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EMPLOYMENT TRIBUNALS

Claimant: **Mr P Ekperigin**

Respondent: **London Borough of Tower Hamlets**

Heard at: **East London Hearing Centre**

On: **28 – 30 September 2016**
In Chambers: **12 October 2016**

Before: **Employment Judge Jones**

Members: **Ms L Conwell-Tillotson**
Mrs P Alford

Representation

Claimant: In Person

Respondent: Mr C Adjei (Counsel)

RESERVED JUDGMENT

It is the unanimous judgment of the Employment Tribunal that:-

1. The Claimant was not dismissed.

2. The Claimant's complaints of discrimination fail and are dismissed.

3. The Respondent gave the Claimant a statement of employment particulars.

4. There was no breach of Sections 1- 4 of the Employment Rights Act 1996.

REASONS

Claims and issues

1. The Claimant brought complaints of harassment and direct discrimination on the grounds of the protected characteristic of being associated with a disabled person. The Claimant's son is a person with a disability.

2. The Claimant also brought a complaint of constructive unfair dismissal and a complaint that the Respondent failed to provide him with a statement of written particulars.

3. We have referred to the itemised list of issues in the judgment below.

4. The Respondent defended the claims.

Evidence

5. The Tribunal had a bundle of documents. We heard live evidence from the Claimant in support of his case and from Ms Jacqueline Okikiola who is a Housing Adviser at the Respondent and one of the Claimant's former colleagues.

6. On the Respondent's behalf, the Tribunal heard from Sandra Awotesu – Team Principal within the Housing Options team and the Claimant's line manager; Janet Slater – Service Manager for Options and Assessments and Ms Awotesu's manager; Jackie Odunoye – Head of Strategy, Regeneration and Sustainability who had overall management responsibility for the Housing Options Team; and Peter Jones – Interim Housing Options and Prevention (Families) Team manager within the Respondent's relevant directorate.

7. All of the witnesses provided the Tribunal with written witness statements.

8. From the evidence before it the Tribunal made the following findings of fact. The Tribunal has restricted itself to only making findings on those matters that are relevant to the issues in this case.

Findings of Fact

9. In December 2008 the Claimant started working for the Respondent as a temp Housing Advisor. In 2009 he was offered and accepted a fix term contract. We had a copy of the letter dated 24 July from the Respondent to the Claimant offering him the fixed term appointment from 1 August 2009 to 31 January 2010. In 2011 he became a permanent member of staff. At all times he worked as a Housing Adviser based at the Housing Options Service at Albert Jacob House Neighbourhood office, 62 Roman Road in East London.

10. The Respondent did not have a copy of the Claimant's terms and conditions of employment on file but believed that the Claimant would have been sent written terms and conditions in 2011 after he was appointed on a permanent basis. The fixed term letter referred to a statement of particulars that was going to be issued to him within 8 weeks of him taking up his employment. There was a further letter that we had in the bundle which was a letter dated 13 February 2013 informing the Claimant of a re-grading of his post. That letter referred to HR having sent him terms and conditions of employment along with another copy of the letter for him to sign and return indicating his acceptance of the appointment. There was no letter from HR chasing this and it is likely that he did sign and return the form to confirm his acceptance of the contract. Alternatively, if no written terms and conditions were sent at that time, we would have

expected the Claimant to have written to enquire as to its whereabouts. The Claimant did not write to the Respondent in those terms.

11. As a housing advisor the Claimant, with the rest of the team, offered a free housing advisory service to private rented tenants in the London Borough of Tower Hamlets. The team dealt with people evicted from their homes by private landlords and sometimes assisted clients with court proceedings. The Claimant would sometimes represent clients at the County Court as a McKenzie Friend or Lay Representative.

12. The Housing Options service is a statutory service that the Council has to provide for the private residents of the borough.

13. The Claimant was part of a team of 4 one of whom was a money advisor. The team took turns on a rota basis to operate an open emergency duty session. At any one time one member of the team would be on emergency duty, one on normal duty and the other two would be expected to deal with telephone enquiries, attend court, see clients and progress casework.

14. While employed by the Respondent the Claimant completed his legal studies in his own time and in October 2011 he was called to the Bar. The Claimant needed to complete the professional stage of training, also known as a pupillage, within 5 years of his call to the Bar in order to begin practising as a barrister. That period was due to expire in November 2016.

15. On 6 September 2013 the Claimant's son Joseph was born. Joseph was born premature. He has been assessed as having delays in speech, language, mobility, social communication and interaction development. The Respondent did not dispute that the Claimant's son was disabled for the purposes of the Equality Act 2010 and because of that, we have not discussed in these reasons the report from Mr Barodia that is in the bundle of docs.

16. In November 2013, while employed by the Respondent, the Claimant secured a position as a volunteer legal advisor at the Royal Courts of Justice (RCJ) with the Citizens Advice Bureau (CAB) based there. He applied to the Respondent to be allowed to reduce his hours to facilitate his ability to carry out the role. That application was approved by George Denton-Ashley who at the time was the team manager. The Claimant worked 4 days a week with the Respondent and 1 day a week at the RCJ for a period of 6 months. The Claimant returned to full-time working in June 2014 having submitted a flexible working request on 22 May 2014 that was granted.

17. In July 2014 Sandra Awotesu joined the Housing Advice Team as the new Housing Advice Principal. Prior to her appointment the post had been vacant for a few years. Her senior manager was George Denton-Ashley and following her appointment he continued to support her while she settled into the job.

18. On 7 October 2014 the Claimant submitted a formal flexible working application. In that application he asked for consideration to be given to altering his work pattern so that he could do homeworking on Mondays and Fridays. He suggested that if the application was granted he would be able to comply with the requirements to handle

telephone enquiries and deal with his other work from home. He did not refer to stress in the application and it was not submitted under the Respondent's stress management policy. The part of the form which asks the applicant to describe how he thinks the new working pattern can be best accommodated by the service area and work colleagues was left blank.

19. Previously, in September, the Claimant made an informal approach to his line manager, Ms Awotesu to inform her that he was having problems with childcare and wanted the Respondent to consider allowing him to work flexibly. Ms Awotesu advised that if he was making a statutory request, he would need to make a formal application. This is what led him to make the application on 7 October.

20. The Claimant and his wife, who works as a Deputy Manager in Camden and Islington NHS for Dementia Services had initially placed Joseph in nursery but he caught a chest infection there. After that they decided that they wanted to care for him themselves. The Claimant's application was to do homeworking on Mondays and Fridays while also having sole care of his son.

21. On 9 October the Claimant met with his manager, Sandra Awotesu and Housing Advice Team Principal – George Denton-Ashley to discuss the application.

22. In that meeting we find it likely that the Claimant was given ample opportunity to explain how he envisaged the homeworking arrangement working. He described the care his son needed and how he thought he would manage his casework and the telephone enquiries while having sole care of his disabled son.

23. In the meeting he referred to the Respondent Stress Management Policy and asked that his request be considered under that as well as the flexible working policy. His position was that he was stressed because of the way in which his childcare had to be structured.

24. The Respondent's flexible working policy was in the bundle of documents. It stated that the Respondent was committed to improving the work-life balance of employees by implementing initiatives that support combining work with family and other personal interests, commitments and responsibilities. It referred to many different types of flexible working including part-time working, flexi-time, home working, staggered hours, term-time only, reduced hours and job sharing. The policy stated that managers and staff should take joint responsibility for finding solutions to business and work-life issues and problem solving. Section 6 set out the application procedure. It stated that the employee must use either the hard copy or electronic copy of the flexible working form to make the application, that the employee's manager would meet with them within a reasonable time frame to discuss it and that the manager would come to one of three conclusions. Those are (i) provisionally agree the request and confirm a start date for the new arrangements; or (ii) provisionally offer an alternative arrangement to which they both agree; or (iii) provisionally reject the request explaining the business reason(s) why the request cannot be accommodated, along with details of the appeals process.

25. We also had sight of the Respondent's Stress Management Policy. That policy stated that the Respondent was committed to protecting the health, safety and

wellbeing of its employees and that workplace stress was recognised as a health and safety issue. It stated that employees have the prime responsibility for their own health and wellbeing. They are advised to identify areas of potential stress, discuss their workload and concerns with their manager, contribute to PDR discussions and if necessary, use the confidential counselling sessions provided by the Respondent and/or develop their own support network and coping strategies. As the employer the Respondent recognised it overarching responsibility for recognising and acting upon potential workplace stressors which cause adverse reactions in its employees. The policy also set out the managers' role, role of HR, Occupational Health and of Corporate Health & Safety in addressing workplace stress.

26. We find it likely that as Ms Awotesu was new in post at the time and had not yet completed her probation her manager George Denton-Ashby chaired the meeting. They discussed the Claimant's application. Although the Claimant denied it we find it likely that the managers suggested to him that an alternative arrangement could be agreed. However, we find it likely that, given his application, the Claimant pressed for a flexible working arrangement that allowed him to do homeworking on Mondays and Friday.

27. We find that the application was considered thoroughly and Ms Awotesu provided the Claimant with a detailed and considered response. Sandra Awotesu communicated her response in a 4 page email dated 17 October 2014. We find it likely from the wording and detail of her response that she gave it careful consideration. Although Mr Denton-Ashby conducted the meeting we find it likely that as she was the Claimant's line manager Sandra Awotesu made the decision on the application, with his support.

28. In her response she set out in detail what the Claimant expected/intended to do with the days he proposed to work at home. She addressed his application from the aspect of the work he would be required to do and the workload of the team and how that would be impacted by him having homeworking on two days a week. She divided her response into separate headings where she addressed each aspect considered – impact on office, impact on other staff who may also wish to work from home, impact on long-term work and team building and interaction with other stakeholders. She also raised matters to do with his existing caseload, which had not been raised with him previously. It was not the right place to raise those issues but they were not raised in a disciplinary context but to show why she believed that it would not be appropriate for him to working from home and to show that there were matters that would preferably need to be addressed in the office rather than through remote working.

29. In the email Ms Awotesu informed the Claimant that his application was refused. She advised him of his right of appeal. In summary, the application was refused because the Respondent considered that it could not sanction a situation where homeworking was being used as a substitute for care arrangements. Ms Awotesu considered it unlikely that the Claimant would be able to complete any or sufficient work during days that he worked at home because of the level of care the child would require.

