RA

# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms N Johnson**

**Respondent:** **London Borough of Hackney**

**Heard at:** **East London Hearing Centre**

**On:** **3, 4, 5, 9, 10 & 11 October 2018,**
**21 & 22 November 2018; and**
**In chambers on 22 & 23 November 2018**

**Before:** **Employment Judge C Hyde**

**Members:** **Ms J Houzer**
**Mr D Ross**

**Representation:**

Claimant: In person, supported and then represented in part by Mr. A Owolade
Respondent: Ms C MacLaren, Counsel

# RESERVED JUDGMENT

**The unanimous judgment of the Employment Tribunal is that: -**

1 **The complaints of sex harassment and direct sex discrimination under the Equality Act 2010 were not well founded and were dismissed.**

2 **The complaints of race harassment and direct race discrimination under the Equality Act 2010 were not well founded and were dismissed.**

3 **The complaints of disability discrimination by way of failure to make reasonable adjustments; direct disability discrimination; and discrimination arising from a disability under the Equality Act 2010 were not well founded and were dismissed.**

**4 The complaints of victimisation under the Equality Act 2010 were not well founded and were dismissed.**

**5 The complaint alleging detriment by reason of Trade Union activities under section 146(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 were not well founded and were dismissed.**

# REASONS

1. The reasons are set out in writing because the judgment above was reserved. In accordance with the requirements of case law, the reasons are set out only to the extent that it is necessary to do so in order for the parties to understand why they have won or lost. Further in compliance with the overriding objective in the Employment Tribunals Rules of Procedure 2013, the reasons are set out only to the extent that it is proportionate to do so.

2. All findings of fact were reached on balance of probabilities.

***Preliminaries***

3. The Claimant presented two claims on 29 August 2017 (pp1-21) and 5 January 2018 (pp38–57) respectively. The Claimant alleged race discrimination, sex discrimination and disability discrimination under the Equality Act 2010 ("the 2010 Act") in both claims. In the first claim she also complained of having been subjected to detriment by reason of trade union activities under the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRA"). The Respondent submitted responses and grounds of resistance on 16 October 2017 and 4 April 2018 respectively (pp22-37 and pp58-70). They resisted all the complaints and the first response was accompanied by a request for further information about the claim.

4. The first preliminary hearing took place before Employment Judge Warren on 13 November 2017. An attempt was made to define the issues, but Employment Judge Warren was unable to complete the exercise and therefore listed the matter for a further preliminary hearing. This also took place before Employment Judge Warren on 8 January 2018. The issues were further defined and directions were made for a final hearing at the second preliminary hearing.

5. After the hearing was underway on day three (Thursday morning) in accordance with the timetable which had been agreed by the parties on the first day of the hearing and discussed with the Tribunal, the Tribunal adjourned for lunch. When the hearing resumed just after 2.00pm Mr Owolade made an application for there to be breaks every half hour. This was a request for an adjustment because of the Claimant's disability. The Tribunal granted this adjustment although it was not precisely clear what the basis of it was. Thereafter the Tribunal fairly meticulously reminded the Claimant and her representative of the half - hour time frame.

6. Further by agreement, the evidence from Mr Ben Gilhooly was interposed and taken on Friday 5 October 2018. He was not available to give evidence at any other time.

7. The issues about breaks for the Claimant had not been highlighted prior to the second day of the hearing and therefore the time allocated for the hearing had not taken that into account either.

***Introduction***

8. The Claimant commenced employment with the Respondent as a Customer Service Assistant ("CSA") in a call centre on 5 May 2014. The allegations straddled the whole period from the outset of the employment. She had several line managers in that period. From May 2014 her line manager was Mr Ben Gilhooly; then from November 2015 it was by Ms Janelle Sandiford, Senior Customer Advisor; and from August 2016 she was line managed by Ms Una Douglas, Customer Services team leader. From 18 April 2017 she was line managed by Ms Nicola Killeen, Real-Time team leader following the retirement of Ms Douglas. Ms Killeen remained the Claimant's line manager until the Claimant was suspended from work on full pay on 3 November 2017.

9. When the second claim form was presented on 5 January 2018, it was confirmed that the Claimant had not returned to work. Indeed, by the date of the final hearing, this remained the position. The Tribunal however was not charged with considering the disciplinary matters which the Claimant then faced.

***The issues***

10. At this Tribunal's direction, the List of Issues which emerged after the second closed preliminary hearing and further discussion at the beginning of the hearing in October 2018 was amended by counsel for the Respondent and agreed with the Claimant and her supporter, Mr Owolade, and sent to the Tribunal on the morning of the second day. It was marked [R6]. Even this list lacked detail such as the dates on which events were said to have occurred, despite the Tribunal having directed that the Claimant should add these. Further, some of the dates provided turned out to have been inaccurate.

11. The issues identified in [R6], the amended List of Issues remained the issues which the Claimant wished to pursue at the end of the hearing. The 8 page list included approximately 9 allegations of failure to make reasonable adjustments; 12 allegations of direct disability discrimination; 8 allegations of discrimination arising from disability; 7 factual allegations which were said to be both sex harassment and direct sex discrimination; 3 allegations which were said to be both direct race discrimination and race harassment; and 18 victimisation allegations; and 4 allegations which were said to be trade union detriment under Section 146 of the 1992 Act. There was some factual overlap and where appropriate where the facts on which the allegations are based are the same or closely related, these were dealt with together below in the reasons.

12. The relevant parts of [R6] have been cut and pasted into these Reasons as follows:

"***Amended List of Issues***

Numbers in square brackets represent paragraph numbers within the record of the PH of 8.1.18 at p28-87 of the bundle
Issues which clearly fall outside the primary time limit are highlighted. Those in respect of which the timing is unclear are in *italics.*

**Disability**

13. [8] R accepts that C has a physical or mental impairment (dyslexia and global learning disability) that has a long-term adverse effect on her ability to carry out normal day-to-day. Is that effect substantial?

**Provisions, Criteria and Practices**

14. [10] C relies upon the following alleged provisions, criteria and practices –

(1) [10.1] Requiring call centre staff to use multiple applications;

(2) [10.2] Not having back up applications or processes in place;

(3) [10.3] A 30 second gap between terminating one call and being required to take another and, on occasion, managers forcing calls through before the 30 seconds had elapsed;

*(4) [10.4] C being required to work on reception;*

(5) [10.5] Not affording C her full one hour administration time;

(6) [10.6] Not providing a specialist workplace assessment;

(7) [10.7] Not permitting companions to support staff during meetings with management;

(8) [10.8] Providing a poor online application form for the post of senior customer adviser; and

(9) [10.9] Requiring C to work in the Shoreditch Neighbourhood office.

**Failure to Make Reasonable Adjustments – s.20 and 21 EqA 2010**

15. [10] Do the following amount to reasonable adjustments –

(1) [10.1] Implementing fewer applications for dealing with contact from the public;

(2) [10.2] Putting in place a system of templates;

(3) [10.3] To remove or increase the set time gap between calls and not to force calls through;

*(4) [10.4] Not requiring C to work on reception;*

(5) [10.5] Permitting C to have her full hour administration time that is protected;

(6) [10.6] Carrying out a specialist workplace assessment at the start of C's employment;

(7) [10.7] Permitting C to have a companion to support her during meetings with management, if required by C;

(8) [10.8] Providing a better online application form and/or interviewing C regardless of the content of her application form; and

(9) [10.9] Permitting C to move to Robert House.

16. [11] Did R know (or could it reasonably have been expected to know) that C's alleged disability placed her at the disadvantage claimed?

**Direct Disability Discrimination – s.13 EqA 2010**

17. [12] Did R treat C less favourably by the following –

(1) [12.1] Ignoring C's need for an assessment of her reasonable adjustments from the start of her employment;

(2) [12.2] Ignoring OHS recommendations and instead implementing capability and sickness procedures;

(3) [12.3] Denying C training opportunities;

(4) [12.4] Providing C with fewer 121 meetings than her colleagues;

(5) [12.5] Individuals ridiculing C –

17.5.1. [12.5.1] In October 2016, Nicola Killeen shouting "why don't you contact IT and start writing by hand" and when asked what to do with it, replying "well, I don't know, Natasha";

17.5.2. [12.5.2] In December 2015, the head of Centralised Services, David Saxon saying to C "you are very slow, Natasha, why are you so slow?";

17.5.3. [12.5.3] In February 2016, Mr Saxon suggesting that C should clean the office in advance of assessors' attendance;

(6) [12.6] In August 2016, Ms Killeen referring to 'a very lazy, permanent CSA' who, it is claimed, could only be C;

(7) [12.7] In March 2016, Samantha Ramanthanagam saying she would name underperforming individuals even if they were disabled;

(8) [12.8] Ms Killeen subsequently sending emails that identified staff performance levels;

(9) [12.9] In December 2015, R denying C an interview for the position of senior customer adviser; and

(10) [12.10] Mr Saxon making negative comments about C during an assessment for the post of accreditation project officer.

18. [12] If so, was any such less favourable treatment because of C's alleged disability?

19. [13] C relies on a hypothetical comparator. In addition, in relation to 5c), C relies on Bryce Bacon as a comparator and, in relation to 5d), Charlene Sango, Marion St Jean and Bianca Hooper as comparators.

**Discrimination Arising from a Disability - s.15 EqA 2010**

20. [14] Do such of the acts and omissions listed in paragraphs 5 c) to j) as are found to have occurred amount to unfavourable treatment?

21. [15] If so, was such unfavourable treatment because of something arising in consequence of C's alleged disability?

22. [16] If so, can any such unfavourable treatment be justified as a proportionate means of achieving a legitimate aim? R relies on its need to manage the performance of its staff and maintain good discipline as legitimate aims it sought to achieve by its actions.

**Harassment on the Ground of Sex – s 26 EqA 2010**

23. [17] Did the following conduct take place –

(1) *[17.1] Mr Saxon making comments about C's appearance –*
*23.1.1. [17.1.1] In reference to her shoes, saying "are you going raving?";*
*23.1.2. [17.1.2] Saying "what is wrong with your hair? You should go to Pax"; and*
*23.1.3. [17.1.3] Sending an email to her saying that she is to be provided with a mirror;*
(2) [17.2] In February 2016, Mr Saxon suggesting that C should clean the office;
(3) [17.3] On 7.2.17, Sabrina da Silva describing women as 'hoverers' with reference to urine on toilet seats;
(4) [17.4] In March 2016, Bukkie Adjeymi commenting that if women couldn't find childcare then the job was not for them before clapping and Mr Saxon laughing in response; and
(5) [17.5] On 19.8.16, Ms Killeen referring to women's personal hygiene and repeating the reference in a subsequent bulletin.

24. [18] If so, was such conduct related to C's sex?

25. [18.1, 18.2, 19] If so, did any such conduct have the purpose and/or effect of violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C, having regard to her perception, other circumstances of the case and whether or not it is reasonable for such conduct to have that effect?

**Direct Sex Discrimination – s.13 EqA 2010**

*26. [20] C relies on the allegations set out in paragraph 11.*

27. [20] To the extent that any such conduct is found to have taken place, does it amount to less favourable treatment of C?

28. [20] If so, was any such less favourable treatment because of C's sex?

29. [20] C relies on a hypothetical comparator. In addition, in relation to paragraph 11b), C relies on Blake Young as a comparator.

**Harassment on the Ground of Race – s 26 EqA 2010**

30. [21] C is black British.

31. *[22, 22.1, 22.2] C relies on the allegations set out in paragraph 11a)* and on Mr Saxon, in August 2015, asking C if she was smoking marijuana.

32. To the extent that any such conduct is found to have taken place, was it related to C's race?

33. If so, did any such conduct have the purpose and/or effect of violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C, having regard to her perception, other circumstances of the case and whether or not it is reasonable for such conduct to have that effect?

**Direct Race Discrimination – s.13 EqA 2010**

34. *[24] C relies on the allegations set out in paragraph 11a)* and on Mr Saxon, in August 2015, asking C if she was smoking marijuana.

35. [24] To the extent that any such conduct is found to have taken place, does it amount to less favourable treatment of C?

36. [24] If so, was any such less favourable treatment because of C's race?

37. [25] C relies on a hypothetical comparator and, in relation to the 'marijuana' allegation, on Bianca.

**Victimisation – s.27 EqA 2010**

38. [26] R accepts that C's first grievance, dated 18.11.16 [26.5], a complaint, dated 30.1.17 [26.4], her first ET1 dated 5.9.17 and a further grievance, dated 25.9.17 amount to protected acts. Insofar as it is material, do the following also amount to protected acts –
    (1) [26.1] A written complaint said to have been sent by C to her then line manager, Ben Gilhooly, on 1.10.14 concerning a 'forced call';
    (2) [26.2] A complaint made by a temporary member of staff, Naiem Hussain, on 19.8.15, entitled "Team Complaint – Abuse of Power/Unfair Dismissal"; and
    (3) [26.3] A complaint made via C's trade union representative on 2.9.16.

39. It is acknowledged that the following acts or omissions occurred –

    (1) C was performance monitored from 29.8.17;

(2) On 5.9.17, C was asked to sign a return to work form that gave the reason for her absence as "stress due to family, work and union duties" and omitted the reason advanced by C herself, namely 'bullying and harassment';

(3) On 12.9.17, R did not uphold C's grievance in full (dismissing 6 out of 8 identified complaints) or the subsequent appeal on 5.1.18;

(4) On 2.10.17, the investigator, Colleen Schwarz, invited C to a disciplinary investigation meeting;

(5) On 5.10.17, the operations manager, Lindsey Matthews emailed C to criticise her having attended the Chief Executive's Road Show early in order to distribute leaflets and referred to her persistent lateness for work;

(6) On 17.10.17, C's then line manager, Nicola Killeen, warned C as to her conduct and alleged that she had made an open and inappropriate comment about her (Ms Killeen), to a customer;

(7) On 26.10.17, Ms Schwarz subjected C to a disciplinary investigation meeting;

(8) On 31.10.17, Ms Killeen asked C to attend 3 meetings concerning reasonable adjustments, IT performance issues and trade union activities;

(9) In late October 2017, Ms Killeen forced a call through to C; and

(10) On 1.11.17, R suspended C pending investigation of allegations of gross misconduct; and

(11) On 5.1.18, the interim divisional head of Tenancy and Leasehold Services, David Padfield, wrote to C to inform her that she would be subject to new disciplinary and grievance investigations.

