondent could have concluded from the existence of the appointments in the calendar was that the Claimant was having frequent appointments or that she was frequently ill. That is not the same as being disabled. At the same time the Claimant was talking about going to the gym and showing Ms Tincknell videos of her hula hooping. She was performing the duties of her job – which included travelling and producing reports – without any obvious difficulty. There were no letters to the Respondent from specialists. Apart from the bout of hives in 2014 there was no communication from doctors to the Respondent. When the Claimant was asked after her health, she said that she was fit and healthy. The Claimant stayed over at Mrs Tincknell on occasions and there was nothing, in relation to the Claimant's ability to carry out day to day activities, that could have led her to conclude that the Claimant was suffering from a disability.

299. The Claimant refused to sign Christmas cards at the end of 2013 because of what she described as hypermobility in her fingers. At the same time, she was typing reports and producing work. She arranged her meetings with donors and was in control of her schedule. There was also what could be considered some bizarre behaviour at meetings. But it is our judgment that those matters – taken together or on their own - were insufficient to lead the Respondent to think that she was suffering from a disability or had a substantial impairment in her ability to carry out day to day activities.

300. The Respondent could not reasonably have known before Mrs Tincknell saw the name of her condition in an ATW report at the end of March 2015 that the Claimant was a disabled person for the purposes of the Equality Act 2010.

301. The next issue for the Tribunal was when the Respondent could have been reasonably expected to know that the Claimant was likely to be placed at a substantial disadvantage by its PCPs.

302. ATW wrote to the Respondent on 22 April to inform them of the adjustments that the Claimant needed to alleviate the substantial disadvantage she suffered in relation to the requirements to write and type; and that she needed special seating. Although Mrs Tincknell had seen enough of the report at the end of March to know that the Claimant had a disabling condition, she did not know what aspects of the Claimant's job put her at a substantial disadvantage until she received the letter from ATW.

303. Before March 2015 it is our judgment that there was nothing from which the Respondent could conclude that the Claimant's job or the duties she needed to perform were putting her at a substantial disadvantage. The Claimant never said that to the Respondent and there was nothing we found that would give that indication. When the Claimant's GP - Dr Romete – was asked to prepare a report on her

condition, she was given a copy of the Claimant's job description. Mrs Tincknell gave her a full description of the job and set out the Respondent's concerns. In our judgment, the report she produced was therefore from an informed position. She was also a qualified occupational health doctor. It was reasonable for the Respondent to rely on her assessment. In her report dated 27 July her only recommendation was that the Claimant and Respondent work together to plan the Claimant's work activities to avoid triggering a flare-up of her condition. She confirmed that the Claimant could continue to travel for her work and that she would continue to take medication. She did not recommend any further adjustments. She also confirmed that the Claimant's condition was a physical one and did not have a mental health component. As this was the only medical report the Claimant had ever given to the Respondent it was reasonable for it to rely in this report in its understanding of the Claimant's condition.

304. In our judgment before April 2015 there was nothing from which the Respondent could have concluded that any aspects of her job were putting the Claimant at a substantial disadvantage.

Discrimination arising from disability

305. We set out in the submissions and law section above what the Claimant relied on as the 'something arising' in consequence of her disability.

306. It is our judgment that we did not have evidence of the Claimant being chastised by Mrs Tincknell or anyone else. She was asked to continue to perform the duties of her job. Her GP had said that she could do her job without further adjustments. The Respondent were entitled to ask her to continue to perform her job duties. We did not have evidence that Mrs Tincknell criticised or chastised the Claimant either verbally or in writing. The evidence showed that she was a patient manager who worked well with the Claimant. She did all she could to support her and to ensure that the Respondent gave the Claimant the aids she needed to do her job.

307. There was nothing in the ATW report or in Dr Romete's report that stated that the Claimant could not work office hours. There was nothing in those reports that stated that the Claimant could not use Salesforce, email or text messages or attend meetings with her managers.

308. The Respondent tried to work with the Claimant to ensure that her work was well paced to avoid her triggering a flare-up but the Claimant failed to cooperate with those efforts. At the meeting in August the Claimant asked for 48 hours notice of any deadlines for completion of work and that was agreed.

309. The Respondent did not have notice that that the Claimant could not use emails or Salesforce or could not attend meetings. The Claimant's failure to do those things did not arise in consequence of her disability. Neither DR Romete nor ATW referred to those duties and the need to adjust her requirement to do them as part of the Respondent's duties to her.