30. On 20 October the Claimant submitted an appeal on that decision. He suggested that the application had not been properly considered. He objected to what

he described as Mr Denton-Ashby steering the discussion towards childcare. He appeared to posit that the application was really all about stress management. At the Tribunal Hearing his position had changed and he stated that it was in relation to both policies. He also appealed because he considered that Ms Awotesu had not offered him alternative possible flexible working ideas in the meeting.

31. Janet Slater who was the Service Manager, Options and Assessments within the Respondent's Development and Renewal Directorate was the manager who considered the Claimant's appeal.

32. In his appeal the Claimant suggested that the Respondent had a duty to improve his work-life balance and that homeworking on two days a week was the appropriate solution to his dilemma. He considered that the Respondent had a duty to relieve the stress caused to him by the management of his son's care as this was impacting on him in the workplace. He set out in his appeal that considerations of his work-life balance were of equal importance to the aspects of service delivery that were cited by Ms Awotesu as the reasons for her refusal of his request and stated that this was unfair to him. He also considered the refusal of his request to be malicious.

33. On 31 October 2014 Ms Slater met with him and they discussed his appeal. She came to the similar conclusions as Ms Awotesu. She confirmed Ms Awotesu's decision and refused the Claimant's application. Ms Slater did not agree that the Claimant would have been able to fulfil his contractual hours and care for his son at the same time. Also, she agreed that his suggested homeworking pattern was likely to have an adverse impact on both service delivery and the Claimant's ability to manage his workload.

34. During the appeal hearing the Claimant expressed an interest in exploring options that did not reduce his income. Ms Slater discussed options with him that allowed him to work around the times that he needed to care for his son. The Respondent was ready to consider with the Claimant options that would allow his work-life balance to be improved and some of those were discussed with him in the meeting. Ms Slater's evidence was that it was likely that the alternative options had been raised at the earlier meeting but that the Claimant had not been interested in exploring those at the time.

35. The Claimant was advised of a further right of appeal.

36. In his response on 31 October the Claimant suggested an alternative proposal. He suggested that he could be allowed to work staggered hours on Mondays and reduced hours on Fridays. That would allow him to work half-day on Mondays and make up the rest of the hours during the week. If that was agreed it would enable him to fit in with the nursery arrangements made for his son on that day. He would work half-days on Friday and reduce his contractual hours by 3. This would fit in with half-day nursery provision secured for his son.

37. By email response on the same day Ms Slater confirmed that having discussed the Claimant's proposal with Ms Awotesu the Respondent were happy to accept his request.

38. The Claimant's working hours were adjusted to 32 hours per week from 3 November. A recorded delivery letter was sent to him on 4 November to record this. The letter stated that it constituted an amendment to the terms and conditions of employment, previously supplied to him and replaced previously agreed working arrangements and local terms and conditions of employment. The Claimant did not write to the Respondent to enquire what terms and conditions were being referred to. He did not notify the Respondent that he had not received any written terms and conditions.

39. In Nov 2014 Ms Awotesu referred the Claimant to Occupational Health as he had mentioned that he was suffering from stress as a result of his personal situation. The OH advice on 19 November confirmed that the Claimant was feeling stressed because of his personal circumstances. He was not suffering any physical symptoms at the time of the appointment but he informed the advisor that it normally manifested as chest pains and palpitation.

40. Occupational Health confirmed that the Claimant was fit for work and that no adjustments were required. The doctor recommended that there should be a 1:1 meeting set up with his line manager to assess his progress and address any concerns that he may have. Resolution of his stress issue would only be achieved through a management route as opposed to a medical route. He reported no underlying stress that was affecting his attendance at work but reported stress due to workload and personal circumstances which he stated were under control. The Claimant makes no complaint about this referral or its result.

41. In March 2015 the Claimant wrote to the Mayor of Tower Hamlets to complain about what he considered to be an issue in direct opposition to the Respondent's Equal Opportunities Policy and Objectives and also the Equality Act. He considered that the Respondent's practice of only providing training contracts for trainee solicitors and not providing the equivalent training for barristers was not in keeping with that policy and with the Act. He asked the Mayor to intervene to change the policy. He informed the Mayor of his deadline in 2016 to get his training completed and that if that did not happen he would have to start again.

42. At that time David Galpin was Head of Legal Services and the Claimant's complaint was referred to him to address. On 1 April Mr Galpin responded to the Mayor on the issues that the Claimant raised. He stated that the Respondent did consider qualification as a barrister as sufficient to meet the requirements that it expected of its lawyers. However, he informed the Mayor that the Respondent had no one currently employed in Legal Services who could satisfy the Bar Standards Board's requirement to be a suitable pupil supervisor for the Claimant. That was why they could not offer the Claimant the training that he needed in order to complete his training to become a barrister.

43. On 3 June Sandra Awotesu sent a group email to the members of her team to advise them on good practice around time recording. She asked them to ensure that they accurately record the times they start work, take lunch and leave for the day. She advised that over and under recording should be avoided and that this could be done by recording time at the end of the working time. The Claimant received this email along with the other members of the team.

44. On 25 June the Claimant sent an email to his manager informing her that he had 40 active cases and asked what measures management were minded to put in place to avoid a catastrophe. The Claimant's case is that this was not a complaint. WE find that he was putting a problem to the Respondent and asking them to find a solution. It was reasonable for the Respondent to consider this as a complaint and address it as such.

45. Later that day and following a team meeting, Ms Awotesu emailed him in response to say that the matter was being addressed. She confirmed that the caseload for officers was high because there was a vacant Housing Advisor Post and there had not been a decrease in the demand for the service. Ms Awotesu confirmed that they had recently interviewed someone who they expected to start in August. In the interim the Claimant was advised to continue to refer cases to partner agencies where appropriate.

46. On 24 June 2015 the Claimant emailed David Galpin the Head of Legal Services to seek work experience or a secondment opportunity in order to fulfil the training requirement of his legal qualification. He informed Mr Galpin that the management at the Housing Options Service was willing to accommodate his request since it pertained to his learning and development as an employee within the Council.

47. In his response, Mr Galpin indicated that he was happy to consider the Claimant's application for any vacancies in Legal but he was not prepared to fund a placement for the Claimant in his service where there was no vacancy.

48. In an exchange of emails the Claimant asked Ms Slater as his Service Head whether she would be willing to support him being seconded to Legal Services for 6 months or less outside the normal channels of a secondment advertisement process. The Claimant's email dated 3 July 2015 confirmed that he had spoken to Ms Awotesu as his line manager and that she was supportive of this.

49. On 10 July Ms Awotesu carried out a Performance Development Review (PDR) with the Claimant. This was a sort of Appraisal system. As part of that review the Claimant noted in his personal development plan his desire for mentoring and secondment to legal services to achieve his personal career aspiration of becoming a barrister. Ms Awotesu understood that these matters would need to be discussed through HR as she was not at a level of seniority within the organisation where she could facilitate or agree to his requests. She was not Head of Housing Options or of Legal Services. As Team Principal we find that Sandra Awotesu's job was principally to ensure that the users of the service received the best service possible and that it was done within budget and by making best use of the resources available.

50. Ms Awotesu considered that the Claimant was a paid Housing Advisor and that he had to do so within a team that was trying to provide a service that was understaffed and had a high caseload. It was not disputed in the Hearing that there was a high caseload and a demand for these services in the borough. She considered that her foremost consideration was to balance the work that he was required to do with the development opportunities he wanted, which were not related to his work and would not necessarily develop him as a Housing Advisor. She referred him to HR as she

considered that it was not her job to assist him in furthering his career as a barrister when this was not required by the service. The team did not require a barrister.

51. On 22 July Ms Slater met with the Claimant to discuss his application to be funded for a secondment to Legal Services for 6 months so that he could gain the experience that would enable him to complete his training to become a barrister. Following discussions between Mr Galpin and Ms Slater who were the relevant service heads, the Claimant was informed that due to funding constraints in both Legal Services and the Housing Options Service a secondment opportunity could not be approved.

52. We find that in a 1:1 meeting between them on 4 August 2015 the Claimant complained to Ms Awotesu that his caseload was nearing 40 cases if not already 40. He asked what strategies management had put in place to deal with the workload. They discussed the matter and Ms Awotesu disputed whether the Claimant had 40 active cases or whether he was actually only working on around 10 at any one time. It was decided that it should be brought up at the next team meeting.

53. We find that Ms Awotesu, who qualified as a barrister in Nigeria, gave the Claimant the benefit of her experience by advising him of ways in which he could get the training that he needed in order to qualify. She suggested volunteering at the local CAB and other ways he could achieve his ambition to become a barrister.

54. The Respondent has a learning and development policy which was in the bundle at page 247. It stated that the Council was committed to supporting employees to take personal responsibility for developing themselves and others through the provision of a wide range of opportunities for personal and professional development and in order to promote effective service delivery and new ways of working. Under the heading "Employee Development Process" the policy stated that the *"annual service and team plans and the individual PDR (appraisal) will play a vital role in ensuring learning and development is effective for everyone involved and meets service and individual needs"*. The policy stated that learning and development priorities are based on the requirements of the Council and Directorates. Those are identified by an analysis of team and individual needs using a combination of processes including PDRs, self-identification by the employee, Directorate, Service and Team Plans and evaluation of past learning and development programmes. The policy acknowledged that learning and development is an ongoing process and could occur in a variety of ways including: on the job training/coaching, work shadowing/secondments, mentoring, internal training courses, participation in working parties, peer review and training leading to external qualifications.

55. The Claimant did attend courses paid for by the Respondent and undertook training required for his job.

56. On 2 October 2015 the Claimant had another 1:1 with Ms Awotesu. She took minutes of the meeting in which it was noted that a fixed nursery place for Joseph would not be in place until he reaches 3 years old in September 2016.

57. On 14 Oct Ms Awotesu wrote to an admin assistant who was part of the team to ask her to record on her flexi sheet the non-work related breaks that she took away

from her desk. She also advised her to accurately record the time she stopped working at the end of the day.