40. In addition, did the following acts or omissions occur –

(1) [27.1] On 15.8.16, Ms Matthews and Mr Saxon deciding to transfer C;
(2) [27.2] Ms Matthews subjecting C to a tirade of abuse on 16.8.16;
(3) [27.3] R taking disciplinary action against C on 5 or 6.9.16;
(4) [27.4] R failing to provide details of the allegations within the disciplinary action;
(5) [27.5] R failing to answer C's grievances within a reasonable timeframe;
(6) R failing reasonably to investigate C's further grievances, dated 15.9.17, 25.9.17 and 3.11.17; and
(7) On 31.10.17, Ms Matthews attending a meeting between C and Ms Killeen and behaving in an intimidating fashion.

41. Do the acts and omissions listed in paragraph 27 and/or such of those listed in paragraph 28 as are found to have occurred amount to a detriment?

42. If so, was C subjected to that detriment because she had done a protected act?

**Trade Union Detriment - s.146 (1)b) TULCRA 1992**

43. [28] Was C subjected to the following detriments –

    (1) [29.1] Ms Matthews attempting to prevent C from putting up posters in Robert House and thereafter limiting C's time to do so to 5 minutes;
    (2) [29.2] On 17.8.17, refusing C permission to visit Robert House;
    (3) [29.3] On 14.8.17, the Interim divisional head of Tenancy and Leasehold Services David Padfield, imposing a ban on C going to Robert House at all; and
    (4) [29.4] Suggesting that C should not take the duties of a trade union representative if she was suffering from stress.

44. [28] If so, were any such detriments for the sole or main purpose of deterring her from taking part in the activities of an independent trade union at an appropriate time or penalising her for doing so?

**Time**

45. Which of the acts or omissions complained occurred within the 3 month time limit?
46. In respect of such acts or omissions which fall outside the time limit, can they be said to form part of a continuing act so as to bring them within the time limit?

47. To the extent that any acts or omissions fall outside the time limit, would it be just and equitable for the Tribunal to extend time?

**Remedy**

48. What remedy would it be just and equitable for C to be awarded?"

### *Evidence adduced*

49. On behalf of the Claimant, the Tribunal was provided with a witness statement marked [C1] and a document containing notes on the statement, which was marked [C2]. In addition, the disability impact statement the Claimant had produced earlier in the proceedings was in the bundle and the Tribunal took that into account.

50. The Claimant adduced a witness statement from Steven Edwards her trade union representative which was marked [C3]. The Claimant produced a further short witness statement which was unsigned and undated in the name of Bianca Hooper. Although the Tribunal read this statement in advance, in the event Ms Hooper did not attend. During the hearing on 9 October 2018, it was said on behalf of the Claimant that an article about the case had appeared in the Hackney Gazette and as a result of seeing it, Ms Hooper had indicated that she did not want the publicity that being a witness in the case might entail. The Tribunal informed the parties that there were no proper grounds on which the reporting of the issues that Ms Hooper might need to give evidence about could be restricted. As the Tribunal had read the unsigned statement, it is marked [C6] in these reasons.

51. On 9 October 2018 the Claimant produced additional documents which were admitted into evidence and contained in a bundle marked [C4]. This bundle consisted

of 17 pages.

52. The main hearing bundle, marked [R1], consisted of two lever arch files of documents running to in excess of 1000 pages. One issue which caused difficulty in dealing with this case was that there were many documents in the bundle which were only partial or were extracts for instance from a chain of emails.

53. The Respondent produced a list of issues at the commencement of the hearing [R2] but this was superseded by the list of issues referred to above [R6]. In addition, Ms MacLaren prepared a chronology, a cast list and a suggested reading list which were put before the Tribunal at the commencement of the hearing. These were marked respectively [R3], [R4] and [R5].

54. The witnesses who gave evidence on behalf of the Respondent were Mr Ben Gilhooly, Team Leader Neighbourhood Contact Centre; Ms Nicola Killeen, Real Time Team Leader, Housing Services, Neighbourhood & Housing Directorate; Mr David Padfield, Special Projects Director; Ms Lindsey Matthews, Operations Manager of the Respondent's Housing Contact Centre and who was the Claimant's second line manager for most of the material time; and Mr Faisal Pirbhai, Head of Resident Participation, Tenant Management Organisation and Communities and who dealt with the investigation into the Claimant's grievances from the autumn of 2016. He delivered the outcome of the grievance investigation in the following summer. The last witness for the Respondent was Mr Steven Swain, Senior Human Resources Partner. The witness statements for these witnesses were marked respectively [R7], [R8], [R9], [R10], [R11] and [R12].

***Closing Submissions***

55. The Respondent's written closing submissions were marked [R13]. They were dated 22 November 2018 and ran to some 22 pages. By agreement Ms MacLaren had the opportunity to supplement them orally. The Claimant's written closing submissions, prepared and presented on her behalf by Mr Owolade were set out in an 8-page document. He also had the opportunity to supplement these orally.

56. The hearing concluded at the end of November 2018 rather than in mid-October 2018 as originally scheduled, because the Tribunal granted a postponement at the request of the Claimant, on what would have been the last day of the hearing in October 2018. This postponement was granted due to the ill health of the Claimant. The Tribunal had made specific directions about the preparation of closing submissions, given the difficulties which there had been in terms of the way the case was being put forward on behalf of the Claimant up to that point. When the time arrived for the closing submissions to be presented towards the end of the resumed hearing on 21 November, Mr Owolade stated that he was not ready to submit closing submissions on behalf of the Claimant and would need to adjourn to the following day. The Tribunal was extremely disappointed by this application given the directions which had been made at the end of the previous session on 11 October 2018 and which had been set out in the Postponement Order which was sent to the parties on 19 October 2018. Despite this, the Tribunal granted the application on the basis that the Respondent's submissions were due first and could be taken on 21 November and the Tribunal would reconvene on the morning of 22 November in order to hear the closing submissions on

behalf of the Claimant.

***Findings of Fact, Consideration of Issues and Conclusions***

57. The first question to be addressed was whether the Claimant was a disabled person within the meaning of the 2010 Act. The Respondent accepted that the Claimant had the conditions that she relied on, namely, that she had a physical or mental impairment (dyslexia and global learning disability) at all material times. They also accepted that this impairment had a long-term adverse effect on her ability to carry out normal day-to-day activities.

58. The question for the Tribunal was whether that effect was substantial. This was disputed. The basis for the Respondent's challenge to this element of the disability test was set out in sections 2 and 3 of the Respondent's Counsel's closing submissions. The Respondent relied in part on the way in which the Claimant gave evidence contrasting her apparent confusion when challenged on difficult issues with what Ms MacLaren characterised as her "remarkably good" performance when recalling specific details of documents which she considered helpful to her case. The Tribunal noted this submission, but preferred not to base any findings on the issue of whether the Claimant was a disabled person on the way in which she gave evidence.

59. The Respondent also pointed to contemporaneous evidence about statistics of performance which showed that over the 6 months of her probation period and prior to any adjustments being made, the Claimant was taking the same number of calls per hour as other CSAs and that her performance was good (p995). This document set out the average calls per hour for the Claimant and for the whole of the team in the period from August 2014 to October 2017. Thus, the Tribunal had no information covering the first four months of the Claimant's employment. There were then returns in respect of the monthly figures for the first three months but then there were no figures for the period November 2014 to February 2015.

60. On the other hand, there was other evidence before the Tribunal (p199) which confirmed that by October 2014 the Claimant had been in discussion with her line manager, Mr Gilhooly, about difficulties she was experiencing in recording information between calls and completing emails. She also talked about having previously discussed with him "briefly" how she was to cope on a daily basis. The letter continued by referring to whether Mr Gilhooly would like her to contact Access to Work with regards to how her disability affected her as she did not want it to appear that she was not conforming to what was required of her and to be seen as a disruptive member of staff.

61. A further email from Mr Gilhooly dated 6 October 2014 (p202) summarised that a meeting had taken place between himself and the Claimant and that adjustments had been made (although not expressed as such) to the effect that a colleague would sit with the Claimant that week to try to understand exactly what part of the data entry was causing her most concerns; and that in the meantime, the Claimant would only enter relevant information on to the database; and that once the Claimant had highlighted 5 addresses on her call log, she would inform Ms Leona Henry or Mr Gilhooly, the team leader and she would be given time off the phone to complete her entries by referring to the notes she had already put on the database during the call.

62. He then continued: "*I then asked whether there was anything else you required from us, particularly in view of your dyslexia. You explained that in previous jobs you have been sent to Access to Work so that your work requirements would be assessed and you asked if we could do the same*". He indicated that he would try to take the necessary steps to initiate that intervention by Access to Work.

63. The other relevant contemporaneous evidence was the five-page probation assessment report which was predominantly completed by the Claimant (pp204-208) which covered the period from the start of the Claimant's employment on 5 May 2014 to the end of the period of 24 weeks on 21 October 2014. It is fair to say that the Claimant did not raise any issues which suggested that she believed she was not performing appropriately and she was rated as having progressed well (the top classification out of three) and that she had met all her targets at stage two. The Claimant also recorded on the probation assessment form (p206) that since the last probation meeting, the team had begun taking calls on behalf of other service areas, so it had proven difficult to complete the staff manual. There was no express reference to the Claimant having any difficulty coping due to her impairment.

64. Mr Gilhooly noted that he was satisfied with the Claimant's performance and the speed at which she had picked up additional reception work. He also recorded that he was happy with her progress (p207) and that whilst she had not had time to complete extra tasks that he had given her, this was largely due to an increase in calls to the team and not due to the Claimant.

65. It was not in dispute that by this stage there had not been an assessment by the Respondent of the Claimant's needs in relation to her impairment. The Tribunal also took into consideration that given that the Claimant was giving some indication of struggling with some of the tasks, albeit not to a noticeable degree and that there were adjustments put in place as early as October 2014, the Tribunal could not be confident that such difficulties that she was experiencing were not caused by her impairment. The Tribunal also noted that the Claimant had shown some disquiet at the time about being able to cope with the increased duties.

66. The Claimant was confirmed in her employment in December 2014 (p210). There was email correspondence available to the Tribunal (pp211-212) in which she asked about a DSE assessment in respect of the use of a chair. This was not relevant to the impairments relied on in this case.

67. The Tribunal took into account that the way in which the Claimant carried out her duties at work was only one element of what was required to establish if there was a substantial adverse effect on her.

68. There was no dispute that the Claimant identified in her starter form at the commencement of her employment (p112) that she considered that she had a disability and that she identified this as learning difficulties. Also in a "fitness for work" certificate dated 28 March 2014 she disclosed that she had dyslexia which is covered by the disability provisions of the Equality Act (p111). At the time that this disclosure was made, the Claimant was working part-time as an agency worker for the Respondent.

69. The Claimant filed a disability impact statement (pp91-94) which set out in detail the ways in which she asserted her impairments affected her ability to carry out normal day-to-day activities. It is neither proportionate nor necessary to repeat them here, as they were not directly challenged. In essence the Claimant contended that her conditions affected her ability to plan and organise daily tasks; and to multi-task. They also affected her ability to learn new processes, and to read and write. In respect of the last point, she described that her reading pace was very slow because it could take time to read written material and digest the information.

70. The Tribunal asked the Claimant about the factual background to an incident which she referred to in the letter to Mr Gilhooly dated 1 October 2014. The Claimant informed the Tribunal that her colleague Ms Leona Henry had made comments about the Claimant's spelling. This was further evidence which was consistent with the adverse effects described by her.

71. Returning to the statistics relied upon by the Respondent, as already referred to above, there were various gaps in relation to several of the months where data was not available. Thus, up to September 2015 when the Claimant started working on the accreditation project which entailed a completely different type of work and did not involve the pressured call centre work on which she was usually engaged, there were only returns in respect of five months from the start of her employment. The Tribunal did not consider this sufficient to paint a picture that the effect on the Claimant of her impairment was not sufficiently substantial to amount to a disability. The Tribunal accepted the Respondent's contention that on the Claimant's return to working on the phones after completing the accreditation program at the beginning of 2016, her performance showed a marked deterioration. The Respondent's contention that this deterioration was unaffected by the various adjustments put in place appeared to be correct in terms of these statistics which also during this period were not comprehensive. However, the Tribunal did not consider that was a reason to find that the effects on the Claimant of her condition were not substantial on her in the sense that is understood under the 2010 Act of being more than minor or trivial.

72. A section of the bundle contained evidence specific to the issue of whether the Claimant was a disabled person. It was apparent that the Claimant had been diagnosed in September 2006 in a report commissioned by the London Borough of Lambeth, as having a global learning disability (pp96-98). The psychologist who prepared the report and who assessed the Claimant, Ms McCormick found that the Claimant showed more strength in verbal ability than in other aspects of her ability. In respect of written language achievement her single word reading was just within an average range, but she showed difficulty with reading comprehension and her speed of reading was slow. It continued that her writing was neat and legible but slowly executed and it contained several spelling errors. She was found to have global learning disability and her reported difficulties in coordination also suggested that she may have some degree of dyspraxia – an impairment or immaturity in the organisation of movement. Among the many recommendations in that report, was that when verbal instructions were given these should be communicated slowly and one at a time.

