



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr Arthur Moan

AND

Optimal Strategix Group Limited

JUDGMENT OF THE TRIBUNAL

Heard at: Manchester

On: 22-25 October 2019

Deliberations: 22 November 2019

Before: Employment Judge A M Buchanan

Non-Legal Members: Mrs P J Byrne and Mr C S Williams

Appearances

For the Claimant: Ms L Quigley of Counsel

For the Respondent: Mr T Wood of Counsel

JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The claims of direct disability discrimination are well-founded and the claimant is entitled to a remedy.
2. The claims of disability discrimination by failure to make reasonable adjustments are well-founded in part and the claimant is entitled to a remedy.
3. The claims of discrimination arising from disability are well-founded and the claimant is entitled to a remedy.
4. By consent, the claim for wrongful dismissal is well-founded and the claimant is entitled to a remedy.
5. The claim of ordinary unfair dismissal advanced pursuant to sections 94/98 of the Employment Rights Act 1996 ("the 1996 Act") is dismissed on withdrawal by the claimant.

REASONS

Preliminary matters

1.1 The claimant instituted proceedings on 23 November 2018 supported by an early conciliation certificate (“ECC”) on which Day A was shown as 22 November 2018 and Day B as 22 November 2018. An earlier claim form was rejected for want of an early conciliation certificate. A timely response was filed in which the respondent denied all liability to the claimant.

1.2 At a private preliminary hearing before Employment Judge Holmes on 1 March 2019, the various claims advanced were defined and case management orders were made including an order for a list of issues to be filed.

1.3 The matter came before this Tribunal as set out above. Reasonable adjustments were made to the conduct of the hearing to accommodate the disability of the claimant taking account of the guidance from the Equal Treatment Handbook of February 2018. Regular breaks were taken throughout the hearing in particular during the time the claimant was giving evidence. The Tribunal room was slightly re-arranged to accommodate the needs of the claimant who is a wheelchair user.

1.4 The Tribunal met in Chambers on 22 November 2019 to complete its deliberations and this Judgment is issued with full reasons in order to comply with Rule 62 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

1.5 At the outset of the hearing the claimant applied to amend the list of issues which had been filed. In essence this was an application to amend the claim of failure to make reasonable adjustments. The Tribunal considered the application in that light and reminded itself of the guidance in Selkent Bus Company -v- Moore 1996 IRLR 661. The Tribunal allowed certain amendments but not others. The list of issues set out below reflects the issues before the Tribunal in light of the decision made on the amendment application.

The claims

2. The claimant advanced the following claims to the Tribunal:-

2.1 A claim of direct disability discrimination relying on the provisions of sections 13 and 39 of the Equality Act 2010 (“the 2010 Act”).

2.2 A claim of disability discrimination by failures to make reasonable adjustments relying on the provisions of sections 6, 20/21, 39 and Schedule 8 of the 2010 Act.

2.3 A claim of discrimination arising from disability relying on the provisions of sections 6, 15 and 39(2)(c) and (d) of 2010 Act.

2.4 A claim of wrongful dismissal relying on the provisions of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“the 1994 Order”). At the outset of the hearing the respondent accepted liability for this claim

but no concession was made in respect of the amount of damages flowing from the breach of contract.

2.5 A claim of ordinary unfair dismissal was withdrawn by the claimant at the outset of the hearing on the basis that it was accepted that the claimant did not have the qualifying service required by section 108 of the 1996 Act necessary to advance such a claim.

The Issues

3. Having considered the application from the claimant referred to above, the issues in the various claims advanced to the Tribunal were as follows:

Section 13 of the 2010 Act: Direct discrimination

1. Did the respondent:

1.1 Adjust the claimant's role and responsibilities by:

- (a) Removing direct line reports (Neil Davis, Jasneet Suri and Jamie Doyle)
- (b) Abolishing/undermining his role as Sales Team Leader by employing David Culley as Sales Director on 9 July 2018 and having him report to the CEO as opposed to the claimant.

1.2 Exclude the claimant from/ not require the claimant to attend the 3-day team meeting from the 31 July - 2 August 2018 at Head Office in USA;

1.3 Exclude the claimant from/ not require the claimant to attend the meeting on the 28 August 2018 in Sweden.

2. If so, did the Respondent treat the claimant "less favourably" than it would have treated a hypothetical Vice President of Sales who was not disabled?

3. If so, was the reason for said treatment because of the claimant's disability or not?

Section 15 of the 2010 Act: Discrimination arising from disability

1. The claimant relies on the following as acts of unfavourable treatment:

- 1.1 Imposition of a Performance Improvement Plan ("PIP")
- 1.2 Failure to allow the claimant to attend the USA meeting
- 1.3 Failure to allow the claimant to attend the meeting in Sweden
- 1.4 Failure to support or to adequately support the claimant
- 1.5 Dismissal

2. Save for 1.4 it is admitted that the above were done by the respondent and would constitute "unfavourable treatment".

3. In treating the claimant as above, was the reason for said treatment due to “something arising in consequence of the claimant’s disability” or not? In particular:

3.1 Was/were the claimant’s performance and/or sales figures affected by the fact he worked part-time for 2 months due to his disability or not?

3.2 Was the claimant’s performance and/or sales figures affected by the fact he did not attend the USA and Finland trips and, if so, was this connected to his disability or not?

3.3 Was the claimant’s performance adversely affected by the fact that the claimant was not office based or not and, if so, was this connected to the claimant’s disability or not?

3.4 Were the issues with the claimant’s behaviour including the fact that he held a meeting at his home office due to something arising in consequence of the claimant’s disability or not?

3.5 Was the claimant’s performance/behaviour generally affected due to something arising in consequence of his disability or not?

4. If so, was such treatment a proportionate means of achieving a legitimate aim or not namely ensuring that the respondent has sales people that contribute to the income of the company, and do so at a level commensurate with their status and experience.

Sections 20/21 and Schedule 8 of the 2010 Act: Failure to make Reasonable Adjustments

1. The claimant relies on the following “provision, criterion or practices” (“PCP”):

1.1 Requirement for home working including that the claimant pay for his own home office;

1.2 Requiring other members of staff to be present in the office in order for the claimant to work

1.3 Not engaging with Access to Work until office move was completed;

1.4 Meetings should not be conducted with colleagues at home office

2. Were the above applied by the respondent to the claimant or not?

3. If so, did the same place the claimant at a substantial disadvantage as compared with non-disabled employees or not?

4. At the material time, did the respondent know or reasonably ought to have known that the claimant was disabled or not?

5. If so, did the Respondent take such steps as it was reasonable to have to take to avoid the disadvantage or not?

Article 3 of the 1994 Order: Wrongful dismissal

1. It is conceded that the claimant was wrongfully dismissed.
2. What loss arises in consequence of the breach?

4. Witnesses

In the course of the hearing, the Tribunal heard from the following witnesses:

Claimant

4.1 The claimant gave evidence and called no other witnesses. A witness statement was provided from Neil Davis (“ND”) who did not attend the hearing. The Tribunal read the statement but were not greatly assisted by it.