58. Also on 14 October the Claimant emailed Ms Awotesu to ask whether he would be allowed to shadow Ngozi Adedeji Team Leader Housing at Legal Services for 1 day a week until a secondment opportunity arose. He asked to be allowed to do this on Tuesdays. He believed that this would avoid it impacting on his duty days. He copied the application to Ms Janet Slater.

59. 2 days later on 16 October, Ms Awotesu responded to refuse the decision. She set out her reasons for doing so. We find that even though she responded quickly she had properly considered it. She gave reasons why the request was refused. That was because, given his present arrangements, the Claimant only had 3 full days a week in the office as he was already on duty on two days – Wednesdays and Thursdays. He worked half days on Mondays and Fridays. Ms Awotesu considered that this left Tuesday as the only day in the week when he would have time to write up notes, write letters and otherwise catch up with work. She also referred to the Claimant's complaints about his caseload which was likely to be even more difficult to manage if he was devoting less time to his job.

60. However, she also confirmed that she was aware of his need for particular continuous professional development and would able to consider his request again if he reverted to a 35 hour week. We did not find that this was an outrageous suggestion by Ms Awotesu even though she was aware of the Claimant's childcare issues that had caused him to apply for flexible working a year earlier in October 2014. It was appropriate for her to say that from the point of view of the service, the only way she could reconsider his request was if he were to revert to a 35 hour week. It was up to the Claimant to consider with his family whether he could do so. He was not pressured to do so.

61. At their next PDR meeting on 3 November the Claimant again raised his personal development objectives. Ms Awotesu advised that he should take the matter up with HR. She considered that this was appropriate as his issue was to further the Claimant's personal development objectives rather than a service objective. The Respondent's learning and development policy does not require her as his manager to pursue his personal development objectives if those are not also the objectives of the service. The Housing Options team did not require a barrister and neither did the Respondent. It was therefore not a corporate or a departmental objective that the Claimant achieve his personal development objectives. We find that Ms Awotesu was sympathetic to his ambitions and supported the Claimant by including his personal development objectives in his PDR and giving him the benefit of her experience and advice, whether or not he found that helpful.

62. The Claimant and Ms Awotesu sat near to each other in the office. However, by November 2015 they had stopped speaking to each other unless they had to. We are unable to determine who stopped speaking to who first but sometime during or after the summer period of 2015 they stopped talking to each other. We find that it is likely to have been the summer because when the Claimant applied for the secondment in the Legal Department in July he informed both Ms Slater and Mr Galpin that he had spoken to Ms Awotesu and she was in agreement so we find it likely that at that time

they were still speaking to each other.

63. It was the Claimant's case that Ms Awotesu stopped speaking to him after he clarified the likely duration of his flexible working needs in January 2015. We did not find that to be case. Ms Awotesu denied that this conversation took place and we found that it was unlikely that it did. We find it more likely that they did not speak to each other unless they had to, from the end of the summer/early autumn period of 2015.

64. As his line manager it would have been Ms Awotesu's responsibility to address the issue of communication between them. She failed to do so and unfortunately the situation deteriorated.

65. On 10 November the Claimant felt sick during the day. He did not speak to Ms Awotesu about this. He did not speak to any other member of management. He decided to leave the office to attend a GP's appointment. As he was leaving the office he spoke to Ms Awotesu to inform her that he had just sent her an email. By the time she read the email he had already left. When she read the email she discovered that he had secured an appointment at his GP for 4.30pm that day. She replied to the email to advise him to book the time as special leave.

66. On 13 November 2015 the Claimant submitted another flexible working request to reduce his hours to 24 per week and only work 3 days per week. The basis for the application was that he needed to complete his professional education by a date in 2016 and could only do so by embarking on the type of professional training specified by the Bar Standards Council. He stated that because of that requirement coupled with his ongoing childcare commitments he needed to alter his working pattern in the short-term to accommodate them. He suggested that his hours could be accommodated over Monday, Wednesday and Thursday.

67. In the part of the form that required him to say how he envisaged the current service being affected, he did not do so but stated that he believed the current service would be unaffected. He suggested that the proposed new working pattern could be best accommodated by arranging a team meeting to discuss his change in circumstances and the impact if any, on their work patterns.

68. At the time George Denton-Ashley was off sick which meant that Ms Awotesu was busy with additional management duties. In particular, her evidence was that she was working on matters concerning the Department for Communities and Local Government and on an audit which she needed to complete urgently. We find that the application was addressed by 25 November. At the time the Respondent believed that the Claimant had a deadline to meet in relation to his qualifications that meant that he needed a quick decision on his application. Because of those matters Ms Awotesu was unable to meet the Claimant to discuss his application before she made a decision on it.

69. We find that Ms Awotesu did not call a team meeting to discuss the Claimant's application. It would not have been appropriate for her to call a meeting to suggest to an already hard-pressed team that they should take on even more work to enable the Claimant to have flexible working so that he could undergo training to help him achieve

his personal ambition of becoming a barrister. Also it would not have been appropriate to ask the team to assist in making the decision as to whether or not the Claimant's application should succeed. The decision had to be made by the Team Principal and/or Head of Service.

70. On 23 November the Claimant wrote to Melanie Clay and Aman Dalvi asking for assistance in securing the learning and training opportunity he required in order to qualify as an employed barrister within the Council. The Claimant was told that his email had been passed to Jackie Odunoye, Service Head Strategy, Regeneration, Sustainability & Housing Options for her to respond to him directly.

71. On 25 November Ms Awotesu responded to the Claimant's most recent flexible working application and refused it. She stated in writing that to agree to it would increase pressure on the Claimant's ability to manage his caseload. Also, that his colleagues would not be able to pick up his cases as the service was already stretched. She suggested that if the Claimant was willing to consider job share for the role whereby his cases were picked up by a job share partner then the Respondent would consider allowing him to reduce his hours in the way he proposed. She considered that a job share for his role may mean the Claimant having to adjust the hours he was proposing to work. It would mean that the other job share would continue the casework on his days off. This would enable the team to provide a seamless service to its customers.

72. On 27 November, Ms Awotesu was still operating under the belief that the Claimant needed the Respondent to make a decision quickly. As she anticipated that the Claimant would want to appeal her decision, she sent it on to Janet Slater for her to consider as an appeal. Ms Slater considered the application on the same day and refused it. She supported Ms Awotesu's decision. She stated that under the Claimant's current proposal there would be 11 'vacant' hours which the Respondent would have difficulty recruiting to. The Respondent considered that it would be better if the Claimant either considered working 28 hours which would mean that there was a 7 hour 'vacancy' that they could fill. Ms Slater did not accept his statement that the current service would be unaffected by the change given that he was proposing reducing his working time by 8 hours per week and the service was already busy. Ms Slater asked that the Claimant indicate how long he would like the arrangement to continue. She refused the application because of the following: an inability to reorganise work among existing staff, the possible detrimental impact the changes will have on the ability of the business to meet customer demand, possible detrimental impact on performance and the inability to recruit additional staff for the remaining hours.

73. Ms Slater also sent the Claimant an email on the same day. She stated that although his request had been refused if the Claimant was able to make alternative suggestions she would be happy to reconsider. She also referred to the Claimant needing to make some key decisions in a short space of time.

74. On 30 November the Claimant appealed this decision. He appealed to Jackie Odunoye. He complained that before making her decision on his application, Ms Awotesu had not held a meeting with him or held a team meeting as he requested in his application. He stated that the managers who considered his application had not

given fair consideration to his career objectives and life plans and he complained that the decision not to grant his application for flexible working was contrary to the ethos of the Respondent's equal opportunities duties. He accused them of preferring to impose an unfair work regime over a reasonable request for flexible working. We did not understand how asking him to fulfil the terms of his contract as it then stood could be interpreted as imposing an unfair work regime.

75. On 11 December Ms Awotesu wrote to the Claimant informing him that she had noticed a trend in how he recorded time on his flexi sheets. She reminded him that the time he should record as the end of his working day should be the time he shuts his computer off and not the time that he leaves the office. She stated that under or over recording time was an abuse of the flexi scheme, the use of which could be withdrawn from an employee.

76. Ms Odunoye arranged to meet with the Claimant on 16 December. This was a day when he was supposed to be on emergency duty. The Claimant arranged this meeting without telling his manager about it. He did enter it into the team e-calendar but did not speak to Ms Awotesu about it. On 15 December Ms Awotesu noticed the meeting in the team diary. She emailed Ms Odunoye to notify her that the Claimant had arranged the meeting for a time when he was supposed to be on emergency duty. She also confirmed that the Claimant had not discussed this with her beforehand.

77. On the morning of the 16 December the Claimant emailed his line manager, Ms Awotesu and told her that he was going to a meeting with Ms Odunoye and that he had rearranged a meeting with a client to enable him to be free for the appointment. He did not refer to any arrangements that he had made for the emergency duty.

78. Ms Awotesu expressed surprise that he had arranged a meeting for a time when he was supposed to be on emergency duty which would not have entailed just seeing appointments but also being available to any urgent cases that presented themselves on the day. The Claimant was asked to clarify what arrangements he had put in place to cover for the period he planned to be out of the office.

79. The meeting with Ms Odunoye was rearranged to Tuesday 5 January 2016. There was then a series of emails between the Claimant and Ms Awotesu over the 16 and 17 December that were increasingly fraught and angry in tone. It is likely that the Claimant felt aggrieved as he felt that Ms Awotesu was not doing all she could to further his career objectives and this was the context to the tone of his emails. The tone of Ms Awotesu's emails indicated to the Tribunal that she felt that she had been as supportive as she could be given that her priority was to run the service and that he was making unsubstantiated allegations against her. Ms Awotesu became defensive when she considered that she was under attack by the Claimant and she asked him for evidence in support of his allegations. In her last email she set out the ways in which she considered that she had personally given him support to achieve his ambitions. She also asked him to ensure that if this situation arose again he would inform the team and make arrangements to have his duty covered.