310. The Claimant was disciplined for her failure to use the Respondent's processes and procedures as she had done earlier in her employment. She had always entered details on SalesForce and sometimes she did this late. We found that this was always

dealt with in good humour by her managers. She had been allowed to enter details of her whereabouts in the online diary and manage her schedule. However, she entered leave on a day after she had been asked to attend a meeting on the same day. This was seen as a deliberate attempt to avoid having to attend that meeting. That did not happen as a result of her disability. We had no evidence that it did.

311. In our judgment, the Claimant was not disciplined because she was unable to use normal administrative processes because of her disability. The Claimant decided not to attend meetings and failed to complete administrative tasks. She also failed to return the Respondent's laptop which had been given to her for work purposes. Those were the reasons for the disciplinary action taken against her which resulted in her dismissal.

312. We had no evidence that the Claimant was chastised at all and not in relation to her failure to work regular office hours. The Claimant worked from home, managed her schedule and her time. The Claimant was not disciplined for failing to work regular hours.

313. We had no evidence that any of the disciplinary allegations that she faced happened because of her disability. She did not provide the Respondent with evidence to that effect when Mrs Tincknell considered those allegations at the disciplinary hearing.

314. In our judgment, the Claimant's complaint of discrimination because of something arising in consequence of her disability fails and is dismissed.

Failure to make reasonable adjustments

315. In our judgment, the Respondent were not under a duty to make reasonable adjustments before March 2015 when it became aware that the Claimant was a disabled person.

316. The Claimant relies on the following six PCP's. The requirement to attend meetings, the requirement to attend the Romsey offices fortnightly, the requirement to use Salesforce, the requirement to stand at fundraising events; the requirement to comply with the deadlines in the Respondent's expense policy and lastly, the policy applied by the Respondent for dealing with incoming post.

317. In relation to the practice of standing at fundraising events, we had no evidence that this was applied to her after March 2015. We did not hear about any fundraising events that the Claimant attended after that date. However, it is likely that had there been a fundraising event the Claimant may have been asked to stand for part of the time she attended.

318. It is our judgment that the Claimant was required to attend meetings with the Respondent between March 2015 and the termination of her employment. That was not a requirement that was only applied to the Claimant. It is likely that all employees would be required to attend meetings with their line manager or to attend disciplinary meetings, where applicable. The Claimant raised an issue about the Respondent's handling of data. That resulted in the Respondent setting up an investigation. It was

appropriate that she be required to attend a meeting as part of that investigation and it is likely that if another employee had made such a disclosure, they would also have been invited to a meeting to clarify and discuss it. It is therefore our judgment that those were PCP's applied to the Respondent's staff, including the Claimant.

319. It is also our judgment that all members of staff were expected to complete Salesforce and the online diary, where that was different. Those members of staff who did not work in the Romsey office, were also expected to attend the office when requested. We did not have evidence of how many times a month the Claimant was expected to attend the Romsey office but she was expected to do so when asked. All staff were required to comply with the deadlines in relation to the expense policy and the Respondent would have requested further information on any expenses claimed if it wanted further clarification of it.

320. It is our judgment that these PCPs were applied to the Claimant and the other employees.

321. In relation to the Respondent's policy on correspondence, it is our judgment that there were no letters addressed to the Respondent that contained confidential matters about the Claimant. She did not refer us to any such correspondence. The Respondent had a system for incoming mail that meant that one person opened the mail and distributed it around the office. However, we did not hear how that system would deal with letters marked 'Private and Confidential' or if they were addressed to the Claimant personally. It is likely that letters addressed in that way would be delivered to Mrs Tincknell unopened. We did not have evidence that they would be opened. It is unlikely that the Respondent's policy on the opening of mail in the office meant that confidential or sensitive private material would have been opened and/or read by other employees.

322. The Claimant wrote to the Respondent by email. The issue of how post was dealt with in the office was not something that the Claimant took up with the Respondent during her employment.

323. It is our judgment that the Respondent did have a practice around the opening of post that was applied to the Claimant and its other employees.

324. The Tribunal considered whether the application of these PCPs to the Claimant put her at a substantial disadvantage compared to the Respondent's non-disabled employees.

325. In our judgment, the requirement to attend meetings did not put the Claimant at a substantial disadvantage. The Claimant did not inform the Respondent that she could not attend meetings because of her disability.

326. When she refused to attend the meeting on 23 October she indicated that she did not want to meet with the Respondent but only with its legal advisers. She made no mention of her disability.