Respondent

4.2 For the respondent evidence was heard from:

4.2.1 Ramamirtham Sukumar (“RS”) the Chief Executive Officer of the respondent.

4.2.2. Simon Dumville (“SD”) the managing director of the respondent.

5. Documents

We had an agreed bundle comprising one lever arch files before us running to some 384 pages. Any reference to a page number in this Judgment is a reference to the corresponding page in the agreed trial bundle.

Findings of Fact

6. Having considered all the evidence both oral and documentary placed before us and in particular the way the oral evidence was given, we make the following findings of fact on the balance of probabilities:

6.1 The claimant was born on 20 February 1973. He has a successful background in sales. The claimant’s successful track record impressed RS and was a major factor in the claimant being made an offer of employment with the respondent.

6.2 On 11 August 2017, whilst on holiday in Spain, the claimant suffered a serious accident which has resulted in him becoming paraplegic. During the course of exchanging messages with SD in the period September 2017 until March 2018 (page 76), the claimant referred more than once to being optimistic that he would walk again. In November 2017 the claimant referred in a message to SD that he was to use a wheelchair (page 80).

6.3 The respondent concedes that the claimant was a disabled person for the purposes of section 6 of the 2010 Act for all purposes in relation to the claims advanced pursuant to sections 13 and 15 of the 2010 Act. The respondent concedes that it had knowledge of that disability at all material times for the purposes of the claims advanced under sections 13 and 15. No such concession is

made in respect of the claims advanced under sections 20/21 of the 2010 Act in respect of any disadvantage suffered by the claimant.

6.4 The claimant was introduced to the respondent in January 2018 through SD who by coincidence later became the managing director of the respondent and the effective line manager of the claimant. The claimant was interviewed by RS on 21 February 2018 (page 102) and in readiness for that interview prepared a presentation (page 89 onwards). RS saw that the claimant was a wheelchair user but chose to make no enquiries of the claimant about that. The claimant did not say to RS that he would no longer need a wheelchair at any time because, as a paraplegic, that was highly unlikely ever to be so. The claimant did indicate that he needed two months of intensive physiotherapy to help improve his condition and to help him achieve a level of fitness to be able to undertake full time duties and thus it was indicated that the claimant would need to work part time in the first two months of any employment - if such employment was offered.

6.5 We find that RS assumed wrongly that, after a period of time, the claimant would no longer be a wheelchair user. Stereotypical attitudes were in play in that RS assumed the claimant would not be able to undertake the role under discussion if he was a permanent wheelchair user and that being fit for work meant for RS that the claimant would be out of his wheelchair. There was no discussion at interview of any reasonable adjustments save in respect of part time working hours for the first two months of any employment. Our conclusion that discriminatory stereotypical attitudes were in play is reinforced by the content of the ET3 where an assumption is made that female members of staff would not be able to help the claimant evacuate Station House Altrincham (where the claimant was to work).

6.6 On 22 February 2018 RS wrote to the claimant with details of an offer of employment (page 102) in which the start date was to be 1 March 2018 at "*our Manchester office*". When he replied to that proposal (page 105) the claimant stated that his rehab team had recommended he scale up his activity through March and April 2018 and so he suggested to RS that he work in March 2018 for 2/3 hours at home each day to help him recover from a pressure sore he had developed. He would work from 12noon until 5pm daily in April 2018 in the office and then full time from May 2018 onwards. The claimant suggested he forego salary in March 2018 but that he be paid in April 2018 on a full-time basis to reflect his working hours in March 2018. The claimant signed the offer of employment on 8 March 2018. The claimant was to head up a new sales team and achieve sales for the respondent in the UK and elsewhere in Europe from a standing start. The respondent was established in the USA but not in the UK and Europe at this point.

6.7 On his first day in the office the claimant completed a personal details form (page 116) on which he wrote: "*Due to a spinal cord injury could be prone to Autonomic Dysreflexia which can be considered a medical emergency. AD is over stimulation of the nervous system*". In addition, in the first working week the claimant asked for assistance to bring his wheelchair from the boot of his car to his driver side door when he arrived at the office each day. The claimant had dealings mainly with the Office Manager/PA to RS namely Louise Holland ("LH") from whom the Tribunal did not hear. In those circumstances we accept the evidence of the claimant in relation to his interactions with LH.

6.8 As early as 22 February 2018 LH wrote to the representative of the landlord of the building in which the claimant was to work namely Station House Altrincham (“the Building”) referring to a “*wheelchair bound employee*” and asking for a disabled car park space to be made available and it was (page 120). The landlord raised an issue about the evacuation of the claimant from the Building in the event of an emergency. The respondent occupied the sixth floor of the building. Those discussions centred on the use by the claimant of a disabled toilet on the third floor of the Building and the purchase of a so-called EVAC chair and the use of a “buddy” to assist the claimant. It became clear to the respondent that numerous adjustments were going to have to be made to accommodate the needs of the claimant. On 8 March 2018 LH thanked the landlord for making the car park space available and said she would need to revert to them on the question of a personal evacuation plan for the claimant as “*this is all new to me*” (page 123). Later in March 2018 correspondence passing between LH and the landlord referred to adjustments to the toilet provision and to fire doors and to the purchase of a chair in which the claimant could be carried from the Building in the event of a fire. A suggestion that the claimant be assigned a “buddy” to assist with visits to the toilet produced a response from LH to the effect: “*.....it will be a little difficult for his buddy to assist with the gents as we are an all female staff* (laughing emoticon added)” (page 128). We infer that the extent of the necessary adjustments was becoming a matter of concern to the respondent from this time. At no point did the respondent sit down with the claimant to discuss any necessary adjustments.

6.9 The claimant began work on 26 March 2018 (later than the anticipated date originally set for 1 March 2018) and was welcomed in an email from RS (page 137). On 1 April 2018 the claimant completed a BUPA form on which he declared he was a paraplegic (page 144).

6.10 On Thursday 5 April 2018 (page 152) LH wrote to the claimant to ask him to have his wife bring him to the office to assist him in leaving his car because she had a shoulder injury and could not assist him into the office. The claimant replied (page 153) that as from 9 April 2018 he would be able to manage that process himself as he had perfected the technique of moving the wheelchair into his vehicle. We infer that the needs of the claimant for assistance were a matter of concern to LH who instructed the claimant to work from home on 3 April 2018 (page 150) as she would not be in the office on that day. We infer that LH considered the adjustments requested by the claimant somewhat burdensome and that she attributed some, if not all, of her shoulder injury to having to assist the claimant in the previous week. We infer that LH was in touch with RS and made known her concerns about the claimant’s requirements for assistance.

6.11 On 9 April 2018 the claimant was told by RS (page 155a) that he should work from home and not undertake any travel on behalf of the company pending GP clearance and clarity from “*our insurance and liability providers*”. The claimant agreed to do so and wrote (page 155) that he had a busy onboarding schedule and could work from home using SKYPE for meeting colleagues. On 12 April 2018 the claimant was asked to sign a consent form for release of information from his GP (page 156). This he signed on the same day (page 159). At the same time the claimant provided a letter to the respondent dated 15 March 2019 from Dr Salman Lari of the NW Regional Spinal Injuries Centre (page 117) which made it clear that

the claimant was a wheelchair user on which he was dependent for moving around and *“his condition is permanent and is unlikely to improve any further”*. We infer that the confirmation that the claimant’s condition and use of a wheelchair was permanent caused concern to RS and to LH and caused RS to question his decision to employ the claimant in the first place.