73. The Claimant also produced and relied on a work place needs assessment completed by Catherine Kindersley and Associates, a dyslexia and assessment

consultancy, in July 2012 [pp99 and following]. This report concluded that Ms Johnson had difficulties across all the measures assessed and found that her difficulties were not the specific difficulties of dyslexia, but of a general learning disability. It found that she managed best when material had become very familiar, but would have difficulties with all tasks where the material was unfamiliar and unpractised, or where she was working under timed conditions. Her processing speed of language and information, was very slow and the Claimant's difficulties could also be seen in her literacy and numeracy skills. The report also identified issues with the Claimant's short term and working memory which were described as "very weak". Although there was reference to motor coordination, this did not appear to have had any impact that was recorded.

74. Against the background of the evidence put forward by the Claimant, the Tribunal considered that she had established that the effect of her conditions on her was more than trivial or minor and therefore met the test of being substantial.

75. The Tribunal addressed the issues broadly in chronological order although they were not set out in that way in the Amended List of Issues [R6].

*Issues 3(f) & 5(a)*

76. By Issue 3(f) Ms Johnson complained that the Respondent had failed to make reasonable adjustments by way of carrying out a specialist work place assessment at the start of her employment. During the hearing the Claimant clarified that this related to the initial period of her employment in about May 2014. She also complained as an act of direct disability discrimination that the Respondent had ignored her need for an assessment of reasonable adjustments for her from the start of her employment: Issue 5(a).

77. Given that the allegation in 3(f) was meant to relate to May 2014, the Tribunal considered that this was out of time. The Tribunal will deal below with the question of whether there was any reason to consider that this was part of a continuing act.

78. In relation to the failure to make reasonable adjustments about carrying out a specialist work place assessment at the start of Claimant's employment, the Claimant relied on a PCP of the Respondent not providing a specialist workplace assessment. However, put that way, that could not have amounted to a PCP. The Tribunal treated this as an assertion that there was a PCP that a specialist work place assessment was provided where required.

79. Lexxic provided a comprehensive report dated 6 June 2017 (pp127-145) for the Respondent. Prior to that, over a considerable period of time, since the time of the Claimant's probation, the Respondent had had discussions with her and taken measures to understand her needs. These included discussions at one-to-ones and return to work meetings and appraisals. The Respondent also commissioned three substantive Occupational Health service reports dated 21 August 2015, 31 October 2016 and 20 February 2017. The work place stress risk assessment was also commissioned on 17 December 2015 (pp363-370). Before the first Occupational Health service report was commissioned, the Claimant had declined the offers of such reports.

80. In the circumstances the Tribunal rejected the contention that the Respondent failed to provide a specialist work place assessment from the start of the Claimant's employment through to the Lexxic report on 6 June 2017.

81. Further, the contention that the Respondent had directly discriminated against the Claimant in this context on grounds of disability (issue 5(a)) was rejected. The evidence referred to above showed that the Respondent did not ignore the need for adjustments in the course of the Claimant's employment. The Claimant did not dispute that the Lexxic report was comprehensive. In any event, the Tribunal found that it was. The complaint from the Claimant thereafter was that the Respondent did not implement the proposals. However, it was also not in dispute that the report was not provided to the Respondent until the first week of September 2017 (p727).

82. Thereafter, a meeting took place between Ms Matthews and the Claimant to discuss the report on 21 September 2017 (pp732-736). Against the background of other investigations being conducted namely into the Claimant's grievances and a potential disciplinary issue at the beginning of October 2017, there was further discussion between the Claimant and her line manager at the time, Ms Killeen, about various matters to do with the way in which the recommendations in the Lexxic report would be implemented. The last of these meetings with Ms Killeen were between 16 and 20 October 2017. There were contemporaneous emails relating to this. In one (p749) from the Claimant to Ms Killeen dated 16 October 2017, she provided an update as to the progress being made in respect of the various recommended adjustments. It was the Respondent's case and the Tribunal accepted this on the evidence, that steps were being taken to implement the adjustments at an appropriate pace.

83. This was one area of evidence that was not well served by a full set of contemporaneous documents.

*Issues 5(d) and 8*

84. Also said to have started in the first period of the Claimant's employment when she was managed by Mr Gilhooly, were the allegations of direct disability discrimination and discrimination arising in issues 5(d) and 8. In these the Claimant complained that the Respondent held fewer one to one meetings than were afforded to her colleagues. As part of the list of issues the Claimant identified as comparators, Charlene Sango, Marian Saint-Jean and Bianca Hooper. These were set out in paragraph 7 of the List of Issues. However, there was no evidence put forward by the Claimant about the circumstances of these comparators and no questions were put about this to the Respondent's witnesses. On the other contrary, Mr Gilhooly whose evidence on this issue the Tribunal accepted on the balance of probabilities as it was not contradicted, was that there was no difference between the level of one to ones provided for the Claimant and those provided for any other members of staff.

85. In those circumstances, as the Claimant alleged that this was a complaint about treatment up to the time that her management was transferred to Ms Killeen in April 2017, this was also a matter which was out of time, and in respect of which, prima facie, the Tribunal had no jurisdiction. In any event, even if it had been part of a continuing act, the Tribunal considered the Claimant would not have been able to establish the primary facts which could lead to the drawing of an inference.

86. The Claimant also alleged that this amounted to discrimination arising from disability (issue 8). As the Claimant had failed to establish the discriminatory treatment complained of, this allegation also did not succeed. The Claimant had also failed to establish that the complaint was brought in time. Both allegations therefore were dismissed.

*Issue 5(c)*

87. In a similar vein (issue 5(c)), the Claimant complained as an act of direct disability discrimination that she had not been given training opportunities. At the end of the case when closing remarks were being made, the Claimant clarified that this was now a complaint only until April 2016 because she accepted that thereafter she had been given training. This meant that this complaint was also out of time by a considerable period of time.

88. The Claimant had relied in the list of the issues in paragraph 7 on Bryce Bacon as a comparator. There was however no evidence about his circumstances or his training even in the more limited period up to April 2016. There was no evidence from the Claimant as to what training opportunities had been sought during that period or what training was available which she had not been given the opportunity to take up.

89. This was also said to be discrimination arising from disability (issue 8). The Claimant had failed to establish the facts alleged to be discriminatory treatment. For the same reasons as the direct disability discrimination complaint failed, this allegation also failed.

*Issues 3(a) and (b)*

90. The Tribunal then considered the matters complained about in issues 3(a) and (b). These were alleged to be instances of failures to make reasonable adjustments. The first complained about the Respondent failing to implement fewer computer applications for dealing with contact with the public. This relied on the PCP at paragraph 2(a) of the List of Issues that the Respondent required call centre staff to use multiple applications. That PCP was admitted.

91. The issue for the Tribunal was whether it would have been reasonable to implement fewer applications as the Claimant argued. Both parties agreed that the use of a variety of applications was fundamental to the job of a Customer Service Assistant. The CSAs needed to answer telephone queries from the public which could cover a wide range of issues. There was not a single system for dealing with contact with the public. For the Respondent to have unified a variety of different complex applications into one system would have entailed a huge I.T project. Even if it had been technically possible, and there was no particular evidence to this effect, there was no way of knowing if such modifications would have proved easier for the Claimant to use.

92. In all the circumstances, the Tribunal found that it was not reasonable to have required the Respondent to make such an adjustment. However, also in relation to this complaint, this was a continuing act because the way of working continued until the end of the Claimant's employment. This also applied to Issue 3(b).

93. The next set of adjustments that the Claimant complained should reasonably have been taken was putting in place a system of templates (Issue 3(b)). The PCP which was relied upon was amended in the course of the Claimant's evidence further to be that the Respondent did not have back up applications or processes in place (as set out in [R6]). The Respondent accepted that this was the position. The explanation for this, which the Tribunal accepted, was that if a technical fault occurred with the computer system, staff were able to take notes by hand and/or invite callers to call back later.

94. The Respondent denied that this PCP put the Claimant or anyone with a disability at a disadvantage. The Tribunal agreed with that contention. It appeared that the large variety of calls received meant that there was no good reason to find that using a large bundle of paper templates would have been easier to manage than simply recording the basic information from the call by hand and/or inviting the caller to call back.

95. The Tribunal therefore rejected this complaint on the basis that the Claimant had not established an essential element namely that the adjustment argued for was likely to have alleviated the detrimental effect on her. The Tribunal was also not satisfied that the process used by the Respondent had a disadvantageous effect on the Claimant by reason of her disability, given that the call centre worker had the option of simply asking the caller to call back in the event of a technical breakdown.

*Issue 3(c)*

96. The next allegation (Issue 3(c)) was a complaint that the Respondent should have made the reasonable adjustment of removing or increasing the set time gap between calls and that they should have not forced calls through. The Claimant relied on a PCP (paragraph 2(c) of the list of issues) to the effect that a 30 second gap between terminating one call and being required to take another call existed, and that on some occasions managers forced calls through before the 30 seconds elapsed. The Respondent accepted the first part of this proposition but disputed that there was a PCP that managers forced calls through before the 30 seconds had elapsed. It was not disputed that this happened on the occasions referred to later in these reasons in the victimisation allegation involving Ms Killeen in late October 2017. However, it was denied that this was a routine event.

97. In this context the Tribunal noted that the Claimant only referred to two such occasions in her witness statement (paragraph 9) namely in October 2014 and June 2015. These occasions were not accepted by the Respondent. There was no corroboration from the Claimant as to when these incidents had occurred. There was some contemporaneous evidence of one episode in October 2014 involving Mr Gilhooly. That episode was substantially out of time.

98. Certainly, the Claimant described [p199] what was understood by everyone as an occasion when she contended that there had been a call forced through on 1 October 2014. This was an incident about which the Tribunal expressed some concern because the Tribunal only had available to it the first and fourth pages of an email chain. It was apparent on the first page that the Tribunal had an incomplete document.

The fourth page contained the Claimant's signature. Attached to this in the bundle was a single further page printing out a screenshot. However, this page was not numbered and it was extremely difficult to read. It was very blurred and was illegible. The Claimant's contention was that this was one of the missing pages from the email. The Tribunal did not consider the state of the evidence on this issue was satisfactory. We were therefore unable to determine the nature of the circumstances which had to led to the call being forced through. The Tribunal also noted that the words actually typed by the Claimant in this context were: "*I have just been forced closed from the system as I did have count down after the last call so this is what appeared I have printed the screen*". Subsequent contemporaneous correspondence with Mr Gilhooly did not refer to this issue.

99. In any event as stated above the Tribunal considered that this allegation was out of time.

100. There was also contemporaneous documentary evidence that at a return-to-work interview on 18 March 2015 the Claimant complained of stress but declined a referral to Occupational Health (p216). At the next return-to-work interview on 18 May 2015 the Claimant indicated to Mr Gilhooly that no adjustments were required (p224).

101. At an appraisal meeting on 3 June 2015 Mr Gilhooly agreed that the Claimant could have an additional 30 minutes of administration time (pp228-234). There were two further occasions on which the Claimant declined to be referred to Occupational Health. These were at return to work interviews on 11 July 2015 and 7 August 2015 respectively (p242, pp250-3). The Claimant was taken through a first stage sickness review meeting on 28 June 2015 after the relevant sickness absence had been triggered (p235).

*Issues 5(j) & 8*

102. The next matters complained about were in August 2015 and were said to have amounted to direct disability discrimination (Issue 5(j)) and discrimination arising from disability (Issue 8).

103. The Claimant had been referred to Occupational Health on 7 August 2015 at a return-to-work interview (p250). She applied for an accreditation project officer post in respect of which she was successful. The exact dates were unclear but certainly by 19 August 2015, the Claimant had been interviewed for the post (p255). The Tribunal was clear about this as the Claimant sent an email to Mr Gilhooly, which she sent at the same time to her private email address, to confirm a conversation she had had with Mr Gilhooly the previous morning in relation to the interview process. She was putting down a marker that she did not believe that the process had been entirely fair and that she believed that there had been a direct insult arising from her disability. She indicated she was not happy about parts of the process or about comments made by David Saxon who interviewed her, with regards to her grammar. The Claimant also expressed her dissatisfaction with regards to the working culture in the office which she believed Mr Gilhooly condoned and that he had not at any point exercised equality or disability awareness within the office.

104. The end of this document was not available, so we were unable to assess how

long the document was, and what the rest of the text in it was. It certainly did not conclude on the first page. The Claimant indicated that she wanted Mr Gilhooly to be aware of her concerns. It was also apparent from the text of the partial email in the bundle that the outcome of the interview had not yet been notified.

105. In the event the Claimant was successful and along with a male colleague, carried out work on the project for a number of months.

106. The Tribunal noted however that there was no reference to some of the matters about which the Claimant subsequently complained in respect of Mr Saxon. The first of these was in paragraph 5(j) of the list of issues in which it was said to have been an act of direct disability discrimination, that Mr Saxon made a negative comment about the Claimant during an assessment for the post of an accreditation project officer. The Claimant confirmed during her evidence this was a reference to the comment about her grammar.

107. Mr Saxon did not give evidence to the Tribunal. The Claimant however did not suggest that his comment about her grammar was incorrect. Mr Gilhooly accepted that Mr Saxon may have made a comment about the Claimant's grammar in her application. Nor did the Claimant contend that Mr Saxon had made the comment in a rude way. The Tribunal had no evidence whether or not he had made similar comments in relation to other candidates.

108. In all the circumstances the Tribunal considered that either this was not less favourable treatment of the Claimant, being a legitimate comment by a manager, or as the Respondent contended, even if it was less favourable treatment, it was so minor as not to amount to a detriment. There was no evidence whatsoever that Mr Saxon was aware that the Claimant was a disabled person and indeed this allegation was also considerably out of time. In all circumstances Issues 5(j) and 8 were not made out.

*Issues 11(a), (14), (19) & (22)*

109. The Claimant further alleged that the associated factual allegations in Issue 11(a) amounted to sex harassment (11(a)), direct sex discrimination (14), direct race discrimination (22) and race harassment (19). Here she alleged that Mr Saxon had made various comments about the Claimant's appearance. No dates were attached to these allegations. The Tribunal only had the account of Mr Saxon taken in the course of the investigation of the grievances in mid-2017, to the effect that he had not been in contact with the Claimant for the last two years (p621 paragraph 33). That was certainly consistent with such contemporaneous documentary evidence as was in the bundle. Nor did the Claimant assert a contrary case in relation to these matters.