327. Earlier in the disciplinary process when she refused to meet with Mrs Tincknell she made no mention of her disability. She refused to attend the disciplinary and other meetings with her because she did not agree that Ms Tincknell was the appropriate person to chair the meeting and not because of anything to do with her disability.

328. The only meeting the Claimant ever asked to be rearranged was the appeal meeting. She asked for the appeal meeting to start at 4pm but the Respondent reasonably concluded that it was unlikely that it would conclude that day if it started so late. In addition, such a late start would be inconvenient for the panel members since they did not live in London. Mr Lassen offered her a start of 1.30pm which would have enabled the whole appeal to be completed that afternoon. Also, other arrangements were put in place which should have reassured her of a fair hearing. HR would be present, the meeting would be recorded and she could attend and make her own recording.

329. The Respondent arranged the Claimant's meetings near her home in London to assist her with attending them. They rented rooms for that specific purpose. That was a reasonable adjustment. The Claimant was entitled to have her public interest disclosure properly investigated by the Respondent and to be given an opportunity to have some input into that process. It was not a disadvantage to her to be invited to do so.

330. As an employee, the Claimant had a right to be given an opportunity to take part in her disciplinary process. She had a right to be invited to meetings to discuss the allegations against her and to be able to comment on them and defend herself. The Respondent followed its practices and procedures when it required her to attend formal meetings in her disciplinary process and in relation to the whistleblowing investigation.

331. In our judgment, requiring her to attend those meetings at a venue that she could get to in London did not put her at a substantial disadvantage.

332. The Claimant never suggested that she needed to be accompanied to meetings and ATW and Dr Romete did not say so either. The Claimant did not ask for her meetings to be conducted by telephone or video link. These were not adjustments that the Respondent refused to make as they were never requested.

333. It is also our judgment that the requirements that the Claimant use Salesforce, complete her expenses claims, or complete the online diary did not put her at a substantial disadvantage because of her disability in comparison with non-disabled employees. There was no evidence that the Claimant had difficulty doing these things because of her disability.

334. The ATW report and Dr Romete's report did not indicate that any adjustments were required to those requirements. The Claimant did not complete administrative tasks on time before the Respondent became aware of her disability and subsequently. After the Respondent was advised by Dr Romete to work with the Claimant to plan her work activities to ensure she continued to do her job and avoid triggering flare-ups; it was concerned to do so. In our judgment, any queries the Respondent made about the Claimant's reports, entries on Salesforce, diary entries or about her workload –

were part of its efforts to support her to get her work done and manage her time effectively so that she did not have a flare-up and worsen her condition.

335. It is our judgment that the requirements to complete Salesforce, complete the online diary and return expense claims did not put the Claimant at a substantial disadvantage.

336. It is also our judgment that since we had no evidence that the Claimant was asked to stand at a fundraising event after March 2015 or that any confidential post ever came in about or for her after that date; she was not subjected to a substantial disadvantage in relation to those two PCP's in comparison to non-disabled people.

337. It is therefore our judgment that the Respondent was not under a duty to make reasonable adjustments because of the application of these PCPs to the Claimant.

338. The Claimant referred to her complaint that the Respondent should have provided disability awareness training as a reasonable adjustment. We were not told what substantial disadvantage this would alleviate. In our judgment, there was no evidence that the Claimant had suffered because of the ignorance of her managers about disability. The Respondent engaged professional advice from Ms Telfer soon after it became aware of the Claimant's disability. The Respondent followed the advice of ATW and Dr Romete.

339. Disability training or disability awareness training is not something that would have alleviated any substantial disadvantage suffered by the Claimant compared to a non-disabled comparator.

340. Nevertheless, it is our judgment that the Respondent made some reasonable adjustments to some of the above PCP's. It arranged meetings in London near to the Claimant to assist her. It did rearrange some meetings when she requested that it do so but in relation to the formal disciplinary meetings, the Respondent did not do so as the Claimant's reasons for not attending were nothing to do with her disability but because she did not agree with the process being followed.

341. In those circumstances, it is our judgment that the duty to make reasonable adjustments did not arise in relation to the PCPs referred to by the Claimant. The Respondent did not fail to comply with a duty to make reasonable adjustments. This part of the Claimant's claim fails.

Indirect discrimination

342. Under this heading the Claimant's complaint was that the Respondent's PCP of sending post to employees without warning would put people with Ehlers Danlos syndrome at a substantial disadvantage.