6.12 On 16 April 2018 the claimant was told by LH that he should continue to work from home (page 162) pending the respondent receiving further clarity on the claimant’s medical condition. In addition LH advised the claimant that the insurers of the respondent had said he would not be covered to travel on business *“as you are currently receiving medical treatment/physiotherapy for your condition(s)..”* That statement misrepresented the terms of the respondent’s travel policy (page 164) which required the claimant to state that he was not expecting or awaiting any treatment, consultations, tests or investigations over the period of (any) trip.

6.13 The claimant, not having seen the email referred to at 6.12 above, arrived at the office on 17 April 2018 but was asked to leave by LH who subsequently reported the matter to RS in a message headed *“Arthur – for our records IMPORTANT”* (page 166). In that message LH stated that she had told the claimant that until the respondent had received confirmation of his condition from his GP and that he was fit to work he would be unable to work in the office and was to continue to work from home. The claimant made it plain he had difficulty working from home as he had no office at home and he had a 9 year old son who lived there with his wife. On 18 April 2018 (page 174) the claimant confirmed he had had no episodes of Autonomic Dysreflexia (“AD”) and did not expect to do so given the level of his spinal injury. The claimant had declared the AD for the sake of completeness. On 26 April 2018 the respondent received a report (page 182) from the claimant’s GP which was not conclusive and effectively referred the respondent to Dr Lari for further information. That information came in a letter dated 11 May 2018 addressed to the claimant’s GP which was shown to the respondent (page 188). This referred to the claimant’s continued use of a manual wheelchair.

6.14 In early May 2018 an employee Jamie Doyle was recruited to assist the claimant with sales and an existing employee named Jasneet Suri was already in post based in Brighton and was also assisting the claimant on the generation of potential sales leads. The claimant suggested the recruitment of Neil Davis as an experienced salesperson and he began work for the respondent in June 2018 but left in early August 2018. In addition, a person “David” was considered for employment in May 2018 (page 187). We infer this was Dave Cully who was subsequently appointed to the claimant’s sales team. The evidence from the respondent as to who was appointed and when and where they worked once appointed was confused, confusing and ultimately unreliable.

6.15 By 29 May 2018 (page 178) the question of the necessary clearance for the claimant to attend the office had still not been resolved.

6.16 The claimant took on a tenancy of Megan’s Cottage close to his home from June 2018 and was intending using this as an office base pending his attendance at the respondent’s office being resolved. The claimant was to be full time in his hours of work from 1 June 2018. On 30 May 2018 the claimant wrote to RS and to LH *“From next week I’ll be moving to full time hours which can be split between my*

new home office and Station House although let's ensure everything is in place to accommodate this". (page 193). In a separate message (page 194) the claimant referred to Access to Work funding for any equipment required at Station House including a "stair climber". RS replied (page 197) that he was trying to get hold of his employment attorneys to make sure "you and all our talent are equally protected and safe....we all want the best and most positive outcome for OSG and for you and your family". We find that the claimant's decision to take on the lease of Megan's Cottage was more because of his domestic situation at the time rather than a desire for a home office as the claimant expected at that time to be returning to work in the Building. In the event the availability of a home office from June 2018 proved fortuitous given the respondent's unwillingness to allow the claimant to attend the Building. The claimant paid the expenses associated with Megan's Cottage himself. On 12 June 2018 LH wrote to the claimant to confirm he was to continue to work from home until "we have enough full time office based staff recruited in the office and the office move is completed...". A strategy meeting planned to take place on 19 June 2018 was to take place at Regus Manchester Business Park (page 200). The claimant thanked LH for her efforts in a message dated 12 June 2018 at 15:56 (page 201).

6.17 The claimant contacted Access to Work ("ATW") with a view to having their assistance in returning him to the workplace. The respondent would not engage with that organisation. The claimant told LH to expect a call from Helen at ATW in a message on 8 June 2018 (page 217). The reason given by the respondent for its unwillingness to engage with ATW was a potential move of the office from the 6th floor to the 3rd floor of Station House Altrincham. We infer this was simply an excuse to delay on the part of the respondent. ATW would have been able to assist with returning the claimant to the workplace in Station House whether the office was based on the 3rd floor or the 6th floor. There was no logical basis for refusing to engage with ATW and we infer the respondent through RS and LH were by this juncture already entertaining doubts about the long-term future of the claimant with the respondent.

6.18 On 23 June 2018 RS advised the claimant (page 222) that Dave Culley had been appointed as head of sales and the selling team then comprised the claimant, Neil Davis, Jamie Doyle and Dave Culley with further support from Jill Wilson and Jasneet Suri. Pressure was applied to achieve and deliver a target of \$2m sales in the year. The tone of the message indicates some impatience on the part of RS at this stage. RS chased up selling plans in July 2018 and the claimant sent his plan as required on 11 July 2018 (page 224 and 226-236).

6.19 On 2 July 2018 Jill Wilson complained (page 237) about the behaviour at a meeting of Neil Davis ("ND") and he in fact left the respondent shortly afterwards: the claimant was not consulted in any way about this matter notwithstanding that ND was a new member of his sales team. In July 2018 SD was appointed as managing director of the respondent by RS. This appointment was made without the knowledge of the claimant. LH was the life partner of SD and we infer that the difficulties arising in respect of the claimant's attendance at Station House dealt with by LH from March 2018 onwards had been discussed with SD. SD had been responsible for introducing the claimant to RS as a potential head of the sales team in February 2018.

6.20 RS organised for the sales team put together by the claimant together with other teams from the USA to attend a three-day event in the USA from 31 July 2018 – 2 August 2018. The event was designed to assist sales teams to achieve contacts and sales. On 23 July 2018 (page 247) the claimant wrote to RS to ask if he had been cleared to travel on business as it was important that he should attend the presentation. RS did not permit the claimant to attend and said that he could engage with the trainer Thomas Massie (“TM”) remotely. The claimant wrote to TM (page 249) on 2 August 2018 asking to do so. In the event that remote meeting never took place. We infer that by this point in time RS had decided that the claimant had no long-term future with the respondent. We reach this conclusion on the basis that it was clearly logical and essential for the claimant as head of a newly formed team in the UK to attend what was to be an important meeting to help attendees develop selling skills and achieve selling targets. This is particularly so when the claimant and his team were operating from a standing start in the UK.

6.21 On 24 July 2018 (page 258) the claimant sent a spreadsheet to RS and to SD which erroneously included some information relating to a company with which the claimant had previously had dealings but not through the respondent. The information was considered by SD to be a data protection breach. SD, who had only recently taken up his duties as managing director, telephoned the claimant and spoke in very forthright terms about the error and its potential consequences and said it must not be repeated. This was reinforced by RS (page 259) in a message dated 25 July 2018. No formal action of any kind was taken against the claimant in respect of this matter but a note was made on the claimant’s file by SD (page 260). This matter was not referred to in the subsequent performance improvement plan.