80. From the contents of the series of emails sent between the Claimant and Ms Awotesu on the 16 and 17 December we find that they were having an argument. In his emails the Claimant used quite strong language such as when rejecting her

assertion that she had tried to support him. He stated that such assertions were *"baseless, untrue and lacks any substance"*. Also, it was his belief that by putting an entry about a meeting in the e-diary he had given sufficient notification to his manager and the team that he was going to be absent on a duty day and any expectation that he should have also spoken to her about it was unreasonable. We find that it was reasonable in the circumstances to expect him to speak to someone about the appointment even if it was not written down in a policy. That would be a reasonable expectation of someone who was part of a small, pressured team providing a much needed public service. He also accused her of targeting him and of harassment by intimidation and bullying.

81. He accused her of ridicule and of maliciously probing into his general working arrangements and functions as a Housing Advisor following her decision not to grant his flexible working application. It is likely that this is a reference to the email sent to him on 11 December about flexi/time recording. We find it appropriate and reasonable for a manager to check that an officer is accurately recording time at work and to monitor it on an ongoing basis. As team principal this would have been part of Ms Awotesu's job.

82. Ms Awotesu was required to check work and monitor arrangements of all staff and in particular, if the members of the team are frontline officers serving the public, a key part of the team managers responsibility is to ensure that there is front line cover in place. Although the Claimant had put the meeting in the team diary, as he was also on emergency duty at the same time, it was entirely reasonable for Ms Awotesu to have raised it with him and asked what provision he had put in place to cover that duty in circumstances where his colleagues were also hard pressed and there was a known need for this service.

83. All of the emails were copied to Janet Slater.

84. On 18 December the Claimant wrote to Ms Slater and asked her to acknowledge his email as his formal complaint and grievance against his manager. He considered that in her emails she had been intimidating, bullying, ridiculing of him and that she had harassed him. He considered the email train to be self-explanatory. He did not suggest mediation as a possible way forward and indeed as he titled the email *"formal complaint"* it would be reasonable for the Respondent to take this to mean that he was not interested in mediation at this time.

85. On 21 December, which both parties agreed was the last formal working day before the Christmas holidays began, Ms Slater sent an email to both the Claimant and Ms Awotesu. She referred firstly to the fact that at the time they sent those emails both the Claimant and his line manager sat at adjacent banks of desks facing each other. She was intimating that they could have spoken to each other instead of using email and that if they had done so it was unlikely that they would have used some of the inflammatory language they had used in their emails. She also stated that she was not going to do the same i.e. use the medium of email to admonish them.

86. She stated that the role of team principal was to manage both the office and oversee the officer's workload which could at times mean making some constructive criticism. She advised them both to consider their communication and relationship

over the Christmas holidays and to meet again on Ms Awotesu's return from her break in January resolved to mend their fractured working relationship.

87. We find that Ms Slater was aware that the Claimant wanted this matter dealt with as a formal grievance since he had made that clear in his email of 18 December. However, it was still open to her to suggest that they try to resolve their differences in an informal way, if it were possible to do so. As a senior manager it would have been part of Ms Slater's role to promote good staff relations and to attempt resolution of problems within the teams under her management. Ms Slater had been out of the office that morning and responded to the Claimant as soon as she could.

88. Ms Awotesu was in the office for a short time that morning. She was in the office to complete some work before going away on leave later that day. She was out of the country from 22 December and was not due back in the office until 11 January 2016. It was not possible to set up a meeting with her that day.

89. During that day the Claimant approached Ms Slater as she tried to copy documents at the office photocopier. She was unable to speak to him as she was trying to complete some work before the office closed for the holiday season. She did not have time and told him so. It was also not appropriate to have a discussion about this matter in the open office. We find that her response was appropriate in the circumstances.

90. Ms Slater did work up until the 24 December but most of her time was spent in pre-arranged meetings and working from home. She was working on the same audit as Ms Awotesu had been working on before she went on leave. During this time, Ms Awotesu was absent from the office and so nothing could have been progressed with her during the holidays.

91. Both Ms Slater and the Claimant were in the office on 4 January which was the first day back after the Christmas holidays.

92. On 5 January Jackie Odunoye met with the Claimant. They discussed both his most recent flexible working application to reduce his hours to 24 and work three days a week; as well as his letter to Aman Dalvi and Melanie Slater that had been referred to her for a formal response. Ms Odunoye was clear that the Claimant thought that the Respondent should support his career aspirations. He believed that it was an equal opportunities issue and that the Respondent should support him as a long-standing member of staff by providing him with the means to achieve his career goals.

93. Ms Odunoye considered that the Respondent could not afford to let a front-line member of staff such as the Claimant, work elsewhere within the organisation, given that it would also have to fund a replacement to continue the work in his paid post while he did his training or placement. The Respondent did not have the budget to cover two salaries which is what it would have had to do in order to give the Claimant what he wanted. The Legal Services Department did not have a budget to fund an additional post to train the Claimant. She informed the Claimant that the Respondent were not duty bound to assist a member of staff to develop an alternative career to the one to which he was appointed especially when that would not have been of benefit to the service that he was employed to work in. The Respondent could not see a way to

support the Claimant even though it wanted to do so.

94. In relation to the Claimant's request for flexible working she upheld Ms Awotesu and Ms Slater's decision that the flexible working application could not be granted. She agreed with them that the service the Claimant worked in, could not be subjected to a further reduction in hours. The service was already overstretched and the reduction that the Claimant proposed would leave insufficient hours to allow the Respondent to recruit to the remainder of the post. She was also happy to consider any amended proposal that the Claimant might wish to submit.

95. On 8 January the Claimant indicated to his manager and to HR that he wished to revert to 35 hours per week from 25 January. Ms Awotesu was not able to respond to his email until she returned to work from her annual leave on 11 January. Once she returned to work she discussed the Claimant's application with Janet Slater. They decided that the Claimant had to submit a formal application to increase his hours and he was informed of this on 13 January.

96. In the interim, on 12 January the Claimant submitted his resignation from the Respondent's employment. In the resignation letter he stated that he was doing so having given due consideration to his career objectives and professional development and his realisation that he had to pursue his plans elsewhere. He gave one month's notice and informed Ms Awotesu that his last day of service would be 12 February 2016.

97. On 13 January the Claimant submitted his formal application to increase his hours to 35 hours per week and this was granted. The Claimant had made arrangements with his wife which meant that she changed her shifts which enabled him to attend work for the whole of the working week from Monday to Friday.

98. He wrote to Janet Slater on 25 January to enquire what decision she had made on his complaint of 18 December about Ms Awotesu. Ms Slater had not progressed this matter on her return from the Christmas break. However, once she got the Claimant's letter she immediately asked Peter Jones to meet with the Claimant to complete the informal stage of the CHAD (Combatting Harassment and Discrimination) procedure. In his email the Claimant stated that he had suggested mediation as a way forward. Mediation had not been mentioned in the formal complaint he made on 18 December.

99. Peter Jones had been appointed interim Housing Options and Prevention (Families) Team Manager and started on 11 January 2016. He had management responsibility for the Ms Awotesu's team while George Denton-Ashley was off on long-term sick leave.

100. Janet Slater asked Peter Jones to meet with the Claimant under the informal stage of the CHAD procedure to discuss his complaint. He sent the Claimant an invitation by email and they met on 2 February 2016.

101. The Tribunal had the CHAD policy and procedure in the bundle of documents. The policy stated that the Council wanted to create and maintain a working environment where individuals are treated with dignity and respect. The Council stated

that it was opposed to all forms of unlawful discrimination and harassment of any kind. The Council, Chief Executive and senior managers were stated to be committed to the success of the policy. The procedure enabled all employees to challenge unlawful discrimination in the workplace. The procedure outlined that both formal and informal options were options available to someone who felt that they had been the subject of harassment or discrimination. It stated that it was preferable for all concerned to try to resolve matters informally if possible. The benefits of doing so were that the solutions that come about were likely to be speedy and effective. Informal solutions were stated as being more likely to restore positive working relations in the workplace and more likely to help minimise embarrassment and the risk of breaching confidentiality. The policy did go on to say that the benefits of an informal solutions should not discourage an employee from taking formal action.

102. The Claimant had raised the complaint with the correct person in accordance with the procedure as it stated that if the complaint is against the line manager then it can be referred to that manager's immediate supervisor. That manager, which in this case was Janet Slater, should act immediately to determine if the complaint is feasible and then respond to the employee to acknowledge the complaint in writing and consider what arrangements would be required to enable work to continue. After a consultation with HR, the manager is to either conduct a fuller investigation or take steps to arrange conciliation/mediation if applicable.

103. The policy stated that there is no single definition of what constitutes harassment and that it can take many forms, including offensive or hostile treatment on the basis of sex, race, religion or belief, age, sexual orientation, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity. It could also include bullying, ridicule or demeaning behaviour, whether or not linked to any particular feature of the employee.

104. The meeting between the Claimant and Mr Jones on 2 February would have been an opportunity for him to assess the feasibility of the complaint and also to see whether it was something that the Claimant, on reflection over the intervening period, was prepared to have addressed informally or through mediation/conciliation.

105. The Claimant confirmed in his evidence that he did have the opportunity to go through his complaint at length with Mr Jones. They discussed the outcomes the Claimant wanted, which was that Ms Awotesu admits her conducts and apologises to him.

106. Mr Jones discussed the matter fully with the Claimant, took advice from HR and considered all the information he had been given.

107. He considered that the email correspondence between them showed that their relationship had deteriorated and that there had been a breakdown in normal communication. This was exemplified by their decision to communicate by email rather than speaking to each other when they sat in close proximity to each other. It was clear that actual communication about work matters had been minimal and avoided where possible and that normal communication, such as saying good morning to each other and exchanging pleasantries had diminished considerably. They both blamed each other for this. Mr Jones considered that Ms Awotesu request that the Claimant

should ensure that in future if had arranged an external meeting on a duty day he should ensure that the team is informed and cover arranged; to be a reasonable management request. He also considered that the Claimant accused Ms Awotesu of ridicule and acting with malice but then did not supply evidence to support such a strongly worded allegation. It was not something that he had raised previously and in the time since putting it in the email he had not given any information in the form of dates or descriptions of incidents to support it.

108. Mr Jones found Ms Awotesu's emails succinct and to the point and putting the onus back on to the Claimant to evidence the claims he made in other emails. He did not consider that that her emails had a bullying or intimidating tone.