343. The Claimant submitted that she would be at a particular disadvantage as she could not pick up post off the floor which meant that she could not read her mail and missed invitations to meetings.

344. In our judgment, the Respondent did have a PCP that letters were sent to employees by post. However, we did not have evidence that people with the Claimant's condition -Ehlers-Danlos syndrome – would be put at a substantial disadvantage by this PCP.

345. It is our judgment the Claimant received and responded to all mail sent to her.

346. In a letter to one of the Trustees at his home address she stated that she would like to be sent a text message beforehand so that she could ensure that she was at the door to receive mail as she could not run down the stairs because of her bad knees. She repeated this request in another letter to the Respondent. Shortly after that she refused to communicate at all with it -whether by post, email or phone, which was likely to have more to do with the increasingly fraught communications between the parties than with the Claimant's disability. The Respondent complied with the request to notify her by text whenever a letter was sent to her. We have set out in the findings of fact some of the times when this was done. The Claimant never said that she could not pick up the post from the floor. Earlier in August, in the meeting with Ms Tincknell and Ms Telfer, the Claimant stated that she would put post to the side and read it at her leisure. There was no medical report or advice to the Respondent which stated that the Claimant's condition left her unable to pick up post from the floor and the Respondent had no information that this was a feature of Ehlers-Danlos syndrome.

347. In our judgment, there was no evidence that the application of the PCP of sending post to the Claimant without warning put the Claimant and others with Ehlers Danlos syndrome at a particular disadvantage or that it put the Claimant at that disadvantage.

Harassment

348. The Tribunal will now set out each of the acts that the Claimant claims had the effect of creating an intimidating, humiliating and hostile environment for her and set out our judgment.

349. The Claimant complained that Jacqueline Bassett manipulated her time sheets by not recording sick leave days and falsely recording time off that the Claimant had not taken. We did not hear from Ms Bassett in evidence. The Claimant did not take us to time sheets to show us any evidence of manipulation. We did not see emails or letters from the Claimant to Ms Bassett or to anyone in management complaining that her time sheets had been manipulated by Ms Bassett. We had no evidence that Ms Bassett had manipulated the Claimant's time sheets.

350. It is our judgment that Ms Bassett did not harass the Claimant by manipulating her time sheets.

351. The Claimant complained that Ms Bassett singled her out in respect of routine expense items and refused expense claims relating to breakfast which did not violate the Respondent's expense policy.

352. The evidence was that Ms Bassett raised legitimate queries about the Claimant's expenses claims. The Claimant did not refer to any other employee who also claimed for breakfast which means that Ms Bassett query about such a claim would not have been singling her out. As the Claimant was not a night worker and there had been no recommendation of an adjustment to her working hours so that she could work nights, it was reasonable for the Respondent's financial officer to query why an employee was submitting a claim for breakfast. Once the query was dealt with, the expenses were all paid.

353. There was no evidence that Ms Bassett made her queries about the Claimant's expense claims in a way that caused her embarrassment or humiliated her.

354. It is our judgment that Ms Bassett was simply doing her job in relation to both complaints. Her actions did not have the purpose of violating the Claimant's dignity or creating a hostile, intimidating, degrading, humiliating or offensive environment for her.

355. We considered whether it could have that effect. In our judgment as the Finance Officer, Ms Bassett's actions were well within her remit. The Respondent is a charity and as such has to be careful with its finances. Ms Bassett was simply doing her job. It is our judgment that her actions in relation to these two complaints did not have the effect of violating the Claimant's dignity or creating a hostile, intimidating, degrading, humiliating or offensive environment for her.

356. The Claimant complains that Mrs Tincknell did not bring to her attention that other employees had noticed that she was not herself.

357. It is not clear to this Tribunal how this can be an act of harassment. As Mrs Tincknell was not medically trained she would have been unable to advise the Claimant on her health and it is likely that the Claimant would have objected had she said anything to her about it. Mrs Tincknell did ask the Claimant whether she was well and the Claimant told her that she was fit and healthy. She did ask after the Claimant's health after the incident in Boots and after the interview setting where her behaviour caused her some concern.

358. In our judgment, Mrs Tincknell's conduct on those occasions did not have the purpose nor could it have had the effect of violating the Claimant's dignity or creating a hostile, intimidating, degrading, humiliating or offensive environment for her.

359. The next three acts that the Claimant complains about all relate to Mrs Tincknell's actions in relation to the Claimant's work. They are that she failed to highlight to the Claimant that the Major Donor Department was underperforming, that she failed to give her the figures she needs to complete her fundraising work and that she altered the contents of emails before forwarding them on.