6.22 In August 2018 (page 266) messages were exchanged between the claimant and SD in which the claimant asked to speak to SD and wrote *“As I’m not permitted in the office the lack of face time with colleagues and peers is a challenge for me so would be good to catch up in person.....”*. On 10 August 2018 the claimant spoke by telephone to RS and SD who both expressed some concern about the absence of any sales generated by the claimant at that time. In a message (page 279) sent on that same day the claimant noted that it was important that they should speak candidly as they *“work towards our goals”* and also wrote *“Please let me highlight that as a disabled employee which was the case when you recruited (full disclosure and access to my medical records) there are certain obligations you need to consider”*. The claimant provided a link to a government publication in respect of employing disabled people. The claimant continued *“That said I am a results orientated person so will not be distracted by my limitations and continue to give 100% effort to my role at OSG and hope you do the same”*. We infer that the respondent had through SD and RS begun to discuss between themselves the lack of sales generated by the claimant and the possible termination of the claimant’s employment. We make this inference because of the way the respondent very shortly after that moved to put the claimant on a performance improvement plan and the conduct of RS and SD throughout the duration of that plan and the manner in which the claimant’s employment was summarily ended at the end of the period of the plan.

6.23 The respondent had made contact with a company in Finland – Cargotec - and there was to be an in-person presentation to that company in August 2018. The

initial contact had been obtained by RS but the claimant had worked up the contact and there was a potential to achieve a high level of sales from that contact which made the presentation to that company all the more important for the respondent in general and for the claimant in particular in terms of achieving his sales target. The claimant had asked for leave in August 2018 before the date of the presentation to Cargotec was known and RS approved the leave and wrote (page 246) *"I hope this does not fall right on the date of the Cargotec presentation. If that is the case, we will need to make it without your presence"*. The claimant offered to travel from his holiday to make the presentation as he had been heavily involved in all dealings with Cargotec. His offer was not taken up and in the event the presentation went ahead without the claimant and was not successful. RS (page 251) sent an email to the sales team dated 22 August 2018 identifying the members of the sales team who were to journey to Sweden but the claimant was not amongst them. The presentation to Cargotec took place in Sweden rather than in Finland and the reference in the original list of issues to the meeting being in Finland is erroneous but nothing turns on that.

6.24 The claimant was away on annual leave for 2 weeks between 13 and 28 August 2018.

6.25 On 29 August 2018 the claimant was placed on a performance improvement plan ("PIP") by the respondent. This came as a shock to the claimant. The plan put in place (pages 295 – 296) recorded concerns at the low number of client interactions and meetings during the previous 75 days and complaints about *"unprofessional behaviour"* by asking employees to attend meetings at the last minute and also at the claimant's home office *"even though OST has provided you with IT services allowing you to collaborate face-to-face effectively using Skype"*. The target set read: *"It is expected that in the next 60 days you will close at least two clients or engagement of value of \$500,000 outside the Cargotec (deal).... Additionally, we expect you to continue to work from home as agreed and would avoid inviting any employees to your home. You will work in a manner supportive of other employees by providing adequate notice to plan and prepare for meetings"*. The plan stated that it was considered to be a fair opportunity to address the concerns and if adequate progress was not made or further concerns were identified then *"we may terminate your employment... after the 60-day performance improvement plan"*.

6.26 The claimant took legal advice on the PIP and raised questions with RS on 7 September 2018 (page 301). RS replied to the effect that the purpose of the PIP was to provide an opportunity to work through the identified issues. Surprise was expressed at the involvement of the claimant's lawyer. It was confirmed that if the claimant met the sales targets and addressed the behavioural issues there was no intention other than to continue the claimant as a valuable employee. The message continued: *"however... If the issues are not addressed to the satisfaction of your manager/senior management of the company or other issues are identified during the period, the actions that can be taken include termination of your employment with the company"*.

6.27 On 17 September 2018 SD confirmed in a message to the claimant (page 297) that like all other employees the claimant was covered for domestic travel via the insurance that the respondent held.

6.28 The claimant received no meaningful support during the two-month period of the PIP from either RS or SD. We infer that the placing of the claimant on the PIP was window dressing in order to justify a decision already taken that the claimant's employment was to be ended. We reach this conclusion because of the lack of meaningful support of any kind provided to the claimant during the currency of the PIP and in light of the manner in which the claimant's employment was summarily ended at the end of the PIP without further consultation of any kind, without any reference to or compliance with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 ("the ACAS Code") and without any payment of notice pay to the claimant which thereby placed the respondent in breach of the claimant's contract of employment - as it eventually conceded but only at the outset of the hearing before this Tribunal. We also make this inference because of the way the staff employed by the respondent as the team managed by the claimant were gradually removed either from the business or away from the claimant's line management.

6.29 On 31 October 2018 the claimant received a letter from the respondent which set out that the claimant had had discussions with the respondent about the PIP on six occasions during the two-month period and had exchanged five emails relating to the meeting of sales goals. The letter stated that the respondent had provided support by one-to-one meetings to address performance and went on "*the PIP period has now ended and it is time to assess your performance over that period. The sales goals (revised to allow you to more easily meet them) are not being met over the 60-day PIP period. As a result, your employment... Is being terminated with effect from close of business GMT on 31 October 2018*"... We find that the respondent had not provided any meaningful support to the claimant in the period of the PIP beyond that which was already scheduled to take place and had been taking place in the period before the PIP commenced. We infer that when the PIP was put in place, the respondent, through RS and SD, had decided the employment of the claimant was to end at the end of the PIP period. We reach that inference because of the manner in which the claimant's employment was ended on 31 October 2018.

6.30 The claimant replied by message on 31 October 2018 (page 336) noting that there was no mention in the letter about his 60 day notice period which he was "*more than happy to work*". Very surprisingly the claimant received a response from SD that same day noting that the claimant had been advised that if he did not meet his goals his employment "*may be terminated. Your termination was decided given you were unable to meet the objectives despite the support we provided. As such, whatever notice period that you would expect (if any) in such circumstances, has been provided. There is thus, no further notice*". The claimant responded expressing considerable surprise at that response. On 1 November 2018 SD wrote to confirm the respondent's position and stated: "*you have had notice of your non-performance for an extended period of time now and just to be clear for a period of more than the PIP period of 60 days*". (page 341). No appeal in respect of the dismissal was offered. The respondent refused to allow the claimant to work his notice or to pay him in lieu. That position was maintained until the first day of the hearing before this Tribunal when liability for wrongful dismissal was conceded.

6.31 On 5 November 2018 the respondent moved its offices from the sixth floor to the second floor of the Building (page 342).

6.32 The claimant contacted ACAS for early conciliation on 22 November 2018 and these proceedings were instituted on 23 November 2018.

Submissions

7. We received detailed written submissions from the representative of the respondent by way of opening and closing submissions which were supplemented by concluding oral submissions and these are summarised. The claimant provided detailed written closing submissions which were supplemented by oral submissions and these are summarised.