109. He did not agree that Ms Awotesu had proceeded by stealth and the fact that her emails had been copied to Ms Slater demonstrated this. Her decisions in respect of the Claimant's flexible working applications had been set out in great detail so that the Claimant could see the matters she considered before reaching her decision. Also, those decision letters had been referred to more senior managers either by the Claimant or Ms Awotesu herself for their consideration on appeal. Mr Jones found no evidence of stealth. He also found nothing to indicate that the Claimant was being targeted or that the motivation behind Sandra Awotesu's emails was malicious.

110. Mr Jones came to the conclusion that the Claimant's allegations based on the email exchange of 16 and 17 December with Sandra Awotesu were unsubstantiated. He decided that he had not found any evidence of harassment or any bullying or intimidating behaviour which could have led him to upholding the Claimant's complaint or that even warranted further investigation. He acknowledged that there had been a deterioration in the communication between the Claimant and Ms Awotesu and that this may have compounded how he viewed that he had been treated by her and may have also been a contributing factor in him feeling stressed about raising issues with her but he could see no evidence of intimidation, bullying, ridicule or harassment.

111. Mr Jones provided his notes of the meeting to the Claimant by email on 4 February 2016. The Claimant made some amendments to the notes and we saw those in the Hearing. Mr Jones provided his feedback to Ms Slater and HR on the same day. In his notes he did say that although he had not had a meeting with Ms Awotesu in relation to the Claimant's allegations he had spoken to her and she clearly did not think that she had done anything that warranted an apology. However, she was of the opinion that the matter could not be resolved informally and should be formally investigated.

112. We find that Mr Jones' conclusions on the Claimant's complaint arose out of his assessment of the emails and his meeting with the Claimant. His conversation with Ms Awotesu only confirmed the conclusions he had already come to on the complaint of harassment and bullying. He did not decide that the complaint had no merit simply because Ms Awotesu said so.

113. In his email on 4 February when he sent the Claimant the notes from their meeting, Mr Jones sent a covering email in which he stated that he was going to speak to Janet Slater and Jackie Coshell of HR about any appropriate next steps. He reminded the Claimant that one possible option was to arrange a further meeting with

Ms Awotesu with a view to reaching a resolution on the complaint at the informal stage. Mr Jones offered himself to facilitate such a meeting. In the alternative, he suggested that a further meeting with the Claimant might be needed before a decision could be made on the complaint.

114. In his response of the same day the Claimant confirmed that he wished the matter to be considered under the formal action part of the CHAD procedure. Mr Jones informed him that he would speak to HR and senior management and get back to him.

115. Unfortunately, there was no further meeting and no further communication with Mr Jones on this matter. The Claimant's employment ended on 10 February 2016.

Law

116. The Tribunal considered the following law in coming to its decision on this matter.

Discrimination

117. The Claimant's complaints were as follows:

118. Disability related harassment contrary to Section 26(1) and 40(1)(a) of the Equality Act 2010 (EA).

119. Harassment is defined in section 26(1) EA as follows:

> *"(1) A person (A) harasses another (B) if—*
>
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
>
> *(b) the conduct has the purpose or effect of—*
>
> *(i) violating B's dignity, or*
>
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."*

120. Most of the allegations of harassment and of direct discrimination on the grounds of his son's disability are made against Sandra Awotesu. There are also complaints made against Janet Slater.

121. The Respondent submitted that the Claimant had not indicated whether he was alleging that the Respondent's conduct had the requisite purpose of effect and whether he was alleging his dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created. It submitted that the Tribunal should consider that the Claimant is pursuing both aspects in the alternative.

122. The Claimant referred to the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 which is the leading authority on harassment. It sets out guidance to a

tribunal analysing a complaint of harassment. The EAT held that it would be a 'healthy discipline' for tribunals to address each factor in the above definition of harassment separately and ensure that factual findings are made on each of them.

123. Direct Disability Discrimination contrary to section 13(1), 39(2)(b) & (d) EA 2010. The Claimant submitted and the Respondent agreed that the law as interpreted in the case of *EBR Attridge Law LLP v Colman* [2010] IRLR 10 is that the provisions on disability discrimination in the EA apply to associative discrimination. The Claimant submitted that the Respondent treated him less favourably and harassed him on the basis of his son's status as a disabled person. Section 13 refers to A discriminating because of a protected characteristic and Section 26 refers to A engaging in unwanted conduct related to a relevant protected characteristic.

124. In determining a complaint of direct discrimination the tribunal has to consider firstly, whether a person had been treated less favourably than an actual or hypothetical comparator and secondly, whether that was due to the protected characteristic. The Claimant relied on a hypothetical comparator. The Tribunal also looked at the discussion on comparators in the case of *Shamoon v Constable of the Royal Ulster Constabulary* [2003] ICR 337.

125. The Respondent made two observations on the formulation of the comparator. Firstly, that there must be no material difference between the circumstances relating to each case, and secondly, where the case involves a complaint of disability, that includes the person's abilities (section 23 EA). In this case, the Respondent submitted that the comparator would be an employee who also requested to work from home to look after a child where the child was first one year old and then later when the child was two years old and the child had delays in speech, language, mobility, social communication and interaction but was not disabled.

126. A comparator is only useful if it assists the Tribunal in answering the question why a person acted or failed to act. The Respondent submitted that the Tribunal should always be focussed on the *"reason why"* the treatment or omission occurred and that may be the first question that has to be answered in analysing this case before considering the constituent elements of the hypothetical comparator. We were referred to comments by the EAT in the case of *Islington v Ladele* [2009] IRLR 154 that were subsequently approved by the Court of Appeal. Those comments were that in practice a tribunal is unlikely to be able to identify the statutory or hypothetical comparator without first answering the question why the claimant was treated as he/she was. Lord Nicholls' comments in the case of *Shamoon* reminded us that the determination of the comparator depends on the reason for the difference in treatment.

127. The burden of proving the discrimination complaint rests on the claimant in each case. However, the concept of the reversal of the burden of proof emerged from case law to address the particular issues in discrimination cases and the fact that proof can sometimes rely on the drawing of inferences. The shifting burden of proof is discussed in a number of cases and set out in section 136 of the Equality Act 2010 which states that *"if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the court must hold that the contravention occurred. If A is able to show that it did not contravene the provision, then this would not apply"*.

128. Guidance on the reversal of the burden of proof in discrimination cases was given in the case of *Madarassay v Nomura International PLC* [2007] IRLR 246. However, in the case of *Laing v Manchester City Council* [2006] ICR 1519 tribunals were cautioned against taking a mechanistic approach to the proof of discrimination by reference to the legislation. In essence, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination against the claimant. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a claimant has made a prima facie case of discrimination.

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

130. The Claimant referred to the case of *R v The Governing Body of JFS and the Admissions Appeal Panel* [2010] IRLR 136. In that case the Supreme Court effectively endorsed *Nagarajan*. They stated that in those cases where race was the criterion applied as the basis for discrimination, the motive for discriminating according to that criterion is not relevant. In other cases where the factual criteria which influenced the discriminator to act as he did are not plain; it is necessary to explore the mental processes of the discriminator to discover what facts led him to discriminate.

131. In assessing the facts in this case the Tribunal was also aware of the comments in the case of *Bahl v The Law Society* [2003] IRLR 640 that simply showing that conduct in unreasonable and unfair would not, by itself, be enough to trigger the reversal of the burden of proof. Unreasonable conduct is not always discriminatory whereas discriminatory conduct is always unreasonable. In the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* [2006] IRLR 865 it was stated that an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He only has to establish that the true reason was not discriminatory. Clearly, if unreasonable conduct occurs alongside other factors which suggests that there might have been discrimination, then the Tribunal should find that the employee had made a prima facie case and shift the burden on to the employer to show that its treatment of the employee had nothing to do with the employee's protected characteristic and in so doing, apply the reversal of the burden of proof as set out above.

132. The principle of the reversal of the burden of proof applies to an allegation of harassment as well as to allegations of less favourable treatment on the grounds of a protected characteristic.

Time limits

133. The Respondent also submitted that some of the allegations are out of time and the Tribunal does not have jurisdiction to deal with them.

134. Under Section 123 of the Act the Claimant has to bring his complaint within 3 months of the date of the act to which the complaints relate. As the claim was not brought until 8 March these claims would appear to be outside of the statutory time limit. Section 123(3) states that conduct extending over a period is to be treated as done at the end of the period. This is what is commonly referred to as a 'continuing act'. The Tribunal is guided in deciding whether matters are part of a continuing act by principles set out in caselaw. In the case of *Hendricks v Commissioner of Police* [2002] EWCA Civ 1686 the Court of Appeal stated that the concepts of a policy, rule, practice, scheme or regime in the authorities should not be treated as a complete and constricting statement of the indicia of *"an act extending over a period"*. Instead, the focus should be on the substance of the complaints to see whether they show an ongoing situation or a continuing state of affairs in which persons such as the claimant in the case are treated less favourably. Mummery LJ stated that the question is whether there is *"an act extending over a period"* as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed. In deciding whether a particular situation gives rise to an act extending over time it will also be appropriate to have regard to (a) the nature of the discriminatory conduct about which complaint is made, and (b) the status or position of the person said to be responsible for it. The tribunal is also to be careful to distinguish between the ongoing effects of a one-off discriminatory act as opposed to an act that extends over a period of time.

135. If complaints are out of time and are not part of an act extending over a period, Section 123(1)(b) gives a tribunal discretion to extend the time limit to such other period as it thinks just and equitable.

136. The Tribunal is aware that it has been held that times limits are to be strictly applied in employment tribunal cases and that there is no presumption that a tribunal should exercise its discretion to extend time. The onus is always on the claimant to convince the tribunal that it is just and equitable to do so, the exercise of the discretion being the exception rather than the rule.