360. The Claimant did not question Ms Tincknell in the Hearing about her alleged failure to give her details of the underperformance of her department. We heard no evidence about this.

361. The Claimant also did not question Mrs Tincknell in the Hearing about the allegation that she failed to provide her with the financial figures that she needed to do her job.

362. There was evidence of Mrs Tincknell asking the Claimant if there was anything else she needed in order to complete tasks. It is unlikely that she would not have given the Claimant the figures to complete a task if she needed them and was entitled to see them.

363. Ms Tincknell's evidence was that she occasionally corrected the Claimant's grammar in her emails before passing them on. If that were the case it would be reasonable for her to do so. There was no allegation that Mrs Tincknell pointed out the Claimant's incorrect grammar in a way that would have caused the Claimant some embarrassment. Silently correcting the grammar in some of her work before passing it on to major donors or the Board was not, in our judgment, an act of violating her dignity or creating hostile, humiliating, degrading, intimidating or offensive environment for the Claimant.

364. The Claimant's complaint of harassment against the Respondent fails and is dismissed.

Victimisation

365. It is this Tribunal's judgment that the letter dated 16 September 2015 did constitute a protected act. In that letter the Claimant made allegations of disability discrimination and a failure to make reasonable adjustments.

366. The Claimant also alleged that she had suffered discrimination because she made protected disclosures. A protected disclosure under the Employment Rights Act is not a protected act under the Equality Act 2010.

367. The Claimant alleged that she had been victimised by the following:

368. She alleged that the Respondent had excluded her written statements and evidence in the initial disciplinary proceedings and in the appeal. She also alleged that the Respondent had withheld investigation meeting minutes and notes and other evidence related to her disciplinary investigation until after her dismissal and appeal.

369. In our judgment, the Claimant wrote many letters to the Respondent, to individual Trustees at their home addresses and to Mrs Tincknell.

370. It is also our judgment that all her written representations and responses were considered. In her disciplinary decision letter, Mrs Tincknell went through all the evidence before reaching a conclusion on each of the disciplinary allegations that the Claimant faced. Following the disciplinary hearing the Claimant did send some written material to Mr Kwiatkowski and Mr Starkey around the 10/12 November. However, as she had addressed it as 'for Board members eyes only' and had accused them of inappropriately passing documents to Mrs Tincknell in the past; they did not pass those documents on to Ms Tincknell. In our judgment, the fact that they did not pass on

those documents had nothing to do with the fact that the Claimant had done a protected act. Furthermore, the disciplinary meeting had already taken place.

371. In our judgment, the Claimant was given full details of the case against her prior to the disciplinary hearing. The Claimant had been invited to take part in the investigation part of the process. On 7 October when Mr Starkey wrote to her to invite her to the investigation meeting she was given full details of the allegations against her. The Respondent also informed her of the adjustments that would be put in place to support her to be able to participate fully in the process. The Claimant refused to attend the meetings but was fully aware of the detail of the allegations against her from the correspondence she received from Mr Starkey and Mrs Tincknell. Once Mrs Tincknell made her decision she wrote a detailed letter to the Claimant setting out her explanations - in relation to each allegation.

372. It is our judgment that although the Claimant did do a protected act she was not victimised because of it. This complaint fails.

373. It is our judgment that the burden of proof did not shift to the Respondent in relation to any of the Claimant's discrimination complaints as the Claimant failed to make a prima facie case that her disability was the sole or part of the cause of the treatment complained of.

The complaint that the Claimant suffered detriment because she made public interest disclosures

374. The first question for the Tribunal is whether the Claimant made protected disclosures.

375. The Claimant alleged that she made many disclosures. The alleged protected disclosures were as follows: She told the Respondent that highly sensitive data in Salesforce was not confidential. In the meeting of 18 August, she told the Respondent that the IT asset disposal had been inadequate as she had been given a laptop with a former employee's highly sensitive files and emails on it; she alleged that Mrs Tincknell's husband had access to her work laptop and the Respondent's IT server. She alleged that every employee had the same password and that Ms Bassett had logged into her email account without her permission. Later, she alleged that Ms Telfer had access to her HR files before she was an official contractor to the Respondent. On 1 October, she informed the Board of Trustees that Mr Starkey and Mr Kwiatkowski had shared the content of her allegations of discrimination, harassment and victimisation with Mrs Tincknell. Lastly, in November she informed the Board that Mr Drummond had sent highly sensitive emails from his P & G Wells email address.