Respondent

7.1 In respect of the adjustment claims, there must be a correlation between the particular disadvantage relied on by the claimant and the steps taken to alleviate the disadvantage. This is a comparative exercise to test whether the individual PCP had the effect of producing the relevant disadvantage between those who are and those who are not disabled. The test of what is a reasonable adjustment is an objective one. The claimant had presented with an optimistic position that he would walk again to SD and on balance it is likely that is how he presented at interview to RS. The respondent should not be criticised for failing to check whether the effects of the impairment were going to be permanent.

7.2 Detailed submissions were made in respect of each of the PCPs asserted and the adjustments contended for.

7.3 The respondent would have benefited from the evidence of LH. The evidence of RS was credible, consistent and detailed. The claimant did not express any disadvantage caused by not being present in the office or any displeasure around not attending trips abroad or that his performance had been impacted by his disability.

7.4 A requirement to work at home did not disadvantage the claimant when compared with non-disabled employees also required to work at home. There was no disadvantage to the claimant in not being present in the office for he had the use of Skype and a mobile telephone. The claimant moved to his home office for other personal reasons. The claimant could not work in the office because the requirements of the landlord prevented him doing so.

7.5 The failure to engage with ATW did not cause a disadvantage to the claimant and in any event, there was no adjustment which would remedy that situation. There was no disadvantage in the PCP that meetings should not be conducted at the claimant's home and it was not reasonable that they should as this could generate other liabilities for the respondent. That was an appropriate concern.

7.6 The claimant was not prevented from attending the training session in the USA. There was no detriment to him. There is no prima facie case of direct disability discrimination in relation to the presentation in Sweden. The explanation that the claimant had not been involved in writing the bid should be accepted. This was

nothing more than a business decision and the claimant's disability had no influence on that decision at all.

7.7 The reason that the claimant's team was changed had nothing to do with his disability and no prima facie case is established. In any event the explanation offered by the respondent should be accepted.

7.8 The USA trip and the presentation in Sweden were not discriminatory exclusions and they did not affect the claimant's sales performance. Working part-time for two months did not affect the claimant's performance. None of the targets set for the claimant were met. The claimant suggested that his performance had not been impaired at all and that his dismissal was unfortunate and that he was happy to work his notice period.

7.9 In oral submissions it was stated that the evidence of RS should be accepted and that it was clear he acted in good faith throughout. Reliance was placed on the documentary evidence which cannot be distorted by the passage of time and is the best guide to the events and the motivation for those events. The case advanced by the claimant that the respondent did not know what to do with him as a disabled employee and did not want to deal with him are all clearly untrue when seen against the documentary evidence. The respondent learned on 12 April 2018 that the claimant's use of a wheelchair was permanent but nothing happens after that date to evince a change of attitude. The respondent invested in the claimant by appointing additional sales staff and he did not register any concerns in respect of his treatment during his employment in particular in relation to the presentation in Sweden. The basic position is that the claimant did not meet his targets and was ultimately dismissed. His disability played no part in that decision and all claims should be dismissed.

Claimant

7.10 The claimant set out detailed written submissions extending to 23 pages.

7.11 In oral submissions it was submitted the question of the respondent's motive or intention was not relevant to the question of liability for direct discrimination. It is clear the claimant's role changed. His status changed and this is a detriment. The claimant lost responsibility for all his reports by hook or by crook and only the respondent knows the reason. There are gaps in the respondent's evidence on this matter and indeed on many other matters. There is no evidence of the resignation of Jasneet Suri. The Tribunal was invited to join the dots in light of the lack of transparency in the evidence provided by the respondent. Members of staff were dismissed without any consultation with the claimant. There was a claimed restructure but no evidence to support such a restructure. It beggars belief that there should be no documents to support a restructure if one in fact took place and it should be inferred that it did not. Both witnesses for the respondent were disingenuous and unhelpful and would not answer straightforward questions. The claimant was side-lined and the question must be asked what was the reason for that. The respondent's witnesses patently told lies and there is no good reason for them to have done so and the question must be asked why did they do so. Witness statements contained obfuscation of the worst kind and they were designed to mislead and in fact produce a case which was not

heralded in the response. The respondent is a multi-million business professionally represented throughout which has sought to deliberately mislead the Tribunal. The absence of LH as a witness is a startling omission: such witnesses as the respondent did call clearly colluded in the preparation and presentation of their evidence. Their statements are full of hearsay and lack transparency. Important documents have not been produced. Their evidence cannot be trusted and an adverse inference should be drawn. The disability of the claimant was clearly a factor in the removal of the claimant's reports and status.

7.12 In cross examination the respondent abandoned the explanation that the reason for the claimant not being allowed to go on the American trip was because there was no insurance and he was too experienced. Those who did attend were, like the claimant, vice presidents of sales globally. The respondent now says the claimant could have gone. The reality is there was no reason for the claimant not to attend and the only explanation can be his disability. The comparator is a vice president of sales who was not a paraplegic. The vacuum which exists to explain the claimant's absence from the American trip can only lead to the conclusion that disability was a factor. There was no medical evidence obtained by the respondent and no risk assessment carried out in relation to the claimant's ability or otherwise to attend the team meeting in America. The respondent did nothing but it acted in an overly cautious manner. The respondent was flustered by the situation with the claimant and did not get its act together – the solution was to put the claimant out of sight and so out of mind. The comparator would have travelled to the USA.

7.13 In relation to the trip to Sweden, there is no reference to insurance. The claimant offers to give up his holiday but received no reply. The claimant was meant to be going on that trip and there was no reason why he should not go. The explanation now given that others on the team did not go has not previously been pleaded. The reference to "*given the situation*" on page 251 is disastrous at best. The explanation provided by the respondent for the claimant not to attend is wholly unconvincing. It is self-evident the claimant should have gone. This was a big pitch and the question arises did the claimant not go because a vice president of sales in a wheelchair would look bad? The claimant does complain about the matter on 10 August 2018 and received no response (page 279).

7.14 There is no sustainable defence to the adjustment claims. The claimant was deprived of the choice of working either in the office or at home and that is a substantial disadvantage. He suffered a lack of interaction with colleagues, a lack of physical space and had to pay for his home office. Reliance is placed on the personal evacuation plan (PEEP) but that has not been produced and no risk assessment has been produced. There are gender-based assumptions made in the form of response. The concerns of the employees about having to assist the claimant were placed above the concerns of the claimant himself and as a result a level playing field was not achieved. The respondent has not produced a list of employees working at Station House and it has been like pulling teeth to find out who did work there. The number of employees does not hold water from day one, the wheelchair movement issue disappeared by week two, the pressure sore was a non-issue. The respondent did nothing to make adjustments and the obvious adjustment was to allow the claimant to work at the office.