137. In determining whether or not this is an appropriate case to apply its discretion, the tribunal had cause to consider the principles set out in the case of *British Coal Corporation v Keeble* [1997] IRLR 336. In that case the EAT held that in dealing with the test of whether it is just and equitable to extend time the Tribunal can consider the factors mentioned in Section 33 of the Limitation Act 1980 which deals with the exercise of discretion by the civil courts in personal injury cases. These factors require the court to consider the prejudice that each party would suffer as a result of the decisions to be made and to have regard to all the circumstances of the case and in particular to:

137.1. The length and reasons for the delay;

137.2. The extent to which the cogency of the evidence is likely to be affected by the delay;

137.3. The extent to which the party sued had cooperated with any requests for information;

137.4. The promptness with which the plaintiff acted once her/she knew of the facts giving rise to the cause of action; and

137.5. The steps taken by the plaintiff to obtain appropriate professional advice once s/he knew of the possibility of taking action.

138. The Claimant's allegations were all brought as part of these proceedings on 8 March 2016.

139. The Respondent submitted that the complaints relating to October 2014 (3.1(a) and (f)) and January 2015 (3.1(c)) are out of time and the Tribunal has no jurisdiction to hear them. Mr Adjei submitted that there was a break in the time line so that even if there was a continuing act it must have ended in January 2015 as there are no complaints between that date and the next complaint in October 2015. There are then complaints in October, November and December 2015. The Respondent also submitted that the Tribunal should not apply its discretion to extend time.

140. The Claimant submitted that allegations 3.1 (a), (c) and (f), were all complaints that were linked with the refusal of his second flexible working application in November 2015 and his communication with Ms Awotesu between 15 and 17 December 2015 and so should be considered as an act extending over a period.

Constructive Unfair Dismissal

141. The Claimant also claimed constructive dismissal. Section 95(1)(c) of the Employment Rights Act 1996 states as follows:-

> *"The employee terminates a contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers' conduct."*

142. The circumstances in which an employee would be entitled to terminate his contract would be where the employers' conduct amounted to a repudiatory breach of contract.

143. The Claimant's complaint is that the Respondent breached the implied term of trust and confidence which is in each employment contract. The tribunal would need to conclude that the employer had acted without reasonable cause in such a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the employee. Also, the Tribunal needs to be certain that the employee had not affirmed the contract under which he was employed after such a breach and before he resigned, or that if he had affirmed the contract there was subsequently a "*final straw*" capable of contributing to a series of earlier acts which cumulatively amounted to a repudiatory breach of contract and that he had resigned in response to the repudiatory breach.

144. The leading case of constructive dismissal remains the case of *Western Excavating Ltd v Sharp* [1978] ICR 221 (CA) where, as Lord Denning stated:

> *"If the employer is guilty of conduct which is a significant breach going to the root of employment, which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminated the contract by reason of the employer's conduct. He is constructively dismissed."*

145. The test that must be applied in determining whether or not this has occurred, is an objective test and this is summarised above and set out in the case of *Mahmud v BCCI* [1997] IRLR 462 in which Lord Nicholls stated that:-

> *"The conduct must…impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances."*

146. In the Court of Appeal decision in *Buckland v Bournemouth University Higher Education Corporation* [2010] IRLR 445 the test to be applied in a constructive dismissal case was set out as follows:

146.1. In determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished *Mahmud* test applies:

146.1.1. What was the employer's conduct that was complained of?

146.1.2. Was the conduct complained of calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties;

146.1.3. Did the employer have reasonable and proper cause for that conduct?

146.2. If acceptance of that breach entitled the employee to leave, he has been constructively dismissed;

146.3. It is open to the employer to show that such dismissal was for a potentially fair reason;

146.4. If he does so, it will then be for the employment tribunal to decide whether the dismissal for the reason, both substantively and procedurally, fell within the range of reasonable responses, and was fair.

147. Dealing with the issue of the "*last straw*" the Claimant referred the Tribunal to the case of *Waltham Forest v Omilaju* [2005] IRLR 35. In that case at the Court of Appeal Lord Justice Dyson said the following:

> *"The 'final straw' may not always be unreasonable, still less blameworthy. …the only question is whether the 'final straw' is the last in a series of*

> *acts or incidents which cumulatively amount to repudiation of the contract by the employer. The 'last straw' must contribute, however slightly, to the breach of implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the abrogation of trust and confidence that it lacks the essential quality to which I have referred.*
>
> *If the 'final straw' is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied trust and confidence, there is no need to examine the earlier history to see whether the alleged 'final straw' does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the 'final straw' principle.*
>
> *Moreover, an entirely innocuous act on the part of the employer cannot be a 'final straw', even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective."*

148. The Tribunal was also aware of the case of *Post Office v Roberts* [1980] IRLR 347 where it was held by the EAT that the conduct by the Respondent which amounted to a repudiatory breach of contract need not be deliberate or intentional or prompted by bad faith.

149. The Tribunal is aware that unreasonable behaviour by the employer is not enough and that the bar is set much higher. The employer has to be guilty of what would be, in effect, the equivalent of gross misconduct from an employee who was summarily dismissed.

150. As already stated the effect of such conduct by an employer would be to break the contract and an employee would have difficulty in succeeding with a claim of constructive unfair dismissal if he has affirmed the contract and waived the breach. An employee will be held to have affirmed a contract where (with knowledge of the breach) he acts in a manner inconsistent with treating the contract as at an end. In *Bashir v Brillo Manufacturing Co* [1979] IRLR 295 it was held that delay in itself is not sufficient to be considered as affirmation of a breach of contract. The employee needs to actually do the job for a period of time without leaving, or some other act which can be said to affirm the contract as varied. Whether or not he has affirmed the breach would depend on the circumstances in each case.

151. The Claimant's last complaint was that the Respondent had failed to provide him with a statement of particulars of employment. Under Section 1 of the Employment Rights Act 1996 (ERA) the Claimant is entitled to a written statement of particulars of employment. The statement may be given in instalments and shall be given not later

than 2 months after the beginning of employment. The statement will contain details of the employer, employee, start date of the employment relationship, details of remuneration, terms and conditions relating to hours of work, holidays, sick leave and sick pay and pensions. It should also cover notice requirements and a brief description of the job the employee is engaged to do along with the job title.

152. If no such statement is provided, an employee is entitled to bring a complaint to the Employment Tribunal under Section 11 of the ERA. Under Section 38 Employment Act 2002 if an employer has failed to provide an employee with a statement of particulars of employment and the employee is successful in the other parts of his claim then he is entitled to an award. The size of the award would differ depending on whether or not the tribunal makes an award in respect of the other successful parts of the claim. If the employee is unsuccessful in the other parts of his claim and at the time he issued proceedings the employer was in breach of his duty to provide him with a statement of written particulars, then no award is due to the employee.

Applying law to facts

153. *Disability Discrimination*

154. As the father of a disabled child the Claimant is entitled to the protection of the Equality Act.

155. *Time limits*

156. The Tribunal had first to decide on the issue of time limits to determine which allegations it had jurisdiction to consider.

157. It is this Tribunal's judgment that the acts complained of at allegations 3.1(a), (c) and (f) which occurred in October 2014 and January 2015 are out of time. They all formed part of the claim that was issued in March 2016.

158. Were they part of a continuing act?

159. It is our judgment firstly that there are significant periods of time between the complaints. The first two complaints of harassment and direct discrimination are dated October 2014, the next complaint was dated November 2015 and the third relates to January 2015 but is about something completely different. The second application for flexible working was not made until November 2015 and was rejected for a completely different reason and the allegation that relates to it is different as it is made against both Ms Awotesu and Ms Slater. There is no evidence that there was a policy or rule or scheme or practice that applied here although that would only give an indication of an act extending over a period rather than restricting its definition to those concepts. The Claimant's applications in October 2014 and November 2015 were different. The people who dealt with them were different. The first was dealt with by Ms Awotesu alone or with Mr Ashley-Denton and the second by Ms Awotesu and Ms Slater. Allegation 3.1(a) related to a flexible working request to provide care for his son and was that Ms Awotesu discriminated against and/or harassed the Claimant by refusing the application. Allegation 3.1.(c) is that Ms Awotesu questioned the Claimant return to full contractual hours thereby harassing him and allegation (f) is that Ms Awotesu failed

to follow the Respondent's internal policies in dealing with his applications and so harassed him or subjected him to a detriment because of his association with his son. These allegations are not linked to the application in November 2015 which was primarily to alter his working patterns to allow him to embark on the type of professional training specified by the Bar Council to enable him to complete his professional education. Apart from the fact that these allegations all concerned the Claimant there is nothing else that links them all together.

160. It is this Tribunal's decision that the Claimant's allegations at 3.1. (a), (c) and (f) as it relates to the October 2014 application, are out of time and do not form part of an act extending over a period.

161. Should the Tribunal use its discretion to extend time?

162. The Tribunal considered whether it should apply its discretion to extend time to allow these complaints to be considered. The Claimant did not give the Tribunal any reasons why it should use its discretion to extend time to enable it to consider these allegations. In addition, it was unclear to the Tribunal why he had not sought advice and brought a complaint before he did, if at the time the Claimant was disappointed with the Respondent's decision on his flexible working application or Ms Awotesu's enquiry about his working hours in January or if he believed that the Respondent had failed to correctly apply the internal policies to him.

163. The Claimant does not give us any information on the steps he took when he was informed of these decisions and actions. He did submit an appeal against the refusal in October 2014 in which he complained that the Respondent failed to follow the stress policy in considering that application. He did not submit that this was an act of associative disability discrimination. He also did not complain that Ms Awotesu had questioned his return to full contractual hours in January 2015. He did not bring these claims to the Tribunal until March 2016.

164. It is this Tribunal's judgment that the statutory time limits should be strictly applied in this case and that there are no grounds for applying our discretion to extend time in this case. The Tribunal does not have jurisdiction to consider the complaints listed at 3.1(a), (c) and (f).

165. We now address the remainder of the Claimant's allegations.

166. Allegation 3.1(b) and (d) is that the Ms Awotesu questioned the Claimant's flexi time recording on 11 December 2015. He also complains about the actual wording of the email.