376. As set out in the discussion on the law above, in order for these to be qualifying disclosures the Claimant has to do two things: firstly – she has to establish that there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on; and secondly – she has to show that the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (*Boulding*). Each disclosure needs to be providing information rather than making an allegation.

377. Even if the Tribunal considered that they all amounted to the provision of information rather than allegations, the Tribunal still had to consider whether the information contained in each disclosure, in the Claimant's reasonable belief tended to show that the Respondent was failing to was likely to fail to comply with any legal obligation to which it was subject.

378. The Claimant cannot simply use the phrase 'data protection' to identify the legal obligation she relies on. The Claimant failed to identify the legal obligation that she claims the Respondent was subject to which it failed, was likely to fail, or was failing to comply with.

379. By the time of the Hearing the Claimant had still not identified the legal obligation/s she reasonably believed that the Respondent was subject to that it was failing to comply with or was likely to fail to comply with in relation to each of the allegations she made.

380. In her submissions, the Claimant stated that the data policy and practices followed by the staff, executive and Trustees were not compliant. But compliant with what? What legal obligation does this refer to? Although the Claimant does not have to identify a specific provision it is necessary for her to identify what legal obligation she reasonably believes the Respondent has failed or was likely to fail to comply with.

381. As she has failed to identify a legal obligation the Tribunal cannot go on to consider whether the information tends to show that a person has failed, is failing or is likely to fail to comply with it.

382. In our judgment, the information the Claimant provided to the Respondent did not disclose any obvious breaches. For instance, as the Claimant never returned the Respondent's laptop it is not known what data was on it and whether they could be accurately described as 'highly sensitive files and emails'.

383. It is not necessary for the information provided to be true. However, the accuracy of the information is relevant to whether the Claimant had the necessary reasonable belief. In our judgment, it was not true that Mrs Tincknell's husband accessed her work laptop and the Respondent's IT server, or that every employee had the same password or that Ms Telfer had access to her HR file before she was an official contractor for the Respondent. It was therefore not possible for the Claimant to have a reasonable belief that the Respondent was failing or likely to fail to comply with any legal obligation in relation to those matters.

384. The Tribunal also considered whether any of the disclosures were in the public interest.

385. In our judgment, this was a small charity. Although it retained the names and contact details of its donors none of the Claimant's disclosures related to how that data was secured. The Claimant's disclosures related instead to the Respondent's internal systems or were personal to the Claimant. It is our judgment that the Claimant could not have had any reasonable belief that these disclosures were in the public interest.

386. It is this Tribunal's judgment that the Claimant did not make any protected public interest disclosures as she failed to identify a legal obligation to which the Respondent is subject and the disclosures she made were not in the public interest. The disclosures she made would need to meet both those tests before they could be considered protected public interest disclosures.

387. It is also this Tribunal's judgment that the Claimant did not suffer any detriment because of making disclosures. The Claimant alleged that she was singled out, chastised, disciplined and dismissed in consequence of her disclosures. She also complains that her pay was withheld because of her disclosures and that it was because of her disclosures that the Respondent attempted to isolate her from work and her social networks and to remove her from having contact with Trustees and stakeholders.

388. In our judgment, the Claimant was not chastised or disciplined because of her disclosures. The Respondent took seriously the Claimant's concerns about data protection even though she had not identified a specific legal obligation that it had breached or was likely to fail to comply with it. There was a full investigation and report on the matter. They engaged a consultant, hired meeting rooms and dedicated Trustee time to it. The Respondent looked into her complaints and the information she provided to see whether any of its procedures needed to be tightened.

389. The issue of the Claimant's pay was not affected by her disclosures. We had no evidence that it had and it was never put to the Respondent's witnesses that the decision not to pay her in October 2015 was related to her disclosures in July, August and September 2015. Although the disclosures were made in July, August and September, the Claimant was paid at the end of those months. It is not plausible that the Respondent would then choose not to pay her for 11 days in October as a consequence of disclosures made some months earlier.

390. In our judgment, the Claimant did not make protected public interest disclosures. The Claimant's complaint of detriment as a consequence of public interest disclosures fails.

Unfair Dismissal – Automatic and under section 98 Employment Rights Act 1996

391. The Claimant alleged a number of reasons for her dismissal. She alleged that she was dismissed because she made qualifying disclosures, as an act of victimisation and because of her disability. In the Hearing, the Claimant did not challenge Mrs Tincknell on whether or not her reasons for dismissing her were genuine. In her written submissions the Claimant stated that there are plenty of mitigating circumstances regarding gross misconduct. This could be considered an acceptance of the Respondent's case that her conduct warranted disciplinary proceedings.