7.15 The claims advanced under section 15 of the 2010 Act all flow into one another. Knowledge of the link between the unfavourable treatment and the disability is not required. The claims must succeed and it is noted the respondent does not now pursue any justification argument. No efforts were made to remove the disadvantage. When the claimant was placed on the PIP, no support was offered other than routine contact. It is apparent that by the time the PIP was imposed the respondent had made up its mind that the claimant was to go. The performance of the claimant was clearly affected by his disability and in particular his part time working and his lack of a home office until he took matters into his own hands. The respondent does not need to have knowledge of the link between the unfavourable treatment and the disability. It is recognised that from a standing start a sales person needs at least nine months in which to build up an appropriate pipeline of contacts.

7.16 The failure to allow the claimant to visit America and Sweden is clearly because of something arising from the disability of the claimant. The PIP was clearly imposed by reason of the disability and it follows that the dismissal also flows from the disability. The behaviour of the respondent is inexplicable. No performance management policy has been produced yet one is said to exist. Two months is a very short time for a PIP and there was no appeal allowed. If it is true that the claimant was offered a consultancy then that must lead to a finding that the dismissal was not proportionate - if such a defence is advanced.

7.17 In relation to all claims there is a continuing act throughout the employment of the claimant. Throughout the short employment the respondent states it is revisiting the questions raised by this claim. There is no one-off decision but there are repeated decisions which together amount to a discriminatory state of affairs. Alternatively, if any claim is out of time then it is just and equitable for time to be extended. The claimant was strung along by the respondent. The respondent was not transparent. It would be just and equitable for time to be extended.

8. The Law

Direct Disability Discrimination

8.1 We have reminded ourselves of the provisions of section 6 of the 2010 Act and also of section 13 which reads:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

8.2 We remind ourselves that direct evidence of discrimination is rarely forthcoming and thus there are particular rules in respect of proving unlawful discrimination referred to below. It is now readily accepted that discrimination need not be conscious. Some people have an inbuilt and unrecognised prejudice of which they are unaware. A discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of 'significant influence', see Lord Nicholls in **Nagarajan v London Regional Transport [1999] IRLR572** at page 576. In some cases discrimination is obvious. However, the Tribunal in most cases will have to discover what was in the mind of the alleged discriminator. In **Nagarajan** (a case involving

race discrimination but equally applicable to alleged disability discrimination) Lord Nicholls said at page 575 that:

“Direct discrimination, to be within section 1(1) (a), the less favourable treatment must be on racial grounds. Thus, in every case it is necessary to enquire why the complainant has received less favourable treatment. This is a crucial question. Was it on the grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in the obvious cases, answering the crucial question, will call for some consideration of the mental process of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision would have to be deduced, or inferred, from the surrounding circumstances”.

8.3 The Tribunal has reminded itself of the provisions of section 136 of the 2010 Act and the detailed guidance in **Igen -v- Wong & Others 2005 IRLR 258**. That case of course was dealing with sex discrimination under the Sex Discrimination Act 1975 but is equally applicable to disability discrimination claims under the 2010 Act

8.4 In **Madarassy v Nomura International Plc**, in the Court of Appeal, Lord Justice Mummery said at paragraph 56:

“The court in Igen v. Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent “could have” committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

And later at paragraphs 71 and 72:

*“Section 63A(2) [Sex Discrimination Act] does not expressly or impliedly prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the complainant’s evidence of discrimination. The respondent may adduce evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the complainant; or that the comparators chosen by the complainant or a situation for which comparisons are made are not truly like the complainant or a situation of the complainant; or that, even if there has been less favourable treatment of the complainant it was not on the grounds of her sex or pregnancy. Such evidence from the respondent could if accepted by the tribunal, be relevant as showing that contrary to the complainant’s allegation of discrimination, there is nothing in the evidence from which the tribunal could properly infer a prima facie case of discrimination on the proscribed ground. As Elias J observed in **Liang** (at paragraph 64), it would be absurd if the burden of proof moved to the respondent to provide an adequate explanation for treatment which, on the tribunal’s assessment of the evidence, had not taken place at all”.*

8.5 The Tribunal has reminded itself of the guidance in the decision of Underhill J in **Amnesty International –v- Ahmed 2009 IRLR 844** who after dealing with cases of

inherently racist behaviour went on to give this guidance in relation to cases which are not inherently discriminatory:

*“But that is not the only kind of case. In other cases – of which **Nagarajan** is an example - the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the “mental processes” (whether conscious or unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator’s action, not his motive: just as much as in the kind of case considered in **James v Eastleigh**, a benign motive is irrelevant”.*

8.6 The Tribunal has reminded itself of the words of Lady Hale in the Supreme Court decision in **R-v- Governing Body of JFS 2009 UKSC 15**:

“The distinction between the two types of “why” question is plain enough: one is what caused the treatment in question and one is its motive or purpose. The former is important and the latter is not. But the difference between the two types of “anterior” enquiry, into what caused the treatment in question, is also plain. It is that which is also explained by Lord Phillips, Lord Kerr and Lord Clarke. There are obvious cases, where there is no dispute at all about why the complainant received the less favourable treatment. The criterion applied was not in doubt. If it was based on a prohibited ground, that is the end of the matter. There are other cases in which the ostensible criterion is something else – usually, in job applications, that elusive quality known as “merit”. But nevertheless, the discriminator may consciously or unconsciously be making his selections on the basis of race or sex. He may not realise that he is doing so, but that is what he is in fact doing. As Lord Nicholls went on to say in Nagarajan, “An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant’s race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did . . . Conduct of this nature by an employer, when the inference is legitimately drawn, falls squarely within the language of section 1(1) (a)..”.

Failure to make Reasonable Adjustment Claim: sections 20/21 of the 2010 Act

8.7 The Tribunal has reminded itself of the relevant provisions of section 20 and 21 and Schedule 8 of the 2010 Act which read:

Section 20:

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

(2) The duty comprises the following three requirements,

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

(4) *The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

(5) *The third requirement is a requirement, where the disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid”.*

Section 21

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

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

(3) *A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purposes of establishing whether A has contravened this Act by virtue of subsection (2): a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.*

8.8 The Tribunal has had regard to the relevant provisions of Schedule 8 of the 2010 Act and in particular paragraph 20 which reads:

“ (1) *A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know...*

(b) *....that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement”.*

8.9 The Tribunal reminded itself of the authority of **The Environment Agency v Rowan [2008] IRLR20** and the words of Judge Serota QC, namely:

“*An Employment Tribunal considering a claim that an employer has discriminated against an employee pursuant to section 3A(2) of the 1995 Act by failure to comply with section 4A duty must identify –*

(a) *the provision, criterion or practice applied by or on behalf of an employer;*

(b) *the physical feature of premises occupied by the employer;*

(c) *the identity of non-disabled comparators (where appropriate);*

(d) *the nature and extent of the substantial disadvantage suffered by the claimant. It should be borne in mind that identification of the substantial disadvantage suffered by the claimant may involve a consideration of the cumulative effect of both the “provision, criterion or practice applied by and on behalf of an employer” and the*

‘physical feature of the premises’, so it would be necessary to look at the overall picture.

In our opinion an Employment Tribunal cannot properly make findings of a failure to make reasonable adjustments under sections 3A(2) and 4A(1) without going through that process. Unless the Employment Tribunal has identified the four matters we have set out above it cannot go on to judge if any proposed adjustment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the provision, criterion or practice or feature placing the disabled person concerned at a substantial disadvantage”.