110. in addition, as allegations of direct race discrimination and race harassment (paragraphs 19 and 22 of the list of issues) the Claimant contended that in August 2015 Mr Saxon had asked if she was smoking marijuana.

111. The Tribunal noted that there was no contemporaneous record of this complaint until it was raised over a year later in her grievance. The Tribunal also noted that in August 2015 the Claimant had made a complaint about Mr Saxon's comments about her grammar but there was no reference whatsoever to any race discrimination by him

nor was there any reference to race harassment.

*Issues 3(h) & 5(i)*

112. The next two matters set out in paragraphs 3(h) and 5(i) of the list of issues dealt with closely related factual matters. In 3(h) the Claimant complained that in November 2015, in the context of the Claimant's application for the job of Senior Customer Advisor, the Respondent failed to make a reasonable adjustment by providing a better online application form. As the case progressed, this developed into a wider complaint about not being interviewed regardless of the content of her application form.

113. Also as this failure to make reasonable adjustments complaint was related to that job application, it was also on its face out of time.

114. Paragraph 5(i) alleged direct disability discrimination and discrimination arising (paragraph 8 of the list of issues in that in December 2015 the Respondent denied the Claimant an interview for the position of Senior Customer Advisor ("SCA").

115. This latter complaint of discrimination arising and direct disability discrimination was also on its face out of time relating to the same recruitment process.

116. In relation to paragraph 3(h) the Respondent denied that it was a PCP that they provided poor online application forms for the post of Senior Customer Advisor. The Claimant's contention was that one of the boxes at the end of the form (p305) meant that she did not have sufficient space to enter the relevant information and could not proofread her response. The application form was received electronically by the Respondent on 3 December 2015. An email of 28 December 2015 from Mr Gilhooly (p320) refers to feedback on the application for the job of Senior Customer Advisor.

117. The Claimant sent in a complaint about the job application data by email on 3 December 2015 (pp311-311A). This was addressed to Ms Sharon Barnet the recruitment manager for the relevant role. It appears that the Claimant had already made a complaint in writing to Mr Gilhooly and she cut and pasted part of it into the email sent to Ms Barnet. She explained that she had asked for information amongst other things about the two-tick scheme because there had been a previous issue where comments had been made about her grammar. The Tribunal took this to be a reference to the Saxon comment complained about above. Apparently in the course of a conversation with Mr Gilhooly about other matters, Mr Gilhooly told her that he had the results of the application she had made for the Senior Customer Advisor post (p311A). He told her that she had been unsuccessful. She stated that she was in shock. She continued that she asked: …"*was it the last question because* [she] *had difficulty accessing and* [Mr Gilhooly] *proceeded to show her on his* [computer] *screen*" that she had not been successful. She went on that he then said to her that it was the last question, and that from what he could see it was fine, and that it went through a panel and that no one could make sense of what was written and that issue had nothing to do with them and that the Claimant should take the matter up with Human resources.

118. In essence, as was set out in a feedback letter from Sharon Barnet (p319) the

Claimant was saying that she had experienced difficulties proofreading one of her responses on the application form. Ms Barnet reviewed the application in the system and could see that the final question box was slightly smaller than the rest. However, she concluded that this would not have prevented the Claimant from completing or reviewing her response before submitting the application. She explained that she could not account for the reason for this box being smaller save that due to the number of questions required for this application, a new question box had to be built and that it appeared that the default box was used and had not been manually adjusted to make it larger as was usually the case. She reiterated however that the fact that the box was slightly smaller would not have prevented the Claimant from answering or reviewing her question in the same way as she had dealt with the other questions. She also noted they were not aware of any problems with the last question until the application process had closed and further, no other candidate had contacted them to report the issue.

119. She indicated to the Claimant that she would provide feedback to the recruitment system provider about the design format of the system as the Central Recruitment Team could not change it from their end. She expressed the hope that this would not deter the Claimant from applying for future opportunities and advised her in the future to formulate her response separately in a word notepad document and when she was happy with it, to cut and paste it into the application box.

120. The Tribunal considered that this was a credible and reasonable response. The absence of any different treatment of anyone else was a complete answer to the allegations of direct discrimination.

121. The Claimant's case had not established that her disability disadvantaged her in relation to providing the answer to this question. The discrimination arising complaint therefore also failed.

122. In relation to the failure to make reasonable adjustments, there was also no evidence that a larger box was something the Claimant would have benefited from or that its absence disadvantaged her by reason of her disability.

123. These allegations were therefore not well founded and were dismissed.

*Issue 5(e)(ii)*

124. The next complaint chronologically was in paragraph 5(e)(ii). The allegation was that in December 2015 Mr David Saxon had said to the Claimant that she was very slow, and asked her why she was so slow. This was also a matter which was out of time on its face, the claim form having been presented on 29 August 2017.

125. No adequate reasons were put forward for the failure to pursue a claim within time, and in all the circumstances it was not just and equitable to extend time in relation to this allegation.

*Issues 5(e)(iii), 11(b) & 14*

126. The factual allegation was that David Saxon made a comment in February 2016

suggesting that the Claimant should clean the office in advance of the attendance of the assessors. This was said to be direct disability discrimination, discrimination arising from disability; sex harassment and direct sex discrimination.

127. The Respondent did not dispute that Mr Saxon suggested that the office was cleaned before the assessors attended, but it was denied that he suggested that the Claimant herself should do it. There was contemporaneous evidence that supported this case, generated by the Claimant herself (p382). She sent an email around the office asking all the staff to tidy up their work areas, even attaching a picture of how she suggested their desks should look afterwards. She concluded by writing: "I will be giving the office a thorough clean and taking down unnecessary posters which may be out of date or make the office look too crowded."

128. On the balance of probabilities, the Tribunal did not accept the Claimant's contention that Mr Saxon had treated the Claimant less favourably. Further, the complaint was substantially out of time. There were no good grounds for extending time.

*Issues 11(d) & 14*

129. The factual allegation was that in March 2016, Bukkie Adjeymi had commented that if women could not find childcare then the job was not for them, before clapping and Mr Saxon laughing in response (p521). This was said to constitute sex harassment and direct sex discrimination. The first complaint about this was apparently in the Claimant's grievance dated 18 November 2016 (pp 517 – 521)

130. The Tribunal not having found any grounds to extend time in respect of any of the out of time allegations above, sets out below in respect of the remaining allegations, our findings on the time points only. It was appropriate and proportionate to carry out this exercise in relation to the allegations which were closer in time to the allegations which were out of time to assess if there was any likely factual basis for a finding of continuing discrimination.

131. First there is a summary of the remaining allegations which appeared on their face to be out of time. In broadly chronological order, these were:

| List of Issues Paragraph | Commentary |
|---|---|
| 5(g) | March 2016 SR comment.<br>Said to be direct DDA and discrimination arising. |
| 5(c) | As modified by the Claimant in her closing submissions, this is an out of time complaint as she only complained about the period up to April 2016. |
| 5(f) | August 2016 - NK "lazy" comment.<br>Said to be direct DDA and discrimination |

| | |
|---|---|
| | arising. |
| 28(a)<br>3(d) | 15 August 2016 Ms Matthew and Mr Saxon deciding to transfer the Claimant/offer of receptionist post;<br>and failure to make reasonable adjustments in paragraph 3(d) – not requiring C to work on reception in Aug 2016 |
| 28(b) | 16 August 2016 – tirade of abuse from Ms Matthews |
| 11(e), 14 | 19 August 2016 – women's personal hygiene comment.<br>Said to be sex harassment and direct sex discrimination. |
| 28(c)<br>28(d) | R taking disciplinary action against C in early September 2016<br>R failing to provide details of the disciplinary allegations<br>Said to be victimisation |
| 5(h) | October 2016 – NK emails.<br>Said to be direct disability discrimination and discrimination arising. |
| 5(e)(i) | October 2016 – NK shouting across the office at the Claimant. Said to be direct DDA and discrimination arising. |
| 3(g) | November 2016 – failure to make reasonable adjustments about Steve Edwards not attending a return to work meeting. |
| 11(c) & 14 | February 2017 – sex harassment and direct sex discrimination re comment about "hoverers". |

132. The Tribunal having identified which of the remaining allegations were potentially out of time as set out above, was satisfied that the complaints related to a range of matters. These were complaints about:

(1) The absence of an assessment at the start of the Claimant's employment – Mr Gilhooly was line manager;

(2) The application process for the Senior Customer Advisor post – dealt with in November/December 2015;

(3) Remarks and actions by Ms Killeen, the last of which was said to have occurred on 31 October 2016;

(4) Complaints about remarks by Mr Saxon which extended from August 2015 and others which were not dated. Mr Saxon was recorded as saying in 2017 that he had not been in touch with the Claimant for some two years.

(5) Remarks by other individuals (by Ms Ranthanagam, Operations Manager; Ms da Silva, Senior Customer representative (issue 11(c)); and Ms B Adjeymi - Outreach Team Leader). The last reference to Ms Adjeymi in these proceedings was some time March 2016 when the remarks were allegedly made. The Claimant asked if she could go through with Ms Adjeymi the adjustments which were needed and recommended by the Lexxic report in September/October 2017. In contemporaneous email correspondence between the Claimant and Ms Matthews, the Claimant stated that she preferred to discuss the matter with Ms Adjeymi and not Ms Matthews. This tends to suggest that whatever had happened before in relation to Ms Adjeymi, the Claimant was not upset by it.

(6) The alleged decision to transfer the Claimant to a receptionist post in August 2016 involving Ms Matthews and Mr Padfield;

(7) Ms Matthews allegedly subjected her to a tirade of abuse on 16 August 2016.

133. The failure to assess the Claimant at the start of her employment in May 2014 or thereabouts was a single separate omission which was subsequently superseded by a plethora of other assessments. There was no valid argument therefore for considering that to be a part of a continuing act. The Tribunal has already referred above to the fact that there were offers of Occupational Health referrals prior to the first referral in August 2015. Further there were other assessments which the Respondent undertook following the start of the Claimant's employment as referred to in the evidence above prior to August 2015.

134. The application for the SCA post at the end of 2015 was also a one-off event that could not be properly seen as part of any continuing state of affairs.

135. Each of the remarks alleged and actions undertaken by Ms Killeen refers to a different and perfectly proper exercise of her managerial role.

136. The complaints about the remarks made by Mr Saxon all appeared to relate to a time frame in 2015/2016. The Tribunal also noted in relation to the one issue which was contemporaneously complained about by the Claimant, namely the comment about her grammar, that the Claimant was successful in the recruitment process during which that comment was made.

137. The Tribunal also noted that a complaint was made about that matter and an explanation was given to her at the time. This also applied in relation to the Senior Customer Advisor post.

138. Further there was evidence by way of an email from Ms Gow-Smith HR Business Partner dated 4 January 2016 (pp322 - 323) that the Claimant had raised concerns about being discriminated against at work towards the end of 2015, had told her employers that she had been to ACAS about it, but had then failed to provide details of the complaints to HR, and had not attended an informal meeting arranged to discuss her concerns about discrimination.

139. In relation to Ms da Silva and Ms Ranthanagam, there was no subsequent involvement in any events about which the Claimant complained. Finally, in relation to other individuals, as set out above, the Claimant looked to Ms Adjeymi as a manager with whom she could have a positive discussion about the implementation of adjustments, after the date of the comments the Complaint complained about.

140. Finally, in relation to the complaint about the decision to transfer the Claimant in August 2016 as the Tribunal set out above there was no decision to transfer the Claimant. She was simply offered the opportunity to take up the post which reasonably appeared to the Respondent to be one to which she would be better suited having regard to her condition and the issues that she had raised up to that point about working in the highly stressful environment of the call centre.

141. Ms Sandiford managed the Claimant from November 2015; Ms Douglas became her manager in August 2016; and then in April 2016 Ms Killeen took over as the Claimant's line manager following the retirement of Ms Douglas.

142. Although Ms Matthews remained the Claimant's second line manager for most of this time, the Tribunal did not consider that was a sufficient reason to find that there was a continuing act. The primary events which led to the matters the Claimant complained about prior to August 2017 were matters over which Ms Matthews had no control such as the interactions between Ms Sandiford and the Claimant, comments made by Mr Saxon and comments made by other colleagues etc.

143. It appeared therefore that all the matters identified above were out of time. The Claimant had not advanced any reasons why she could not have submitted her complaints within the primary time limit of three months. She was at all relevant times assisted by her trade union and indeed as the Tribunal found above (and it was not disputed), that she herself was a UNITE representative from June 2017. She therefore had access to appropriate advice at all material times.

144. In all the circumstances the Tribunal considered that it was not just or equitable to extend the time in respect of the above allegations as they were out of the time. Further, in relation to the circumstances of each of the events which occurred before the three-month time frame, the Tribunal was satisfied that there was no continuing connection with the matters which were in time.

*Allegations in Time*

145. There was an interval in the chronology of the complaints between February 2017 and August 2017 onwards, the events which occurred up to February 2017 having all been held to be outside the Tribunal's jurisdiction. From August 2017 the first set of allegations were about the Roberts House posters issue and were said to be detriments by reason of Trade union membership, and failure to make reasonable adjustments.

146. The remaining allegations were all said to have been victimisation under the Equality Act 2010. The Claimant relied upon the following as relevant protected acts. The Respondent disputed that these amounted to protected acts under the Equality Act 2010. These were:

(1) [26.1] A written complaint said to have been sent by C to her then line manager, Ben Gilhooly, on 1.10.14 concerning a 'forced call' (p199);
(2) [26.2] A complaint made by a temporary member of staff, Naiem Hussain, on 19.8.15, entitled "Team Complaint – Abuse of Power/Unfair Dismissal" (p256); and
(3) [26.3] A complaint made via C's trade union representative on 2.9.16.