167. In our judgment Ms Awotesu raised the issue of correct way to record time with all members of the team and not just with the Claimant. She sent them all an email on 3 June 2015 to that effect. She also sent an email to the admin assistant in similar vein in October 2015. It is likely that the documents in the bundle are a selection of the correspondence that Ms Awotesu conducted with other members of her team. As the Team Principal it was her job to ensure that members of her team used the time recording facility properly. It is our judgment that what she is seeking to do in the 11 December email is to firmly advise the Claimant on the proper way to record time on

his flexi sheet. The Claimant submitted that as they were not on talking terms at this point this makes this email a hostile act. In our judgment, whether or not they were on talking terms, Ms Awotesu still has the responsibility to manage the service. She had not been removed from the Claimant's line management. She still had the responsibility to run the team and to ensure that time was recorded properly. There is no specific mention of time recording in the 1:1 minutes that we were shown.

168. However, we did not infer from that that it was not a legitimate issue to raise with him on the 11 December.

169. We did not find any facts that would lead us to infer that the email sent to the Claimant on 11 December 2015 was sent because of the Claimant's application for flexible working or his association with a disabled person.

170. Allegation 3.1(e) is that the Respondent refused the Claimant leave to shadow Legal Services for one day a week on 16 October 2015.

171. The Claimant confirmed that this was a complaint about Sandra Awotesu. Ms Awotesu refused the Claimant's application and set out in her refusal her grounds for doing so. In our judgment the grounds set out in her email were true and the Claimant has not disputed that he only had Tuesdays to write up his notes, write letters on behalf of clients and catch up with work. This is confirmed by his suggestion that Tuesday was a good day for him to do the shadowing as that was the day he was not on duty.

172. In our judgment it was also the case that the Claimant had previously complained about his workload. The fact that he had not phrased it as a complaint did not meant that he was not complaining. In our findings we refer to two emails in which the Claimant referred to his workload as being excessive and asked what plans the Respondent had in place to address it. It was reasonable for the Respondent to take that as a complaint and to take the existing workload of the Claimant and his colleagues into account in making a decision on his application.

173. Ms Awotesu's response was professional, was explained and was not just a bare refusal of his application. She was pleased that he had managed to arrange this opportunity but as the Team Principal she would have been failing in her duty to the service, the other team members and the service users if she put the Claimant's need to complete his personal professional qualifications above all else. The Learning and Development Policy does not require her to do this.

174. In our judgment, the Claimant has failed to prove facts from which we could infer that the Respondent's refusal dated 16 October of the Claimant's application to shadow legal services was done because he was associated with a disabled person.

175. Allegation 3.1(f) is that the Respondent failed to follow the Flexible Working Policy and Stress Management Policy regarding his request on 13 November 2015.

176. The only failing that the Claimant referred to in the Hearing and in his appeal and in the case is Ms Awotesu's failure to hold a meeting with him before she made her decision. He also complained in the Hearing that she should have acted on his suggestion to hold a meeting with the rest of the team. That was not required as part

of either policy and would not in our judgment have been appropriate. It was not a breach of any policy.

177. Ms Awotesu did not hold a meeting with the Claimant as was set out in the Flexible Working Policy before making a decision on his application. It is our judgment that she failed to do so due to the following reasons: pressure of work, because she genuinely believed that the Claimant was against a deadline and needed her decision quickly and because Mr Denton-Ashley who should have dealt with the request was off sick. The Claimant had explained himself in his application and it is unlikely that she required any further clarification from him. Although it was a technical breach of the policy we did not find that it was done to disadvantage the Claimant. It was done for the reasons set out above. She genuinely believed that the Claimant needed a decision quickly so that he could make plans for his future. In our judgment those were not facts from which we could infer that her failure to hold the meeting was because he was associated to a disabled person. There were also no facts from which we could infer that her failure to hold the meeting was in anyway related to the Claimant's association with a disabled person. His son was not referred to in the application although he did refer to ongoing childcare commitments as part of the background to the application. It was not referred to in the refusal.

178. Allegation 3.1(g) is the rejection by Ms Awotesu and Ms Slater on 25 and 27 November of the Claimant's flexible working request made on 13 November 2015.

179. In our judgment the reasons why this flexible working request was refused first by Ms Awotesu and then by Ms Slater are clearly set out in their decisions.

180. As the Team Principal and Service Manager they had to consider not only the Claimant's situation but also the service that they had the responsibility to provide to the public, the needs of the rest of the team – including their stress levels - and the Claimant's contractual obligations to the service.

181. The Claimant had an acknowledged desire to complete his legal training to become a barrister. Both Ms Slater and Ms Awotesu acknowledged his desire to complete his qualifications in accordance with the requirements of the Bar Standards Council. However, those were personal ambitions and not the ambitions of the team or of the service. There was no identified need for a barrister as part of this team.

182. There is no duty in the Respondent's Learning and Development Policy that would have required the Respondent to put the Claimant's desire to complete his training above everything else. There was no duty on Ms Awotesu to go out of her way as Team Principal of the Housing Advisory Service to secure training for the Claimant to complete his training to become a barrister.

183. Both Ms Slater and Ms Awotesu had expressed support for the Claimant in his personal ambitions. Ms Awotesu gave her advice on ways in which he could achieve this. Even though he considered that her advice was of no use to him it is our judgment that she gave that advice in good faith and did so because she wanted to help him. Ms Slater also supported him and tried to assist in what way she could, while maintaining her duty to the service as her main concern.

184. In his application the Claimant did not show how he considered the service would not be affected by him being absent on the only day he had left in which to write up cases, write letters on behalf of clients and catch up on casework. As the Claimant had a heavy caseload it is likely that his colleagues were in the same position. It is unlikely that there was any spare capacity within the team and there had been discussions about recruiting a new team member to assist.

185. Ms Slater does refer to his child care commitments in her response to the application but that was part of her recitation of the matters that might make her proposal that he increase the amount of hours he was prepared to work to 28 hours, unfeasible. She did not refer to it as the reason or even part of her reasoning for refusing the application.

186. It would have inappropriate for the managers to have held a team meeting to ask the Claimant's colleagues to take on more work so that he could pursue his personal ambitions. It is unlikely that this would have been fair. It was also for the Claimant to suggest how he saw this arrangement working and for his managers to address it. There is no requirement in either of the policies for the team to be asked to decide on whether such an application should be granted.

187. There was no evidence from which we could draw an inference that Ms Awotesu and Ms Slater's refusal of the Claimant's flexible working application on 13 November 2015 was because he was associated with a disabled person.

188. Allegation 3.1(h) relates to the email correspondence between the Claimant and Ms Awotesu on 16 and 17 December 2015.

189. In our judgment the email correspondence between Ms Awotesu and the Claimant over those two days constituted an argument between them. We considered that it was unfortunate that it was carried out in writing and therefore saved for posterity. All the Claimant's pent up frustration at his failed attempts to get his training from the Respondent came out in that correspondence as well as the fact that he blamed the Respondent and in particular, Ms Awotesu for that. Ms Awotesu also seemed to be frustrated at what she considered to be the Claimant's inappropriate attitude towards her and she responded to that. As Ms Slater stated, Ms Awotesu is the manager and it was within her remit to question the arrangements that staff make to enable them to do their work and to cover their work when absent.

190. Ms Awotesu's emails do not refer to the Claimant's duties in looking after his son or his childcare arrangements. Her language was professional and she rightly sought to defend herself from the Claimant's accusations.

191. In our judgment there was nothing in Ms Awotesu's emails to the Claimant that would lead us to draw an inference that they related to his association with a disabled person. She took up with him his decision to book an appointment elsewhere to discuss a personal matter at a time when he was supposed to be on duty to deal with emergency clients. The Claimant's case is that there was no written policy that anyone on duty had to make arrangements for someone to cover them before they made such an appointment. It is unlikely that there was a need for a written policy on this. As an employee in the team it is reasonable to expect that the Claimant would prioritise duty

days as this was a much needed service to the public and one which he was contracted to provide. Even if there was no such policy, the fact that his manager, Ms Awotesu asked him about the arrangements and asked him to let he know of such appointments in future was not in our judgment, unreasonable, intimidating or harassing.

192. We found no facts from which we could draw an inference that the contents of the emails that Ms Awotesu sent during this email exchange between her and the Claimant was because of his association with a disabled person.

193. Allegation 3.1(i) was the Respondent's failure to deal with the Claimant's formal complaint submitted on 18 December 2015.

194. This complaint is against Ms Slater. When the Claimant referred the matter to Ms Slater he did not say that Ms Awotesu had been harassing him or discriminating against him because of his association with his disabled son. Ms Slater therefore did not appreciate that this is what was being alleged.

195. He did refer to bullying, ridicule, intimidation and harassment and asked for it to be formally addressed under the Respondent's CHAD policy.

196. Her initial response was to try to diffuse the situation. That was not an unreasonable response seeing as the two individuals were about to go on Christmas break and the service would have been closed in the immediate period.

197. It was reasonable that she did not sit down with the Claimant when he approached her at the photocopier about this. She was busy, no meeting had been arranged and it was unlikely to take just a few minutes. In order for her to properly address it, there needed to be an investigation or at least a proper meeting.

198. In this Tribunal's judgment Ms Slater did not fail to deal with the complaint. She responded on 21 December and asked both the Claimant and Ms Awotesu to consider matters over the Xmas break and to meet on Ms Awotesu's return in January to make attempts to mend their professional relationship.

199. When they returned in January, she set up an investigation by Peter Jones to look into the matter.

200. It was not clear to the Tribunal what the Claimant's expectations were. Although he stated at the Hearing that only a formal process under the CHAD policy would do, at the time he did not complain about Ms Slater's email of 21 December, he approached Ms Slater at the photocopier seeking some action and according to his email of 25 January he mentioned mediation to her.

201. The Claimant resigned soon after returning from Christmas break and a day after Ms Awotesu returned. It would not have been reasonable to expect the Respondent to arrange a meeting between the two of them on the day of her return. There was likely to have been a number of urgent work matters that needed to be addressed on that day. This was one of a number of priorities that Ms Awotesu would have had on her desk.

202. Ms Slater's initial response was to try to deal with this informally even though the Claimant had headed his email of 18 December as a formal complaint. However, there were no facts that related Ms Slater's decision to initially try to resolve his complaint informally - to the Claimant's association with a disabled person. Ms Slater was trying to resolve this matter quickly and informally as the procedure allowed her to do. The Claimant made it clear that he wanted it done formally and she immediately instituted an investigation to do so.