392. The burden of proving the reason for dismissal is on the Respondent. It is our judgment that at the end of his investigation Mr Starkey considered the allegations against the Claimant serious enough to warrant disciplinary action. Mrs Tincknell also considered each of the allegations against the Claimant in detail. We did not find evidence that the Claimant's disclosures, her disability or her protected act were

considered in the disciplinary process. In our judgment, the Respondent has proved that the Claimant's conduct was the reason for her dismissal.

393. Was it fair and reasonable to dismiss her in the circumstances?

394. It is our judgment that the Claimant committed the acts of misconduct for which she was disciplined. She did not dispute this at the Hearing. Instead she sought to explain why they occurred or that in addressing her misconduct the Respondent should have been lenient towards her because of her disability or otherwise.

395. The Claimant had clear instructions on a number of occasions to return the Respondent's laptop but resolutely failed to do so, even after she was told that a continued failure to do so would be considered a disciplinary offence. The Claimant repeatedly failed to attend formal meetings with management without an adequate explanation and sometimes failed to give reasonable notice of non-attendance. Those are outlined in the findings of fact above. The Claimant insisted on contacting Board Members at home and in the early hours of the morning despite being told that she should not do so. At the same time, she refused to communicate with Mr Drummond and Mrs Tincknell when she had been advised to do so.

396. Although the Claimant made allegations against Mrs Tincknell, she did not take out a grievance and she never gave the Respondent details of her complaints. In those circumstances, it is our judgment that it was appropriate for her to continue to be line managed by Mrs Tincknell and for her to conduct the disciplinary meeting and make the decision on the appropriate sanction to impose on the Claimant.

397. It is our judgment that the Respondent was patient with the Respondent. She was not disciplined or dismissed in haste. There were repeated requests and then instructions to return the laptop. This was equipment that had been given to her to perform her duties but always remained the Respondent's property. She refused to do so and at the date of the Hearing had still not returned it to the Respondent. The Claimant had been instructed not to contact colleagues and Trustees at unsociable hours yet she continued to do so. She wrote letters to Trustees at their private home addresses and at their work addresses. The Claimant acted in direct contravention of explicit instructions from the Respondent.

398. The Claimant failed to perform her duties, failed to complete the Respondent's administrative tasks, failed to attend the disciplinary investigation meeting and took unauthorised absence. In our judgment, there was no evidence that these failures were related to her disability.

399. It is this Tribunal's judgment that the Claimant had every opportunity to attend the investigation and disciplinary meetings and the Respondent made reasonable adjustments to those to enable her to attend and participate fully in them. It was not appropriate to conduct the disciplinary process by video link or conference call but the Respondent was prepared to make other adjustments to the process to enable her to participate such as recording meetings

400. It is this Tribunal's judgment that the Claimant had all the information about the allegations against her and was able to address those prior to the disciplinary hearing.

The Claimant was given the minutes of the meeting and a detailed letter setting out Mrs Tincknell's decision and her reasons for it. The Claimant was fully informed of the process and had ample opportunity to take part in it and to put her case forward in response to the allegations. She also understood the allegations.

401. In considering whether the decision to dismiss her was fair in all the circumstances, it is this Tribunal's judgment that the Claimant performed an important role in a small charity. The Respondent employed only 7 employees who all worked part-time. It therefore had limited resources and depended heavily on the unpaid time of its volunteer board of Trustees. The Respondent needed the Claimant to perform her role. She effectively refused to do so from September by refusing to use email or SalesForce or make herself available for meetings with Mrs Tincknell as she had previously done. The Respondent were not given a medical reason for this. The Claimant did not give a medical reason related to her disability for this at the Hearing either.

402. The Respondent tried to work with her as advised by her GP to ensure that her work was managed so that a flare-up in her condition was not triggered. The Claimant met its attempts with hostility and wrote several letters to Trustees and colleagues threatening legal action. The most significant of those was the letter dated 16 September 2015.

403. Mr Starkey and later, Mrs Tincknell considered all these matters carefully as part of the disciplinary process. Mrs Tincknell also considered the Claimant's objections to her and Mrs Telfer taking part in the disciplinary process and concluded that the Claimant had failed to substantiate her allegations against them and that it was appropriate for them to continue. In our judgment, as the CEO of the organisation and the Claimant's line manager, it was appropriate and reasonable for her to chair the disciplinary meeting and for her to have Ms Telfer to assist her.