The Respondent agreed that four of the protected acts relied on amounted to protected acts. These were:

(4) The Claimant's first grievance dated 18 November 2016 (p517);
(5) A complaint by the Claimant dated 30 January 2017;
(6) The first claim form presented on 5 September 2017; and
(7) A further grievance from the Claimant dated 25 September 2017.

147. Findings of fact about the email from the Claimant dated 1 October 2014 to Mr Gilhooly relied on as the first protected act (at p199) have been set out above. The Respondent submitted that the mere use by the Claimant of the word 'disability' in her email was insufficient to engage section 27(2) of the 2010 Act. The Tribunal considered that the Claimant went further than that in the text of the email which was available. She appeared to the Tribunal to be expressing a concern that she might be viewed unfavourably because of the effects of her disability. The Tribunal considered that this was sufficient to constitute a protected act.

148. The second piece of evidence relied upon as a protected act was an email from a temporary member of staff making various complaints. It was headed "TEAM COMPLAINT – ABUSE OF POWER/UNFAIR DISMISSAL". It was sent and copied on 19 August 2015 to about twenty recipients. The ten addressees included two councillors. The Claimant and one of her managers referred to in this case, Jonelle Sandiford were copied in to it. Although it was said by Mr Hussain, the writer, to have been sent on behalf of the majority of the Team at the Shoreditch Neighbourhood Call Centre, where the Claimant worked, it was only from him, and was copied to the rest. As a temporary member of staff who had left the Respondent's service by the time the letter was sent, he had no particular authority to speak on behalf of the team. There was no suggestion that the Claimant had 'adopted' his complaint.

149. The Respondent submitted that this email did not have the protection of the 2010 Act because it was not something done by the Claimant. The Tribunal accepted that this was certainly the effect of the first limb of section 27(1). However, something may be a protected act if one of the Respondent's managers had believed that the Claimant had or may have written or been party to the email. There was no evidence before the Tribunal that this was the case.

150. In the circumstances the team complaint email was not a protected act under section 27 of the 2010 Act.

151. The third disputed protected act was said to be a complaint made on 2 September 2016 via the Claimant's trade union representative, Hilary Fairman (p438). Ms Fairman asked for a mediation meeting "…to discuss certain situations taking place in the office which involve Natasha, i.e. team brief meeting topics, which involve menstrual cycles in front of male colleagues …." The email went on to mention a couple of other subjects for discussion. The Claimant relied on the reference to menstrual cycles being discussed in front to males in arguing that this was a protected act. As set out above, the facts that this relate to were those in Issue 11(e) above, an allegation of sex harassment in August 2016 by Ms Killeen, which the Tribunal has found it did not have jurisdiction to determine. However, the Tribunal did not consider that this would prevent the reference in this letter from being a protected act. A complaint about what the Claimant believed to be inappropriate discussions about menstruation could in the Tribunal's view amount to a protected act. It did not have to have been an act of sex discrimination/harassment, as long as the concern was being raised in good faith by the Claimant. There was no suggestion that she did not raise this concern in good faith. The means by which she raised it tended to support this. There was no evidence of anything further happening in relation to this request for a discussion.

152. The email was sent to Jonnelle Sandiford and Lindsey Matthews and was copied to Candice Gow-Smith, Steve Swain and the Claimant.

153. The Tribunal considered that the email from Ms Fairman constituted a protected act.

154. Having found that it was a protected act, the issue was whether it caused or contributed to any of the subsequent acts of victimisation complained about by the Claimant. It was also relevant that at the time the Claimant raised this concern, the events of August 2016 which had involved, among other things some conflict between the Claimant, Ms Sandiford and Ms Matthews and which led to complaint and counter-complaint between herself and Ms Sandiford.

155. The disputed protected acts pre-dated the agreed protected acts. Further the first act of victimisation alleged was said to have been the performance monitoring of the Claimant from 29 August 2017 (Issue 27(a)). By that date the first two agreed protected acts had taken place.

*Issues 3(i), 31(a) – (d)*

156. The factual matters complained about in these issues were about the

Claimant's entitlement to go to Robert House in August 2017 to put up Trade union posters. These allegations were said to be a failure to make reasonable adjustments (para 3) and subjecting the Claimant to trade union detriments (para 31).

157. The Respondent accepted that Ms Matthews had tried to stop the Claimant putting up posters in Robert House and then limited her time to do so to 5 minutes. The issue was whether this action was taken in an effort to stop the Claimant carrying out her trade union duties.

158. At some point after the conflict at the Shoreditch office in August 2016, Ms Sandiford started carrying out more of her duties from Robert House, which was the other location from which the Housing Contact Centre operated. Robert House was the larger of the two. There was a dispute between the parties as to the precise time frame in which this occurred and the precise reasons why Ms Sandiford preferred to or was allowed to work more from Robert House. It is not necessary for the determination of the complaint to make findings about those matters. Suffice it so say, that at the time of the Claimant's wish to go to Robert House, she was told that one of the reasons why the Respondent would not wish her to do so, was because of a concern about Ms Sandiford's well-being. The Tribunal was also satisfied that the Respondent organisation at all material times endeavoured to safeguard the welfare of its employees, even if this entailed providing reassurance to Ms Sandiford by way of her working arrangements in circumstances in which they did not share her concerns about coming into contact with the Claimant, but they believed her concerns to be genuine.

159. The Claimant had apparently been the Unite steward since about June 2017. On 1 August 2017, the Claimant notified Ms Killeen by email (p646) that as the new UNITE steward, she wanted to go to Robert House where the majority of the staff worked, to update the notice board. She asked if she could use 2 hours of facility time that week. She suggested that it would be more efficient for her to work from Robert House on Thursday 3 August, rather than travelling to and from the Shoreditch office. Ms Killeen responded on 1 August by congratulating the Claimant on her appointment but asked her to await the receipt of advice from HR about the arrangements going forward. Ms Killeen promised to revert to the Claimant the following week. She repeated the request for the Claimant to hold off on her plans, in a further email sent on 3 August 2017.

160. Mr Steve Edwards, full time trade union representative for Unite wrote to Ms Killeen, and copied the email to others including the Claimant on 2 August 2017, questioning the reason for asking Ms Johnson to delay the taking of facility time as requested.

161. By 3 August 2017 Ms Matthews wrote to the Claimant informing her that the objection was not to her request for facility time, but was about the location at which she planned to use it, away from her normal place of work, which she did not understand to be the way facility time was normally used. She also offered alternative means by which the posters could be placed on the Robert House noticeboard and named two people (p651) who could do it.

162. By now it was apparent that many of the Respondent's manages were taking an interest in this issue, as her email of 3 August was sent also to Ms Killeen, and was

copied by Ms Matthews to Mr Saxon, Mr Gilhooly, Ms Anderson (also HR) and Mr Edwards. The correspondence on this issue continued in a similar vein with the restriction being placed on the Claimant's attendance at Robert House, and the Claimant insisting on her right to carry out her facility time for a matter of a few hours there.

163. Eventually at a meeting which took place on 14 August between Steve Edwards and David Padfield, the Respondent gave a fuller explanation of their position. Mr Edwards wrote back to Mr Padfield on 15 August setting out his understanding of what was discussed (pp663 - 665).

164. The next matter complained about chronologically which was not an allegation about a continuing matter was about the restriction on the Claimant's attendance at Roberts House in mid-August 2017.

165. The Respondent's description of the policy in relation to the use of trade union facility time as set out in Mrs Matthews' letter (p660) was not contradicted by any evidence before us.

166. The meeting between Mr Edwards and Mr Padfield did not resolve the issues but Mr Edwards sent an email (pp663 – 665) to Mr Scorer, Director of Housing Services suggesting as a compromise that he accompanied the Claimant to Roberts House. He expressed concerns that the reason the Claimant was not being allowed to go to the building was based on allegations from over a year ago which she knew nothing about.

167. Following a telephone conversation with Mr Scorer, he confirmed by email to Mr Edwards which was copied to Mr Padfield that he had agreed that the Claimant could go to Robert House between 12 and 2.00pm on 17 August 2017 providing that she was accompanied by Mr Edwards (p666).

168. The reason which Mr Edwards was given at the meeting with Mr Padfield as captured in Mr Edwards' email of 15 August 2017 was that there were "other underlying issues relating to the facility time issue and that the key thing as [Mr Padfield] saw it was concluding the outstanding grievance" (lodged in September 2016). He also described having been told by Mr Padfield that there was "a difficult situation" that he had been informed about between the Claimant and Ms Sandiford.

169. As the Tribunal has inferred earlier in our findings we did not consider that it was necessary to set out detail of the issue between the Claimant and Ms Sandiford save to say that it apparently related to both the issue from the previous August 2016 in respect of which the Claimant had also presented a grievance referred to by Mr Edwards in the email, and a further matter which the Respondent did not consider the need to address with the Claimant but which they gave Ms Sandiford the benefit of accepting that she was concerned about. The Tribunal did not consider that it was helpful to repeat those matters in these reasons. It was particularly important that the Respondent was not seeking to rely on the truth of concerns about the further matter, but simply the fact that they understood they were genuine concerns of Ms Sandiford's.

170. We considered therefore that the reasons for seeking to restrict the Claimant's

attendance at Robert House in August 2017 were related to their concerns about the interpersonal issues between the Claimant and Ms Sandiford in particular. On the evidence before us it was not likely, on the balance of probabilities, that the reason for the restriction was caused by the attempted exercise of trade union activities by the Claimant. There was no evidence that the Respondent's managers had restricted any other trade union officer in the exercise of their trade union duties. Moreover, as set out, they attempted to find an alternative way in which the particular duty – updating the notice board at Robert House – could be discharged. Finally, there was no suggestion that the Respondent sought to interfere with the exercise of the Claimant's trade union duties at the Shoreditch neighbourhood office, her base.

171. In considering the trade union detriment complaint about Robert House, the Tribunal also had regard to the facts found, as set out below, in relation to the victimisation complaint under the Equality Act 2010 at paragraph 27(e). In that complaint, the Claimant alleged that she had been criticised by Ms Matthews for having gone to the Chief Executive's road show early in order to distribute leaflets and referred to the Claimant's persistent lateness for work. The details of this allegation are set out below.

172. The complaint under the 1992 Act was therefore not well-founded and was dismissed.

173. The Claimant also contended that this treatment amounted to a failure to make reasonable adjustments. The Provision, Criterion or Practice ("PCP") relied on was requiring the Claimant to work in the Shoreditch neighbourhood office (para 2(i) of the List of Issues). The adjustment which was said to have been reasonable was set out in Issue 3(i) namely to have permitted the Claimant to move to Robert House. It was confirmed during the hearing that these were the relevant parts of the list of issues which applied to the facts referred to above.

174. In Ms Matthew's email to the Claimant (and others) on 7 August 2017 (pp656 – 657) having set out her position in relation to the trade union facility time request, she indicated that the other query which she had sought advice on, related to the Claimant's recent health position and more specifically her reported stress and how the Respondent could help the Claimant manage this, bearing in mind that she would be taking on additional responsibilities linked to her role within the trade union. It appeared to the Tribunal that Ms Matthews was simply reporting that she had taken Human Resources advice about what action if any the Respondent should take to assist the Claimant. Indeed, she then reported that Human Resources had advised her that they were to undertake a further work place stress risk assessment or at least update the previous risk assessment undertaken to ensure that consideration had been given to the change in circumstances.

175. There was no evidence before the Tribunal that the Claimant requested a move to Robert House. The Lexxic report which was prepared at around this time did not suggest such a move or any move. Indeed, in an email from the Claimant sent on 25 November 2015, to Mr Gilhooly, (p293) the Claimant had indicated that she would rather remain at that office. The Tribunal took into account the date of this email, and that the discussion with Mr Gilhooly was a general one. However, the Respondent had no other evidence which suggested that that the Claimant wished to move offices.

176. In all those circumstances the allegation of failure to make reasonable adjustments in respect of these matters was not well-founded and was dismissed.

*Issue 27(a)*

177. The first claim form was presented on 29 August 2017 (pp1 – 21). This was one of the protected acts relied on. The first of the 18 or so allegations of victimisation was that the Claimant was performance monitored from 29 August 2017.

178. Issue 27(a) was set out in the Claimant's draft list of issues which was sent in after the presentation of the second claim in January 2018 and after the Preliminary Hearing Summary (p87b). At paragraph 2a of that page Claimant stated that she relied on the fact that from 29 August 2017, the Respondent continued to subject her to performance monitoring and issues as to her performance without informing the Claimant and that the monitoring was outside the Respondent's policy and procedures. She continued that this included, but was not limited to, meetings which took place on 28 September and 2 October 2017.

179. 29 August 2017 was the date of the report from Mr Pirbhai which addressed the Claimant's grievances and which involved a broad range of issues dating back as far as January 2015 to the date of his report. He produced a 27-page report (pp676 – 702). Mr Pirbhai at the time was Head of Resident Participation, Tenant Management Organisations and Communities – Neighbourhoods and Housing Directorate. He upheld two of the Claimant's allegations. The Claimant was not informed of the outcome of this report until 12 September 2017 (pp711 – 721). He upheld the complaint that the OHS recommendations were not implemented or due consideration given to required adjustments in a timely manner (p688); and he upheld her sixth complaint that a disciplinary investigation was initiated on 6 September 2016 against her without any details being provided about the allegation (pp 694 – 696).

180. On 28 September 2017 the Claimant attended a one-to-one meeting in relation to her performance.

181. The Lexxic report had been provided to the Respondent in the first week of September 2017 (p727). At the time the Claimant was on leave and although she returned to work on 13 September 2017, she was told that her line manager Ms Killeen was now on leave until 25 September 2017.