The Tribunal notes this guidance was delivered in the context of the Disability Discrimination Act 1995 but considers it equally applicable to the provisions of the 2010 Act.

8.10 The Tribunal has reminded itself of the guidance in respect of the burden of proof in claims relating to an alleged breach of the duty to make reasonable adjustments in the decision in **Project Management Institute -v- Latif 2007 IRLR 579** where Elias P states:

“It seems to us that by the time the case is heard before a Tribunal, there must be some indication as to what adjustments it is alleged should have been made. It would be an impossible burden to place on a respondent to prove a negative.....that is why the burden is reversed once a potentially reasonable adjustment has been identified.....the key point...is that the claimant must not only establish that the duty has arisen but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made.....we do think that it would be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not.”

8.11 We note also that the EAT in **Lincolnshire Police –v- Weaver 2008 AER 291** made it clear that a Tribunal must take account of the wider implications of any proposed adjustment and this may include operational objectives such as the impact on other workers, safety and operational efficiency. The purpose of an adjustment in the employment context is to return the employee to work or to retain the disabled employee in the workplace.

Discrimination arising from disability – section 15 of the 2010 Act.

8.12 The Tribunal has reminded itself of the provisions of **section 15 of the 2010 Act** which read:

“(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequences of B’s disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Sub-Section (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

8.13 We remind ourselves that in considering a claim pursuant to section 15 of the 2010 Act, we need to consider what breach of section 39 of the 2010 Act is established, whether there was unfavourable treatment of the claimant, whether there is something arising in consequence of the disability and finally whether the unfavourable treatment was because of the something arising from the disability.

8.14 We have reminded ourselves of the guidance of Simler J in **Pnaiser –v- NHS England 2016 IRLR 170** in respect of the proper approach to adopt in cases involving section 15 of the 2010 Act:

“From these authorities, the proper approach can be summarised as follows:

(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.....

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in *Land Registry v Houghton* UKEAT/0149/14 a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of *Weerasinghe* as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(i) As *Langstaff P* held in *Weerasinghe*, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.

8.15 We have reminded ourselves that in considering so called justification, that we must consider an objective balance between the discriminatory effect of the PCP engaged and the reasonable needs of the party who applies it. We have noted the words of Pill LJ in **Hardys and Hanson -v- Lax 2005**. This was a decision of the Court of Appeal taken in the context of a claim of indirect discrimination but this test was applied to claims advanced under section 15 of the 2010 Act by the EAT in **Hensman –v- Ministry of Defence UKEAT/0067/14/DM**.

“Section 1(2)(b)(ii) requires the employer to show that the proposal is justifiable irrespective of the sex of the person to whom it is applied. It must be objectively

justifiable (Barry) and I accept that the word "necessary" used in Bilka is to be qualified by the word "reasonably". That qualification does not, however, permit the margin of discretion or range of reasonable responses for which the appellants contend. The presence of the word 'reasonably' reflects the presence and applicability of the principle of proportionality. The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal, in this case for a full-time appointment, is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary. I reject the appellants' submission (apparently accepted by the EAT) that, when reaching its conclusion, the employment tribunal needs to consider only whether or not it is satisfied that the employer's views are within the range of views reasonable in the particular circumstances".

Burden of Proof and other relevant provisions of the 2010 Act.

8.16 The Tribunal has reminded itself of the relevant provisions of **section 136 of the 2010 Act** which read:

"(1) This Section applies to any proceedings relating to a contravention of this Act.

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

(3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

8.17 The Tribunal has reminded itself of the relevant provisions of **section 39 of the 2010 Act** and in particular:

(2) An employer (A) must not discriminate against an employee of A's (B)-

...

(c) by dismissing B

(d) by subjecting B to any other detriment.....

(5) A duty to make reasonable adjustments applies to an employer...

8.18 We have reminded ourselves of the provisions of section 123 of the 2010 Act in respect of the time limit for the advancement of a claim. We have noted the decision in **Abertawe Bro Morgannwg University Local Health Board -v- Morgan 2018 EWCA Civ 640** and that section 123(4) of the 2010 Act indicates that the period in which the employer might reasonably have been expected to comply with the duty should in principle be assessed from the claimant's point of view having regard to the facts known or which ought reasonably to have been known by the claimant at the relevant time. In addition, we note that section 123 gives Tribunal the widest possible discretion to consider an extension of time but factors which are almost always relevant include the length and reason for the delay and whether the delay has prejudiced the respondent.

Discussion and Conclusions

9. We approach our conclusions by dealing with the various disability discrimination claims advanced and issues arising in the following order:

9.1 The claims of direct disability discrimination.

9.2 The claims in respect of alleged failures to make reasonable adjustments.

9.3 The claims in respect of discrimination arising from disability.

Matters of general application

10. Before dealing with the specific disability discrimination claims advanced, we make some general findings which are relevant to each of the discrimination claims advanced in terms of the drawing of inferences from the primary facts found by us and also in terms of whether there exists the required additional so-called **Madarassey** factor before the burden of proof would shift to the respondent to explain any less favourable treatment found to exist by us in terms of the direct discrimination claims advanced.

10.1 The two witnesses who appeared before the Tribunal for the respondent were two of the most unimpressive this Tribunal has encountered. It was plain that their evidence had been written either together or for them by a third party as several of the paragraphs in both statements were identical. When asked about this, the witnesses denied that they had colluded and denied that the words were other than their own and said that any similarity was coincidental. This was patently untrue and had a serious bearing on our assessment of their credibility and reliability as witnesses.

10.2 Both witnesses for the respondent were severely damaged in the course of cross examination. We accept the submission of Ms Quigley that RS consistently sought to avoid answering questions put to him but rather sought to answer questions he wished had been put to him. RS failed time and time again to give a straight answer to a straight question and sought to shift the focus away from questions he was obviously finding it difficult to answer. RS sought to explain under cross examination the movement of staff away from the claimant by reason of a "restructure". This alleged restructure was not heralded in any pleading and indeed was not referred to in the witness statement of RS but emerged in cross examination. The respondent is a relatively large international company but no documentary evidence of any kind has been produced to evidence any such restructure. We reject any suggestion of a restructure leading to the claimant's sales team being moved elsewhere: the only evidence of that came from RS on whom we find we can place only very little reliance as a witness. We conclude that there was no restructure.

10.3 In the course of giving evidence the respondent's witnesses referred to various documents said to exist which have not been produced to us. It was said that there was a capability procedure which would have dealt with the imposition of a performance improvement plan. That procedure was not produced to us. We infer that if it had been produced, it would not have justified the imposition of the PIP on the claimant in the manner and timescale which was applied in this case. Other

documents referred to were not produced including a grievance policy, a staff handbook and an organogram which apparently showed the structure of the respondent company and reporting lines. It was very difficult to obtain evidence from the respondent's witnesses as to the number and identity of staff who worked at Station House, Altrincham at the relevant time. That straightforward evidence should have been available without difficulty, but it was not. We can make no findings as to who worked there and when. The claimant on whom we could place reliance as a witness was barely permitted to attend that office at all. The witnesses for the respondent could not or chose not to help us on that matter. We infer the respondent had something to hide. In addition, the respondent chose not to produce to the Tribunal the personal evacuation plan to which its witnesses referred as having been imposed on it by the landlord of the Building.