203. There are no facts from which we could infer that the way in which Ms Slater handled this complaint had anything to do with the Claimant's association with a disabled person.

204. In our judgment if someone who had a child who had similar needs as the Claimant's son but was not disabled and who also wanted the Respondent to make arrangements so that he could complete his training to become a barrister within the Respondent, made the same requests as the Claimant and conducted himself in the same way; it is likely that the Respondent would have made the same decisions and he would have been treated in the same way. There was no evidence to support the Claimant's case that any of these allegations occurred because of the Claimant's association with a disabled person.

205. The Respondent did not treat the Claimant less favourably because of his association with a disabled person.

206. The Claimant also alleged that all the above were also allegations of harassment by the Respondent.

207. The effect of Ms Awotesu and Ms Slater's decisions were unwanted as the Claimant wanted them to make different decisions. He wished to be successful in all his applications for flexible working, to be allowed to take up the shadowing opportunity at Legal Services, to attend the meeting with Jackie Odunoye without comment and for his manager to go out of her way to arrange for him to complete his legal education within the Council. However, that did not happen. He did not get those decisions.

208. Did the Respondent harass the Claimant? Those decisions may well have disappointed the Claimant. It is likely that he was frustrated and even angry about those decisions and that he was disappointed that the Respondent was refusing to assist him in achieving his career ambitions. Was that harassment? Did the way in which Ms Awetosu and Ms Slater addressed the Claimant's applications and worked with him amount to harassment? Did they harass him?

209. In our judgment, the decisions referred to above and in allegations 3.1 (b), (d) – (i) did not have the purpose or effect of creating a hostile, intimidating, degrading, offensive or humiliating environment for the Claimant.

210. He was unable to pursue his ambitions to become a barrister within the Respondent. However it is this Tribunal's judgment that there was a desire to support him to do so and many senior individuals as well as his managers spent time trying to figure out a way to make it happen for him. However, due to budget constraints it was

not possible. There was no need for a barrister within the Council. There was no one who could provide the supervision required by the Bar Standards Board. There was no money to backfill his position even if he was able to take up opportunities within legal. The Housing Options Service did not require a barrister.

211. The fact that the Respondent has since recruited for trainee solicitors shows that it needed trainee solicitors. It does not demonstrate that it had the budget for or needed a barrister.

212. It is our judgment that it is likely that the email correspondence between the Claimant and Ms Awotesu upset him and may have angered him but he was not intimidated, degraded or humiliated by it. It is our judgment that in his emails the Claimant gave as good as he got and responded robustly to Ms Awotesu's points and at times appeared to object to her reasonable management instruction.

213. Ms Awotesu was not hostile to the Claimant. She tried to manage him as she did the rest of the team. She did not create an intimidating, hostile, degrading, humiliating or offensive environment for him. She properly considered his applications and on each occasion gave explanations and reasons for her decisions. Ms Slater treated the Claimant's appeals and his complaint against Ms Awotesu seriously. That is not contradicted by her attempt to resolve the matter informally. She did set up an investigation as soon as it was clear that the Claimant wanted it formally addressed. Mr Jones conducted an investigation into the Claimant's complaint and properly considered all that the Claimant had to say and the detail of the emails that were the subject of the complaint, before coming to his decision.

214. In our judgment the Claimant's complaints of harassment and of less favourable treatment because of his association with a disabled person fail and are dismissed.

Constructive Unfair Dismissal

215. The Claimant submitted that Ms Awotesu in her emails to him between the 16 and 17 December stirred up hostility, unease and a show of power. He submitted that this together with her treatment of him before that had the effect on his motivation and that he felt targeted by her. The cumulative effect of this kind of conduct, the Claimant submitted, caused him to resign when he did.

216. It is this Tribunal's judgment that Ms Awotesu did not breach the Claimant's contract of employment in her email exchanges with him over the 16 and 17 December 2015. She defended her position and made clear her expectations of him in the future – should the situation ever arise again. She did not say anything that would lead us to conclude that she did not or that the Respondent no longer wished to be bound by the terms of the Claimant's contract.

217. Ms Awotesu was the team principal. That job comes with the responsibility to ensure that the team provides a public service. Her decisions on the Claimant's flexible working applications were well thought through, reasoned and were explained to him in writing.

218. The decisions in respect of the Claimant's applications for flexible working may

not have been what he wanted and he was clearly disappointed by them but those decisions did not amount to breaches of his employment contract.

219. The Claimant also referred to the Respondent's failure to adhere to its CHAD policy. It is this Tribunal's judgment that Ms Slater's decision to initially try to resolve informally the issue between Ms Awetosu and the Claimant was a reasonable one. This was not a breach of contract. The Claimant did not complain when he received her letter urging both him and Ms Awetosu to consider matters over the Christmas break and come back to work ready to resolve matters between them in the New Year.

220. When he wrote to her in January he was chasing up progress. He did not complain that his contract had been breached. The CHAD procedure does allow matters to be addressed on an informal basis. Thereafter, an investigation was set up as soon as the Claimant confirmed that he wanted it to be formally addressed. Thereafter, there was insufficient time for the matter to be resolved before the Claimant resigned.

221. He had not gone to speak to Ms Slater again – following their brief conversation at the photocopier - so she was not aware that he was unhappy with the informal way that the matter was being handled.

222. The Claimant refers to Ms Slater failing to agree to mediation as another aspect of the breakdown of trust of confidence that he submits happened in his employment. We did not find that he talked to her about mediation at the photocopier on the last working day before Christmas 2015. There was therefore no rejection or failure to agree to mediation. This also contradicts his case that at that time he was pursuing a formal approach to his CHAD complaint. At the time that he spoke to Ms Slater at the photocopier, Ms Awotesu was already away from work on annual leave and so would not have been able to agree to it and in any event, it could not be arranged unless both parties agreed.

223. The Claimant then resigned the day after Ms Awotesu returned to the office. The issue of mediation was one that had not yet been explored.

224. In our judgment the Respondent did not fail to agree to mediation since it was not a matter on the table in the dispute between the Claimant and Ms Awotesu. Had the Claimant raised it with Ms Awotesu or Ms Slater upon Ms Awotesu's return from leave or as part of Mr Jones' investigation then it is likely that, with Ms Awotesu's agreement, it could have been arranged. There was no indication that the Respondent was adverse to mediation. Given what Ms Slater said to both parties in her email of 21 December it is likely that the Respondent preferred to have this resolved informally and mediation could have been part of that process. By the time of the Claimant's resignation it had not yet been set up because the Claimant had not asked for it, he did not give the Respondent time to set it up and Ms Awotesu had not yet been asked or agreed to take part in mediation. This was not a breach of contract by the Respondent.

225. In this Tribunal's judgment the Respondent had conducted itself properly towards the Claimant. The Respondent had properly considered all of the Claimant's applications. Some had been granted as he had flexible working for a period to allow him to take up the opportunity with the CAB at the royal Courts of Justice and the

Respondent granted his application to increase his hours again back to full-time once that opportunity came to an end.

226. Even after he resigned the Respondent granted his application to increase his hours back to fulltime which meant that his last wage was paid at that rate which was to his advantage. Those were not the actions of an employer that no longer wished to be bound by the terms of the contract with the Claimant.

227. The Claimant stated to Mr Jones that his preferred outcome for the CHAD process was for Ms Awotesu to apologise to him and admit that she was wrong. That was before the investigation was completed. The Respondent could not pre-empt the investigation and order her to do so. Although we stated that Ms Awotesu as the manager could have addressed their relationship before December 2015, once the Claimant brought a formal CHAD against her it was no longer her responsibility to address it as the Claimant's complaint took it out of her hands and up to senior management. Ms Slater addressed the complaint. There was no failing on her part. There was no breach of contract by Ms Slater in the way she addressed the Claimant's complaint against Ms Awotesu.

228. In our judgment there were no previous breaches of contract and nothing that could amount to a last straw entitling the Claimant to resign.

229. There was no conduct complained of that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the Respondent and the Claimant.

230. The Claimant resigned so that he could pursue his plans to advance his legal career. Try as it may, the Respondent was unable to support him in those plans in the way that he wanted and the Claimant decided that he could best achieve his ambitions elsewhere. That was a decision that was open to him. His letter of resignation makes no mention of any of the matters he relied on in the Hearing as breaches of his contract of employment. Although he was not obliged to set that out in a letter of resignation, in our judgment, if he considered it so, it was likely that he would have put it in the letter.

231. In our judgment, as the Claimant is legally trained he would have known that it was important to clearly set out his position in written documents. His letters of appeal, his emails and his applications all demonstrate that the Claimant is able to clearly set out his position in writing.

232. In our judgment, the Claimant did not resign because he considered that his contract had been breached. In our judgment there was no fundamental breach of contract which entitled him to resign. The Claimant resigned because of the reason stated in the letter of resignation which is to further his ambition to become a barrister.

233. The Claimant's complaint of unfair dismissal fails and is dismissed.

Failure to provide a written statement of employment particulars

234. The Respondent was unable to provide documentary proof that it had given the Claimant written particulars of employment by the time he issued these proceedings.

235. However, the letter confirming his fixed term appointment indicated that written terms and conditions would be issued to him within 8 weeks. There is no letter from the Claimant to the Respondent following the letter of 13 February 2013 enquiring after the written terms and conditions referred to therein and it is likely that he received them. The terms and conditions were referred to in subsequent correspondence with the Claimant. If he had not received it, it is our judgment that he would have written to the Respondent to ask what written terms and conditions were being referred to.

236. It is our judgment from the documents that it is likely that the Claimant was provided with written terms and conditions of employment within 8 weeks of him taking up the permanent position with the Respondent.

237. The Claimant relied on those written terms and conditions throughout his employment with the Respondent. The Claimant made no complaint that they were missing during his employment and it is likely that he would have done so had he not received them.

238. It is our judgment that the Respondent has not breached the Claimant's right to written terms and conditions and that those were provided to him during his employment.

239. The Claimant's complaint of a breach of Section 1 of the Employment Rights Act 1996 fails and is dismissed.

240. The Claimant's complaints all fail and are dismissed.

Employment Judge Jones

5 January 2017