182. Unfortunately, one of the issues which led to the Claimant's concerns was that in meetings that took place between the Claimant and her managers between the end of September 2017 when the Lexxic report was made available and the period when the Claimant went off sick, there was an attempt by the Respondent to separate discussions about performance and discussions about the recommendations and adjustments. It was not always apparent that the Claimant understood or accepted the need for this distinction.

183. The Tribunal was satisfied that both parties wished to progress matters in relation to the Lexxic report's recommendations promptly. This was obvious from the correspondence from both parties. Before the report was made available to the

Respondent they had been chasing up progress. The Claimant wished to approve the contents of the report before it was sent to the Respondent as she was entitled to. However, once the report was disclosed to the Respondent as set out above there were delays due to the Claimant being on leave initially and then Ms Killeen being on leave. It was at this stage, in September 2017, that the Claimant suggested that Bukkie could go through the report with her so as to accelerate the process of implementing the adjustments (pp 727 – 728).

184. The reference to the one-to-one meeting the Claimant had with Ms Killeen on 28 September was at para 103 of her witness statement [C1]. In that paragraph, the Claimant expressed frustration that performance issues were being discussed with her at this meeting rather than the implementation of the proposed adjustments.

185. The Tribunal noted that the Claimant had by now already had a meeting with Lindsey Matthews (she was more senior to Ms Killeen) and Steve Edwards on 21 September 2017 in which the Lexxic recommendations had been agreed. By a letter dated 25 September 2017, Mrs Matthews wrote to the Claimant setting what had been agreed at the meeting (pp732 – 736). Despite the fact that the time for discussions was cut short due to the late attendance of the Claimant and her trade union representative, it appeared from Mrs Matthews's note that all of the recommendations were discussed and that it was agreed that the Respondent would implement all the recommendations from pages 12 – 15 of the report with the assistance of the Claimant's buddy. Ms Matthews also asked the Claimant to keep her manager updated on progress.

186. Thus, by the date of the one-to-one meeting with Ms Killeen, the central step of agreeing the recommendations had been achieved. In her oral evidence, Ms Killeen further explained that she wanted to set the base standards against which the Respondent would judge whether the implementation of the Lexxic report recommendations was making a difference to the Claimant's performance.

187. The Respondent agreed that all staff were performance monitored at all times. Their argument however was that there was no differential treatment of the Claimant.

188. The Tribunal also took into account that this complaint in relation to performance monitoring started, on the Claimant's case, after the historical protected acts and also after the first grievance on 18 November 2016 and the Claimant's further complaint of 30 January 2017. However, it predated her first claim form on 5 September 2017 and further grievance on 25 September 2017 – the next two protected acts. It appeared to the Tribunal however that the Claimant may well have got the dates wrong in her allegation. There was no contemporaneous documentation about a one-to-one on 29 August 2017. Indeed, the Claimant's own contemporaneous account in the email about the receipt of the Lexxic report suggested strongly that she was on leave at that point and that Ms Killeen was then on leave as well until much later in September. It appeared likely that where the Claimant talked about performance monitoring from 29 August she actually meant performance monitoring from 28 September 2017. The Respondent agreed that there had been a meeting with her on 28 September (R1 p737A & C4 p18).

189. It was not clear in fact whether the one-to-one meeting with Ms Killeen took

place on 28 or 29 September.

190. The Tribunal noted also that the Claimant was not put into any sort of formal or informal capability process. Further there was no basis for any finding that anyone else was treated differently. Having meetings to discuss issues with members of staff was in the Tribunal's view routine and legitimate exercise of the management role.

191. In all those circumstances, the Tribunal did not consider that the complaint about performance monitoring was well-founded. There was no comparator but in any event, there was no evidence that the issues which the Respondent's manager raised with the Claimant were not appropriate subjects for monitoring. Also, there was contemporaneous documentary evidence that much earlier on, the Respondent had wished to address performance issues in relation to the Claimant but this had all been put on hold pending the outcome of the Claimant's outstanding grievance. The managers were not in a position to progress these issues until after Mr Pirbhai's report was received. There was no good reason to find therefore that the protected acts or any of them, was the cause of the performance monitoring in September 2017.

*Issue 27 (b)*

192. The Claimant complained that on 5 September 2017 the wrong reasons for her absence were entered on the return to work form (p703). This was the next victimisation complaint. The form was signed by Ms Killeen but the Claimant refused to sign it. Ms Killeen had entered as reasons for absence relating to the Claimant's absence between 29 August and 30 August "stress due to family, work and union duties". In a letter the Claimant sent to Ms Killeen by email on 6 September 2017 about the reason for absence she said that she had explained to Ms Killeen how she "felt due to a combination of the continued victimisation/harassment with regard to [her] carrying out trade union duties and 2 bereavements within [her] family." She went on to describe some of the practical difficulties involved in attending the funerals abroad and out of London and reported that she had explained to Ms Killeen that she felt "even more stressed than before" and she felt that she was being continually attacked. She also referred to the trade union duties which were contingent on her recent appointment as a shop steward.

193. The Claimant's complaint was that Ms Killeen had not included the words "bullying and harassment" in her description of the reason for absence.

194. The Claimant described in the witness statement (para 82) that Ms Killeen apologised for the way in which the reason for absence had been recorded on the form in response to the Claimant's email of 6 September and deleted references to her trade union duties but did not add in the references to bullying and harassment.

195. The Tribunal did not consider that there was any substance to this complaint. The reason for absence was simply a short summary. The fact that the Claimant was complaining of bullying and harassment at work was included in the phrase "stress due to ……, work .." which summarised the reasons for absence. The Tribunal considered that this difference in the wording of the reasons for absence was not a matter of substance and there was no basis for concluding that it was an act of victimisation based on the protected acts which had occurred before.

*Issues 27(c) and 28(e)*

196. The Claimant next complained about failure to answer her grievances and to uphold her grievance or appeal on 12 September 2017. These are complaints about the actions or omissions of Mr Pirbhai who dealt with the grievance and Mr David Padfield who dealt with the appeal. They are further allegations of victimisation under the Equality Act 2010.

197. The Tribunal has set out above that Mr Pirbhai upheld two out of the eight complaints made by the Claimant. Further there was no question in the Tribunal's view but that he conducted a very thorough investigation. Indeed, no criticism was put forward which the Tribunal considered was substantiated about his approach. The report very clearly set out the investigations that were conducted which were thorough and then Mr Pirbhai reached his conclusions. He then made what were clearly appropriate recommendations for the future management of the Claimant.

198. Mr Pirbhai referred to disciplinary matters which had been put on hold pending the outcome of the grievance (para 7.3, p702), on the last page of his report. He recommended that the disciplinary investigation should be reconvened and concluded swiftly ensuring that full details were provided to the Claimant in the first instance. He also referred to what he saw as the Respondent's managers failure to manage underlying issues and concerns of employee conduct, behaviour, performance and wellbeing. The Tribunal considered, as stated above, that this was the context against which to assess Ms Killeen's actions in holding a one-to-one and starting to discuss these issues with the Claimant from September 2017 onwards.

199. To the extent therefore that the Claimant complained that the Respondent did not uphold any of her grievances or appeal, this was inaccurate as two of the grievances were upheld (issue 27(c)). In relation to the other complaints which were not upheld either at grievance stage or on appeal, the Claimant failed to put forward any grounds for the Tribunal to conclude that the reason for this was because she had made allegations of discrimination, as opposed to simply reflecting the merits of her grievances.

200. Mr Padfield conducted the appeal into the points which the Claimant summarised in a document consisting of ten points (p766). The appeal meeting took place on 18 October 2017 (pp767 – 780). Once again, the Tribunal considered that it was apparent in the notes that detailed consideration was given to all the points the Claimant raised. Mr Padfield wrote to the Claimant on 5 January 2018 (pp781 – 785) addressing her points and notifying her of the outcome. Her complaints were largely criticisms of Mr Pirbhai's approach and the process he followed. Mr Padfield rejected all the grounds. He informed the Claimant that his conclusions were the end of the grievance process. He also commented on what was very apparent to him during the process, namely that there had been what he described as "a complete and potentially irreparable breakdown in trust between the Claimant and her line managers". He reported having discussed with the Claimant as part of the appeal process how this could be remedied or improved but that the Claimant was not forthcoming with any suggestions. He indicated therefore that the matter would now also need to be considered as part of the new disciplinary and grievance investigation being conducted by Mr Rob Jack (p785).

201. Whilst it would be surprising if there were one, there was no actual comparator in relation to the victimisation allegations.

202. The Tribunal took into account the complexity and volume of issues raised by the Claimant and read very carefully how the Respondent had addressed the grievances and appeal. The Claimant raised an issue about witnesses not having been pursued: (p766). Mr Padfield's response in relation to this (p782 para b) was cogent. He investigated with Mr Pirbhai why he had not pursued the people that the Claimant identified who she believed should have been interviewed by Mr Pirbhai. Mr Pirbhai's response was that he had agreed the list of which witnesses should be interviewed with the Claimant and her union representatives during the investigation. Mr Padfield considered that Mr Pirbhai's investigation had been proportionate and that he had exercised his judgment on this issue in a reasonable manner. He agreed to a certain extent with the Claimant's point in relation to the date of Mr Saxon's "marijuana" comment complaint. He considered however that Mr Pirbhai's failure to interview that witness, given the scale of the grievance investigation, was not material to Mr Pirbhai's overall conclusion. The Tribunal noted that the Claimant called a witness whose witness statement addressed the issue of the marijuana at work comment (Ms Bianca Hooper) but, as set out in the earlier paragraphs of these reasons, she did not in the event attend the Tribunal to be questioned about this.

203. In all the circumstances, the Tribunal saw no grounds on which it could properly find that the failure to uphold the Claimant's grievances in respect of six of the grievances and the failure to uphold the appeal were acts of victimisation or were not justified by the strength or otherwise of the grounds of grievance and appeal. This complaint therefore was not well-founded and was rejected.

*Issue 28(f)*

204. This was a complaint of victimisation that the Claimant's further grievances from 15 September to 3 November 2017 were not dealt with. These were dated 15 September, 25 September and 3 November 2017.

205. The grievance of 15 September 2017 was an email from the Claimant to Mr Scorer copied to Ms Matthews and Mr Edwards. She complained that she believed she was being harassed and being sent emails by Ms Matthews forcing her to find an alternative representative thus causing her to feel stressed and upset (p723). She said that she was sending the email as a request that Ms Matthews should send her no further emails until Mr Edwards returned from leave the following week. She then referred to being in the process of sending a formal grievance with regards to the conduct and that there was further conduct that she had experienced over the past months.

206. Mr Scorer acknowledged receipt of that email and informed the Claimant that he was forwarding it to Mr Padfield as Head of Service, for him to decide in the first instance how best to respond. Mr Padfield also responded to the Claimant by email of 18 September 2017 and explained that the management, in the form of Ms Matthews, was anxious to meet with the Claimant to discuss how to implement the Lexxic report recommendations as soon as practicable. He told the Claimant that he had invited Mrs Matthews to reschedule the meeting for a later date and that if her union representative, Mr Edwards was not available then she could have another friend or

representative to accompany her to the meeting (p722).

207. As the Claimant had promised, she committed her grievance to writing on 25 September 2017 (pp729 – 731). It was addressed to Mr Scorer and was said to be a complaint/grievance about the continuation of disability discrimination, bullying and harassment by Mr Padfield. She raised the Robert House incident and expressed her dissatisfaction with what she saw as the "bogus and malicious" complaint being used to victimise her. This was a reference to what the Tribunal has referred to above as Ms Sandiford's genuine concern.

208. She referred to the fact that she did indeed attend Robert's House on 17 August 2017 but complained that Mr Padfield had then reinstated the ban which continued to the date of her letter. In the hearing before the Tribunal it was not suggested that the Claimant was entitled to work at Robert House in order to carry out her union activities going forward.

209. Mr Scorer wrote to the Claimant by email dated 6 October 2017 (pp738 – 739). He asked for further information among other matters about the allegations by 13 October 2017. He repeated the explanation which had been given to the Claimant's representative and which the Tribunal found above was the Respondent's reason for not allowing the Claimant to attend Robert House. This related to Mr Padfield's concerns regarding the difficult working relationship that had been reported to him and which he believed were exacerbated by the fact that the Claimant's long-standing grievance investigation had not been concluded. Mr Scorer informed the Claimant that as Mr Padfield had informed Mr Edwards at the time that it was always his intention to revisit the decision once the Pirbhai investigation was concluded, he was happy to do so and as such Mr Scorer confirmed that the restrictions could now be lifted. He asked the Claimant to ensure that she gave prior notice to her manager of any appointments that she had in relation to undertaking trade union activities at Robert House given the sensitivity of the issue. He also believed that this was a common courtesy in any respectful working relationship with managers. Further he rejected the suggestion that she had been victimised on account of her trade union role because he did not believe that she had been placed at a disadvantage by reason of the actions in relation to the Robert House attendance.

210. Mr Scorer concluded by confirming to the Claimant that he was awaiting better particulars in relation to her allegations of disability discrimination, bullying and harassment on the part of David Padfield. The trade union detriment allegation however was rejected.

211. The final grievance the Claimant complained about was a formal grievance sent by her by email on 3 November 2017 (pp758 – 760). She entitled it "continued victimisation of submitting a protected act and recent suspension and further suspension to come".

212. This was acknowledged by Odile Anderson, Strategic HR Business Partner (p761). She summarised the current position in relation to the internal processes. Thus, she confirmed that the disciplinary investigation meeting had now been concluded with the Claimant and that an outcome letter was due to be issued to her that week. Further she reminded the Claimant that her grievance appeal had not yet concluded (before Mr Padfield) and was due to be reconvened on 8 November 2017.

She then indicated that the suspension meeting in which the new allegations would be put to her was scheduled for 6 November 2017. She then confirmed also that the new allegation which the Claimant had made in her grievance of 3 November 2017 would be addressed by another neutral manager if required. Once that manager had been assigned the Claimant would be informed of who it was. In the event these were matters which were all referred to Mr Jack.