404. It is this Tribunal's judgment that taken together, the allegations against the Claimant were proven and could amount to gross misconduct. Mrs Tincknell did consider separately what would be the appropriate sanction to impose on the Claimant. It was her decision that, considering the threatening correspondence that the Claimant sent to Trustees and to colleagues she had seriously damaged her working relationships within the organisation. This was due to the Claimant's conduct. She had refused to complete basic administrative tasks which she had been doing before September or to attend meetings to discuss work.

405. In our judgment, it was fair and reasonable in all the circumstances to dismiss the Claimant for the matters of gross misconduct found against her at the disciplinary hearing.

Wrongful dismissal

406. The Claimant was summarily dismissed and was therefore not paid any money in lieu of notice.

407. An employer has the right to dismiss an employee summarily if they have committed a repudiatory breach of contract. In the case of *Neary v Dean of*

Westminster [1999] IRLR 288 the Court stated that to constitute gross misconduct the conduct in question “must so undermine the trust and confidence which is inherent in the particular contract of employment ...” that it can be terminated. That judgment was referred to in the subsequent case of *Adesokun v Sainsbury’s Supermarkets Ltd* [2017] IRLR 346 where the Court of Appeal added that in assessing such a complaint “the focus is on the damage to the relationship between the parties. Dishonesty and other deliberate actions which poison the relationship will obviously fall into the gross misconduct category but so in an appropriate case can an act of gross negligence.”

408. In this case the Respondent’s position was that the Claimant had breached the implied term of trust and confidence which is a necessary term in a contract of employment. Mrs Tincknell carefully considered what would be the appropriate sanction to impose on the Claimant.

409. In our judgment, she properly concluded that when taken collectively, the Claimant’s actions had irreparably destroyed all trust and confidence between her and the Respondent. She had threatened individual colleagues unnecessarily, so it would have been difficult for her to restore a positive working relationship with them. She had also written many letters directly to Trustees at their homes and places of work to threaten legal action or without good reason. In writing to Mr Kwiatkowski’s and Mr Starkey’s employers, she showed little regard as to how those letters could affect their employment. She had resolutely failed to follow management instructions and been repeatedly insubordinate. She had also threatened the Respondent with legal action even before any disciplinary action had been taken against her and effectively demanded money to not do so.

410. It is our judgment that the Claimant’s actions amounted to repudiatory breach of the implied term of trust and confidence in her employment contract and that it was appropriate for the Respondent to treat the contract as discharged. The Respondent was entitled to summarily dismiss the Claimant because of her conduct.

411. The complaint of summary dismissal fails and is dismissed.

Expenses

412. The Claimant referred to a claim for unpaid expenses in a letter to the Tribunal after the end of the Hearing. She wrote to us on 16 December which was the day we met in chambers to decide on her case.

413. During the Hearing the Claimant did not question Mrs Tincknell or any of the Respondent’s other witnesses about her claim for unpaid expenses. This was not a matter that she addressed at the Hearing or in her submissions. As this was a complaint of a failure to pay wages or of unlawful deductions, the Claimant has the burden of proving it. She did not provide us with evidence of unpaid expenses.

414. As far as we were aware, all travel expenses were paid.

415. The Claimant also claimed unpaid wages in relation to the period of 8 – 19 October 2015. It is our judgment that the Claimant was not paid wages for those 11 days. It is also our judgment that the Claimant was on unauthorised absence

between those dates. The Claimant stated at the end of September that she was taking a 'hiatus' from the Respondent. She had no authority to unilaterally take a break from her job. The Respondent had not received a sick certificate or any other information to say that the Claimant was indisposed or on holiday. The Claimant simply refused to tell them what was happening or to account for her whereabouts as it was reasonable for the Respondent to expect her to do. In those circumstances, the Claimant's time could not be accounted for and she was not entitled to be paid.

416. The Tribunal did not hear evidence on the Claimant's claim for outstanding holiday pay. The burden is on her to prove that the Respondent has failed to pay her holiday pay to which she was entitled. She failed to do so.

417. These claims fail and are dismissed.

418. The Claimant's complaints of direct disability discrimination, indirect disability discrimination, harassment, victimisation; detriment because of protected disclosures, unlawful deduction of wages and failure to pay holiday pay all fail and are hereby dismissed.

Employment Judge Jones

1 June 2017