213. The Tribunal noted as summarised in the email to the Claimant from Ms Anderson that there were a number of complex matters involving both discipline and grievance which were being dealt with by the Respondent at this time. There was no evidence to suggest that the Respondent did not deal with these matters appropriately or with due expedition having regard to the scope of the various investigations. The allegation of victimisation therefore appeared to the Tribunal to have no basis and was not well-founded.

*Issues 27(d) and 27(g)*

214. By these allegations the Claimant further complained about the conduct in October 2017 of the disciplinary process by Colleen Schwarz in that on 2 October 2017 Ms Schwarz who had been appointed to be the investigator on the disciplinary issues which had been revived after the outcome of the grievance, invited the Claimant to a disciplinary investigation meeting. The Respondent did not dispute that the invitation to a disciplinary investigation meeting was a detriment.

215. In relation to the complaint about Ms Schwarz calling the Claimant to a disciplinary investigation meeting the Claimant acknowledged in her oral evidence that the allegations against her were serious and warranted investigation.

216. The Tribunal saw no proper grounds however for finding that the decision to invite the Claimant to the disciplinary investigation meeting was in any way related to her protected acts. As already set out above the Respondent was awaiting the conclusion of the grievance meeting to start to address these issues and indeed this delay in holding the disciplinary investigation meeting had been subject of adverse comment against the Respondent by Mr Pirbhai in his report as cited above.

217. Ms Schwarz did not give evidence to the Tribunal. In paragraph 105 of her witness statement the Claimant described a letter being sent by Ms Schwarz instructing her to attend a disciplinary investigation meeting for the same day as her appeal hearing. The Tribunal is aware from the notes of the appeal hearing (p767) that the grievance appeal took place on 18 October 2017. The Claimant describes that the letter was sent by Ms Schwarz to the wrong address and thus compromised her confidentiality to her neighbour. The meeting was eventually rescheduled for 26 October.

218. The relevant document was not in the bundle. The Tribunal considers that this was most likely on the balance of probabilities a simple clerical failure on Ms Schwarz's part to appreciate that the Claimant was due to be attending a grievance appeal hearing on the same day as her proposed disciplinary investigation meeting. The Claimant did not describe that there was any difficulty with rescheduling the meeting. As the Tribunal did not see the letter it was impossible to comment on the wrong address details. However, when the investigation took place on 26 October 2017

(p751A) it was apparent that the Respondent had sent the address to the wrong number of Poplar Road. There was no reason whatsoever, however, for the Tribunal to consider that this was anything more than administrative error. It was not an act of victimisation as the Claimant contended. There was no adequate reason why Ms Schwarz would wish to delay the event of the Claimant's attendance at the disciplinary investigation meeting. In all the circumstances therefore, the Tribunal rejected this complaint and determined that it was not well-founded.

219. The Claimant then also complained about being "subjected" to a disciplinary investigation meeting on 27 October 2017 (pp751A – 751N). The notes record that the meeting was attended by Ms Schwarz as the investigating officer; by Ms Gow-Smith, HR adviser; by the Claimant; by her trade union representative, Mr Edwards; and that notes were taken by Ms Applebee. Further it recorded that the allegations which the Claimant faced were acting inappropriately towards her line manager Jonelle Sandiford and failing to take a reasonable instruction from her line manager; and acting inappropriately within the office to one of her colleagues. These disciplinary charges arose from the events in mid-August 2016.

220. While once again it was not disputed by the Respondent that this treatment constituted a detriment, the Tribunal saw no reason to find that the Respondent had taken this action as an act of victimisation. The event reported as having occurred in August 2016 clearly warranted a disciplinary investigation. On the balance of probabilities that was the more likely explanation for the Respondent having taken this action. Allegation s27(g) was therefore not well-founded and was dismissed.

*Issue 27(e)*

221. The next alleged act of victimisation arose out of the fact that on 5 October 2017, Mrs Matthews the Operations Manager emailed the Claimant to criticise her for having attended the Chief Executive's road show early in order to distribute leaflets and referred to the Claimant's persistent lateness for work.

222. In relation to the Chief Executive's show issue, the Tribunal had the benefit of the contemporaneous email exchange between the Claimant and Ms Matthews. The Tribunal accepted that the Respondent's position that the reason for Ms Matthews' criticism was her belief that the Claimant had provided misleading information to her as to the start time of the road show. She also criticised the Claimant for having undertaken trade union duties outside of her facility time, and for her very poor timekeeping.

223. In the letter from Mrs Matthews sent by email (pp744 – 745) she noted that she had received a call from the Claimant on 4 October at approximately 10.25am advising her that the Claimant was due to attend the Chief Executive's conference on 4 October and that she was on her way there. Ms Matthews recorded that she asked the Claimant what time the conference started and that the Claimant told her that it started at 11.00am and that she did not want to be late and that the invitation had said she had to attend early. Ms Matthews noted that based on the information provided to her by the Claimant and given that the Claimant said that she was on the bus on her way there, Ms Matthews agreed to the Claimant going straight to the conference. It was not in dispute that the conference was not being held at the Claimant's normal place of work. Mrs Matthews then continued that she had since been advised by others that

the conference actually started at 11.30am, that she had checked the invitation sent to the Claimant by the senior customer service representative who organised the team's attendance on Mrs Matthews behalf and that this also stated that the conference started at 11.30am but it advised the Claimant to be there 15 minutes early. She indicated that she would have expected the Claimant to go to work first because the Claimant was also aware that the Respondent was experiencing staff shortages at the contact centre at the time.

224. Mrs Matthews continued that she had also been advised by colleagues that before the start of the conference the Claimant and other members of Unite Union had been handing out leaflets which suggested that the Claimant was engaged in union duties, but that this had not been mentioned when the Claimant spoke to Mrs Matthews on the telephone. Mrs Matthews expressed her disappointment as this appeared to be a clear intention on the Claimant's part to provide her with inaccurate information on which the Claimant wished Mrs Matthews to make her decision. Mrs Matthews also reminded the Claimant that she had previously advised her to have agreed facility time in advance.

225. Finally, Mrs Matthews told the Claimant that she had reviewed the Claimant's attendance from the beginning of September 2017 to date i.e. over the last month, and could see that she had been late for work every day by an average of 28 minutes. She expressed the view that this was clearly unacceptable although she accepted that everyone was late on occasion. She informed the Claimant that she would be referring this matter to the Claimant's line manager to meet with the Claimant to discuss this and agree how to move forward and to ascertain if there were any underlying issues that the Respondent needed to be aware of or that the Claimant needed the Respondent's support with.

226. As set out above the Tribunal took into account our findings on this issue when considering the trade union detriment complaint.

227. Further the documentary evidence before the Tribunal confirmed that Mrs Matthews was correct about the start time notified to invitees for the Chief Executive's conference. Further, the Claimant confirmed contemporaneously that her start time for work was 10.00am. She wrote back to Mrs Matthews on 9 October 2017. She did not explain why she had not made prior arrangements to get permission to go straight to the town hall. She indicated that when she got to the road show she and others were there "a bit early" and given that the road show was going to be starting later than had been advertised, there was a delay where "nothing was happening before the road show started". She described seeing the Unite convener Steve Edwards outside the road show handing out leaflets with the antibullying campaign that the Unite Union was having and that as nothing was happening and there was a delay, he asked if the Claimant would help handing out the flyers.

228. The distinct impression given by the Claimant was that the handing out of leaflet was a spontaneous action, taking advantage of the unexpected interval before the show started and that she had not deliberately attended the town hall earlier than required in order to assist in handing out the flyers. She relied on the invitation stating 11.15am.

229. Ms Matthews disputed that this was an accurate characterisation. She

reiterated that the invitation clearly stated that the event started at 11.30am and advised the Claimant to attend 10 to 15 minutes early. Among other matters she noted that the Claimant was still on a temporary phased return to work which involved the Claimant doing reduced hours, and which had been in place since February 2017.

230. The Claimant responded on 11 October 2017 (pp741 – 742). She did not engage further with the factual matters that Mrs Matthews had identified but asked her to take the matter up with union convener, Mr Edwards. She also copied the email to Mr Padfield, Mr Scorer and Mr Edwards and complained that she believed that the emails from Ms Matthews constituted harassing behaviour and were causing distress along with the other issues that she was having to deal with.

231. The Tribunal considered that the Claimant's case on this issue at the time was somewhat disingenuous. The Respondent produced a flyer (p737) which was handed out after the Chief Executive road show in October 2017 which made it clear that part of the campaign against bullying, harassment, victimisation and discrimination in Hackney Council involved the "justice for Natasha!" campaign. This was accompanied by a picture of the Claimant standing outside the Employment Tribunal. It was agreed by the Claimant that the picture was taken by Mr Steve Edwards on one of the previous occasions on which the Claimant had attended the Employment Tribunal.

232. The Tribunal considered that Mrs Matthews' email correspondence with the Claimant about the issue of the information the Claimant had given her in order to secure Ms Matthews' permission for the Claimant to attend the town hall directly and not to have to come into the office was appropriate and clear. The Tribunal also found that Ms Matthews was entitled to question the Claimant about her actions on that day. It was not necessary to look beyond the Claimant's action for another reason for Mrs Matthews to have questioned the Claimant. The Tribunal was satisfied in the circumstances therefore that Mrs Matthews actions were not prompted by the protected acts which had by now occurred.

*Issue 27 (f)*

233. The Claimant complained that on 17 October 2017, Nicola Killeen, her current line manager warned the Claimant as to her conduct and alleged that she had made an open and inappropriate comment about her to a customer.

234. The Claimant included this matter in her grievance of 3 November 2017 (p760). The Tribunal noted that in that grievance the Claimant recorded that Ms Killeen had said she wanted to speak to her about her conduct and that she had spoken about her in front of a customer. However, she went on to say that Ms Killeen said she would draw a line under it. The Tribunal considered therefore that this was a matter being raised with the Claimant by her manager ostensibly about a matter which if it were true or the manager had reasonable grounds to believe it were true or at least that it may have happened, the manager was entitled to raise with the member of staff. The fact that the Claimant reported that at the time Ms Killeen said that she would draw a line under it reinforced the picture that this was a normal management query which was not been taken to further, and certainly not to the level of formal action. It was apparent from the way in which this was described by the Claimant in the email of 3 November 2017 that the meeting between herself and Ms Killeen at which Ms Killeen raised this with her, occurred on 31 October 2017, albeit that the event discussed had

occurred on 17 October.

235. The Tribunal took into account Ms Killeen's account of her perception of events (paras 17 – 19 of her witness statement [R8]). She observed that the Claimant came into the office late that morning and that a resident had been waiting to speak with an adviser for some time. Pausing there, the Tribunal recollected that in Mrs Matthews' letter to the Claimant about the Chief Executive's show, she had noted that the call centre was short staffed at this time. Ms Killeen continued that she had explained to the tenancy management organisations' receptionist that she was the only one in the office and that she would be unable to help the customer and asked the resident to come back after 10.00am, but that the resident said that he was happy to wait. She then continued that when the Claimant eventually arrived and was informed by the receptionist that someone was waiting, the Claimant stood in the doorway between the back office and the reception area and said loudly to the resident: "My manager is here, I can't understand why she couldn't help you, this is disgusting!". She also gave evidence that while the Claimant was saying this she was gesturing with her hands in Ms Killeen's direction. She then described (para 19) that after Ms Johnson had finished dealing with the resident she continued to raise the issue with another member of staff whilst Ms Killeen was sitting in the office.

236. Ms Killeen explained that she did not address this with the Claimant at the time and that the whole incident had distressed her greatly and she wanted to maintain her composure. She reported it to her line manager and decided to address this with the Claimant at a later date once they had both had an opportunity to reflect on the incident.

237. Although the Claimant indicated in her grievance email that Ms Killeen's account of the interaction with the resident was not true, as the Tribunal has stated, the issue here was whether it appeared on the balance of probabilities that the Claimant was being asked about this interaction as an act of victimisation.

238. In her witness statement at para 114 the Claimant described being written to by Ms Killeen about this on 17 October. No page reference was given for that letter or email. There was an email chain between the Claimant and Ms Killeen about work matters and adjustments at pages 750 – 751. This correspondence covered two emails on 16 October and a further one from the Claimant on 20 October 2017. None of the emails made reference to the conversation with the customer. They were on the subject of adjustments and IT. The Claimant therefore appeared to be mistaken in her witness statement when she referred to receiving an email from Ms Killeen about this issue on 17 October. Certainly, there was no contemporaneous email that the Tribunal was taken to on this issue.

239. Based on the description given by Ms Killeen, the Tribunal considered that on the balance of probabilities the reason why she spoke to the Claimant about this was not because of the protected acts. The Tribunal also noted that it was not as the Claimant alleged a warning to the Claimant by Ms Killeen but as was said in the Claimant's own contemporaneous record, Ms Killeen told her at the time that she would draw a line under it.

240. The Claimant had therefore failed to establish the primary facts on which she relied and in any event the Tribunal was satisfied that the reason for the conversation

with the Claimant on 31 October about the events of 17 October 2017 was because of Ms Killeen's belief that the Claimant had indulged in inappropriate conduct on 17 October 2017. This victimisation complaint was therefore not well-founded and was dismissed.

*Issue 27(h)*

241. The Claimant complained that Ms Killeen asked her to attend three separate meetings on 31 October 2017 concerning reasonable adjustments, IT performance issues and trade union activities. The Respondent accepted that Ms Killeen had indeed asked the Claimant to attend three meetings. The Claimant complained that she had not been given notice about the content of each of these meetings. The Tribunal considered that in relation to the reasonable adjustments it was appropriate that Ms Killeen should have called the Claimant to a meeting because this was a matter which it was important and needed to be implemented appropriately following receipt of the Lexxic report. The Tribunal did not consider that calling the Claimant to a meeting about this matter could be a detriment. This was the Tribunal's view even though the subject matter was something the Claimant did not have notice about.

242. The Tribunal also considered that each of the three issues the Claimant identified were appropriate topics for discussion. The separation of the issues into three separate meetings was consistent with the disabilities identified to the Respondent in relation to the Claimant. The Respondent submitted that this action of Ms Killeen could not amount to a detriment. The Claimant did not address this and in the circumstances, the Tribunal accepted the Respondent's submission. Even if it were a detriment for a member of staff to attend three meetings with their manager on the same day, the Tribunal considered that the Respondent had more than adequately explained the reasons for this and that they were legitimate topics for discussion.

243. The Tribunal had regard to the contemporaneous evidence by way of emails about the need and desire on both sides to implement the adjustments and also had regard to the outstanding issues in relation to performance and also the difficulty which appeared to be rearing its head again by way of notification to managers about facility time for trade union activities. There was no reason why the Respondent should not have addressed each of these matters with the Claimant, in informal face to face meetings with her line manager.

244. The Tribunal concluded in the circumstances that this complaint was not well-founded and was dismissed.

*Issues 27(i) and 3(c)*

245. The factual matter on which these allegations of victimisation and failure to make reasonable adjustments were based was the allegation that in late October 2017 Nicola Killeen forced a call through to the Claimant. Ms Killeen accepted (para 26 of [R8]) that she put calls through to the Claimant but she disputed that she did this as an act of victimisation. It was not disputed that she managed staff across four sites and that she had asked all staff to be available to take calls. They had a large number of calls waiting to be answered. Once again, the Tribunal reminded itself of the contemporaneous evidence of Mrs Matthews in the email to the Claimant in which she indicated that the call centres were short staff.

246. Finally, Ms Killeen asserted that she had taken exactly the same action with other members of staff and that they had responded to her reasonable management requests to assist. This evidence was not contradicted and there was no evidence before the Tribunal to suggest that Ms Killeen was not telling the truth about this.

247. In relation to Issue 3(c), the Tribunal could see no basis on which the Claimant could succeed in relation to the failure to make reasonable adjustments complaint. The Tribunal noted that she had provided no detail of the alleged call being forced through. In the circumstances described by Ms Killeen, there did not appear to be any reason why the action she took was not something the Claimant could have dealt with. In her oral evidence she elaborated that this was a rare event. The Tribunal also took into account the arrangements which were already in place with the Claimant to allow sufficient time between calls. If there was a very rare or occasional deviation from this, the Tribunal did not consider that the Respondent had thereby failed to make a reasonable adjustment.

248. In all the circumstances therefore, Issue 3(c) was not well-founded and was dismissed.

*Issue 28(g)*

249. The factual matters alleged were that on 31 October 2017, Ms Matthews attended a meeting between the Claimant and Ms Killeen and behaved in an intimidating fashion.

250. This was a reference to the meeting that the Claimant had with Ms Killeen on 31 October which was the last of the three meetings held and in which Ms Killeen spoke to the Claimant about her conduct. The Claimant described in her grievance email (p760) of 3 November 2017, that whilst she was explaining matters to Ms Killeen, Ms Matthews appeared in the doorway of the office and said that she wanted to speak with her and with Ms Killeen. The Claimant then described that she asked if she could go to the toilet as she felt uncomfortable and was frightened and that she had already submitted a grievance about Mrs Matthews' behaviour. The Claimant also described this at paras 120 – 122 of her witness statement.

251. The Claimant expressed that she was uncomfortable and felt worried about having a meeting on her own with both Ms Matthews and Ms Killeen in light of the previous allegations which were being investigated. She described telling Ms Matthews that she did not feel comfortable coming in alone with both or one of them and said that Ms Matthews questioned whether she was refusing to attend the meeting while shutting the windows. It appeared to the Tribunal that the Claimant saw this as intimidatory. However, it suggested to the Tribunal that Ms Matthews was engaged on another activity and simply sought to clarify with the Claimant whether or not she was proposing to attend the meeting. The Claimant then described that Ms Matthews agreed that she could get someone from another team to attend the meeting with her.

252. In her grievance email sent a few days later on 3 November 2017 (p760) the Claimant described the meeting taking place with Ms Matthews. She did not describe that Ms Killeen attended this meeting as well. She then described Ms Matthews raising with her "previous trade union issues" and the event of 25 October i.e. what the Claimant was doing the day before the meeting to discuss disciplinary issues. She

wanted to know why the Claimant had not told her line manager about this. Once again it appeared to the Tribunal that Ms Matthews was raising issues which she was fully entitled to with a member of staff. It also appeared to the Tribunal that the context in terms of asking to talk to the Claimant after her meeting with Ms Killeen was also unobjectionable. The meeting with Ms Killeen was an informal meeting between a member of staff and their manager discussing current issues. It did not appear to the Tribunal that there was anything wrong in principle with Ms Matthews popping her head around the door to ask to speak to the Claimant also after the meeting. There were clearly current issues which needed to be addressed. Further the request by the Claimant to be accompanied was agreed to by Ms Matthews.

253. In relation to the action of shutting the windows, the Tribunal noted that on the Claimant's own account these events were taken place at the end of the working day because the Claimant also described other members of staff leaving to go home. There did not appear to be anything sinister in those circumstances about the senior manager shutting the windows.

254. In all those circumstances the Tribunal considered that this allegation was not well-founded and was dismissed.

*Issue 27(j)*

255. Towards the end of her email of grievance dated 3 November 2017 (p 760) the Claimant reported that when she attended work on 1 November she was told that there was "a serious allegation made" and that she should leave immediately.

256. The Claimant was first written to about her suspension by the Respondent on 7 November 2017 (pp762 – 765). The letter was from David Saxon, Head of Centralised Services.

257. Unfortunately, in the chain of emails which dealt with this period of time and this issue, the fourth page was missing. The Tribunal could see on the fifth page, apparently of 5) (p757), the end of an email by the Claimant querying what the allegations were and asking for more details. That email must have been sent before 9.30am on 2 November 2017 because that was the date and time of Mr Scorer's response to her (p755). She described having had a meeting with Mr Gilhooly on what the Tribunal assumed from the context was 1 November 2017 but he told her that she could have representation and that indeed a meeting subsequently took place at 10.24am with Mr Edwards and the Claimant and Mr Gilhooly who was Operations Manager. Mr Gilhooly apparently advised the Claimant that a serious allegation had been made and that he had been told to send the Claimant home until further notice and that a further meeting outlining the allegations and suspension would be given at a later date. She recorded that no paperwork was given nor was anyone from HR present and there was no fourth-tier manager present.

258. In his response on the next available document in this chain (p755) it appeared Mr Scorer told the Claimant that as far as he was aware she had not been suspended but that she would be invited to a suspension meeting at which the allegations/process around the suspension would be explained further. He indicated that this was likely to be held on the following Monday. The email was sent on Thursday 2 November 2017 at 09.31am. The Claimant responded again querying the process and her status. The

Claimant was then responded to in more detail by Odile Anderson (HR). She reiterated what the Claimant appeared to have understood namely that the Claimant had been sent home until further notice on 1 November and that it was said to have been without any implication of guilt and that the Claimant had not been suspended but that she would be invited to a suspension subsequently. This echoed what Mr Scorer had written in his email. She was informed that her pay was not affected and that she was being paid during this period. Ms Anderson noted the Claimant's concern about the effects of the Council's action on her.

259. The letter of 7 November 2017 noted that the Claimant was invited to a suspension meeting on 3 November 2017 scheduled for 6 November 2017. The letter continued that the Respondent had received a telephone call from Mr Edwards shortly before the meeting confirming that the Claimant would not be attending but that no reasons for the non-attendance were given during the phone call. It was acknowledged by the Respondent that Mr Edwards had subsequently confirmed in an email that the Claimant did not feel she could attend a meeting held by a manager who she had made allegations against. In the circumstances the Respondent decided to notify the Claimant of the issues by letter. They reiterated that the allegations had not been investigated so that there was no implied guilt. The allegations which were being investigated were deemed by the Respondent to fall under the category of gross misconduct hence the act of suspension although again it was acknowledged that suspension was merely an act designed to protect the Claimant from further allegations arising whilst a thorough investigation was undertaken.

260. The allegation was that the Claimant had acted in a way that amounted to bullying, harassment and intimidation towards her line manager and a colleague and that due to the impact that her behaviour had had it was further alleged that there was now a complete breakdown in the working relationship. The Respondent then cited the sections of the code of conduct which they believed were applicable.

261. The Claimant complained about the bringing of disciplinary proceedings but as set out above the merits of the disciplinary matters are not matters for this Tribunal and are subject to a subsequent claim which the Claimant brought. Within the limited scope of this Tribunal's enquiry on this issue, the Tribunal could only find as it did, that the allegations on their face appeared to be sufficiently serious to justify suspension.

*Issue 27(k)*

262. By this allegation of victimisation, the Claimant complained that on 5 January 2018, Mr Padfield wrote to her to inform her that she would be subject to new disciplinary and grievance investigations (p781). The Tribunal has already referred to the evidence to this effect above (p785). It was at the end of the letter from Mr Padfield notifying the Claimant of the outcome of her grievance appeal.

263. To the extent that Mr Padfield was indicating that the grievances would be investigated by Mr Jack, the Tribunal could not see the basis for any suggestion that the Claimant had been subjected to a detriment. It did not appear that Mr Padfield was initiating a new course but simply referring back to the course which was consequent on the suspension of the Claimant at the beginning of November 2017.

264. In the event, the August 2016 allegations were investigated by Ms Schwarz the

Business and Development Manager in the Neighbourhoods and Housing Directorate and by letter dated 13 February 2018, she informed the Claimant that after the disciplinary meeting held on 26 October 2017 she had decided that there was no case to answer (pp786 – 789). The first allegation that she did not follow reasonable management instruction was held not to be proven because whilst there was no dispute that the Claimant was late into work on 16 August 2016, there was no proof that her line manager, Jonelle Sandiford had asked her to confirm her expected time of arrival. In relation to the second allegation that the Claimant spoke to her line manager inappropriately by calling her a liar, evil and by saying: "God will judge you", Ms Schwarz also found that there was no evidence to corroborate either side. The Respondent found that they could not be satisfied on the balance of probabilities that the comments had been made by the Claimant. Rather, Ms Schwarz found that Ms Sandiford did indeed ask the Claimant to provide an estimated time of arrival which the Claimant failed to confirm. She found that this fell short of the local procedure for reporting lateness and the need to follow a reasonable management instruction. However, she took into account that the Claimant had mitigating circumstances which may have excused some of her ability to provide what appeared to be the response to a simple management request. She then referred to the details which had been provided to her about some health issues and the issue about the possibility of a receptionist post elsewhere.

265. Similarly, in relation to the alleged comments towards Ms Sandiford, Ms Schwarz found that on the balance of probabilities an altercation of some sort happened, however she could not be satisfied that the Claimant spoke inappropriately to Ms Sandiford. She thought it was highly probable that the interaction between the Claimant and Ms Sandiford gave rise to a tense and unpleasant situation but she could not assume more culpability on the part of one person than the other. She did not have such evidence.

266. Ms Schwarz's outcome was not the subject of complaint and is simply included in these reasons for completeness' sake, and to make it clear that those allegations were different from the ones in respect of which the Claimant was suspended on 3 November 2017 or thereabouts.

267. In respect of allegation 27(k) therefore, the fact that Mr Padfield reviewed the position in relation to the disciplinary and grievance investigations and referred to the fact that the issue of the severe breakdown in relationships would be considered by Mr Jack did not appear to the Tribunal on the balance of probabilities to have been caused in any way by the Claimant's protected acts.

*Issue 5(e)*

268. This was an allegation of direct disability discrimination in that it was said the Respondent ignored Occupational Health Service recommendations and instead implemented capability and sickness procedures. Although the Claimant did not attach any dates to this allegation it appeared that she was talking about events from August/early September 2017 onwards when the Lexxic report was made known to the Respondent. She was also referring to the performance monitoring which she also complained about.

269. The Tribunal has already made its findings above about the Respondent not

having started any formal capability proceedings by way of the performance monitoring.

270. In relation to ignoring Occupational Health recommendations, our findings above established that within a month of the Respondent being supplied with the Lexxic report, a meeting had been held (21 September 2017) with Ms Matthews who was the Claimant's second line manager and therefore sufficiently senior to authorise implementation of the recommended adjustments, and at which the Claimant and her trade union representative and Ms Matthews signed off on all the recommendations. There was further considerable evidence by way of emails confirming that the Occupational Health recommendations were being implemented with due expedition.

271. In all the circumstances, therefore the Tribunal considered that the Claimant had not established the factual basis of her allegation. She could not point to any specific Occupational Health recommendations which had not been implemented or which had not been set in train by the date on which she was last at work namely 1 November 2017. The Tribunal also took into account that the Lexxic report had originally been prepared in June 2017 but due to administrative delays in the process of the Claimant having an opportunity to make amendment and comments on it, it was not provided to the Respondent until the first week of September 2017. The progress thereafter within the Respondent was prompt in the Tribunal's view.

272. In relation to the Occupational Health Service recommendations the Tribunal found that a workplace/assessment was undertaken and the Claimant's timeframes extended (p116); further the Respondent allowed the Claimant to be supported at significant meetings (p119); and a more detailed assessment was eventually carried out (pp118 and 123).

273. Here again there was no comparator evidence. Indeed, the Tribunal noted that the fact that Ms Killeen held so many meetings with the Claimant including to discuss the implementation of the adjustments led to complaint by the Claimant. There was no factual basis therefore on which the Tribunal could find that there was undue delay or any delay on the Respondent's part. There was also an absence of communication contemporaneously to the Respondent querying any delay.

274. Finally, the Respondent admitted (para 8(e) of Ms MacLaren's closing submissions [R13]) that the Respondent implemented its sickness procedure. It was denied however that the Claimant was subjected go any capability procedure. There was no evidence to contradict this submission. Allegation 5(b) was therefore dismissed as not well-founded.

Employment Judge Hyde

Date: 5 March 2019