10.4 None of the witnesses for the respondent, and indeed none of the members of staff referred to by those witnesses, had received any training of their responsibilities under the 2010 Act.

10.5 At no time did the respondent seek any medical advice or Occupational Health advice on the claimant's condition or on the type of adjustments which were needed in order to ensure that the claimant was not disadvantaged in the workplace. It was clear that the respondent simply did not know how to manage a disabled employee and chose to solve the problem by asking the claimant to remain away from the workplace, which he did for the whole of his employment except for certain days during the first two weeks of his employment by the respondent.

10.6 A character central to the events involving the claimant was Louise Holland. She was the life partner of the witness SD and we infer that she had made SD aware, before he began his own employment with the respondent in July 2018, of the difficulties she perceived she was having with the claimant and the adjustments necessary for him in the workplace. We accept that Louise Holland knew that SD had referred the claimant to RS as a potential employee and we infer that she told SD that the claimant was a permanent wheelchair user when that matter became known to her during the early weeks of the claimant's employment. She was a central witness to the events of relevance to us. She remains an employee of the respondent company but yet was not called to give evidence and no meaningful explanation was given to us as to the reason for her absence as a witness. We infer that there was something to hide.

10.7 The claimant gave straightforward evidence in relation to his dealings with the respondent. The central facts are that the claimant began work on 26 March 2018 on a part time basis and did not begin full-time work until 1 June 2018 and yet by 31 October 2018 found himself summarily dismissed. The claimant was employed as a Vice President of Sales to oversee the sales of the respondent company in the UK from a standing start. It is common sense that to build up contacts and sales will take time in such circumstances. The respondent's witnesses accepted that in the industry in which the respondent operated, a period of at least nine months should be allowed for leads to be established and orders obtained - particularly in the light of the type of goods being sold by the respondent company and particularly when, as in this case, the claimant was operating from a standing start. The claimant was not allowed that opportunity. We do not overlook the situation that in the period of his employment the claimant did not achieve any sales contacts or sales. However,

when the claimant returned from a holiday in late August 2018, he found himself immediately placed on a PIP for a two month period and then summarily dismissed in circumstances which lead us to infer, without hesitation or difficulty, that the decision to dismiss was pre-ordained and that the PIP was not a genuine attempt to improve the claimant's performance but rather window dressing to remove someone from the respondent's employment whose presence was a cause of problem and concern for the respondent. The question for us is whether the claimant's disability was at least a factor in the thinking of the respondent which lead them to act as they did towards the claimant in the various ways covered by the various claims advanced.

10.8 In respect of the claims of direct disability discrimination, all those matters lead us to conclude that the additional factor is present which leads us to look to the respondent for an explanation of any less favourable treatment which we find to be present and as alleged by the claimant. It is to that question that we now turn.

11. Direct Disability Discrimination claims: section 13 of the 2010 Act.

Adjustments made to the role and responsibilities of the claimant

11.1 We conclude that in the period from the end of June 2018 until 29 August 2018 the sales team for which the claimant was responsible was removed from his direct line reporting and effectively his role as Sales Team Leader for the UK was removed from him. We find that ND was dismissed by the respondent in July 2018 and that the claimant was not consulted about that dismissal or about the decision by RS that he should not be replaced. We find that Jamie Doyle was removed as a line report of the claimant without any consultation with the claimant or without any apparent rationale. David Culley ("DC") was recruited by RS in July 2018 and given a line report direct to RS without any apparent rationale or explanation to the claimant despite DC being a member of the UK sales force for which the claimant was responsible. DC then replaced the claimant on the American visit and Sweden trip despite having less experience than the claimant and despite having less involvement in the Cargotec project than the claimant. We find that the claimant was not consulted about the absence of the employee Jasneet, who assisted the claimant - albeit from a different office, or the conversations which led to her subsequent resignation. The effect of all this was that within a short period of two months the claimant's UK selling team had effectively disappeared. The claimant was effectively side-lined and the question must be asked why was this so? The side-lining of the claimant was clearly a detriment within section 39(2)(d) of the 2010 Act.

11.2 The claimant relied on a hypothetical comparator with which to test this allegation of less favourable treatment. How would a hypothetical non-disabled UK sales director with all the same material circumstances have been treated? The claimant was paid a substantial salary and was employed to create from a standing start a UK sales department which involved working up sales leads and then sales. A sales team was gradually put in place to assist him. It was accepted that a period of nine months was acceptable for such a new position to show results. The claimant began full time duties only from the beginning of June 2018 and yet three months later found himself on a PIP with a clearly pre-ordained outcome. We have no hesitation in concluding that the hypothetical comparator would not have been

treated in that way. Despite the absence of sales leads and sales, more time would have been allowed for the process to come good. There are sufficient additional factors to which we refer at paragraph 10 above for us to seek an explanation from the respondent.

11.3 The respondent failed to provide any real explanation for this treatment of the claimant. In the course of cross examination, RS came to rely on a “restructure” as the reason these changes were made. That evidence was not heralded in the form of response (ET3) to these proceedings and was not referred to in his relatively brief witness statement. It emerged for the first time in cross examination and we wonder why that was so. No documentation of any kind was produced to support the so-called restructure and we accept the claimant’s evidence that, if there was such a restructure, he was not told about it or consulted about it in any way. We reject that explanation. We conclude there was no re-structure at all. We conclude that that evidence was an attempt by RS to mislead this Tribunal. We infer that the disability of the claimant, bringing with it into the workplace the problems perceived to exist by the respondent, was a material factor in the adjustments made to the claimant’s role between the end of June and the end of August 2018.

11.4 We have considered if there are time issues in relation to this particular claim. The adjustments to the claimant’s role occurred over a period of time but we conclude that the removal of the claimant’s team only became clear and was only complete at the end of August 2018. That being so, we conclude there are no time issues in respect of this particular claim as the provisions of section 123 (3)(a) of the 2010 Act apply. Any act occurring on or after 23 August 2018 is in time by reference to the ECC submitted on 22 November 2018. Should that conclusion be wrong, then we have considered if time should be extended by reference to the provisions of section 123(1)(b) of the 2010 Act. Any delay in advancing this particular claim is a short one, we accept that the claimant only had realisation that his disability had become a factor in his treatment by the respondent in mid-August 2018 and in particular when the PIP was imposed at the end of August 2018. The respondent has been able to deal with this allegation without any apparent difficulty in terms of the evidence relied on and available to it. The prejudice to the claimant in not extending time would be greater than that to the respondent if time was extended. We conclude that, should an extension of time be required to enable this claim to be advanced, it would be just and equitable for the period to be extended to 23 August 2018 to enable this claim to be considered.

11.5 The claim of direct disability discrimination in this regard is well-founded and the claimant is entitled to a remedy.

Excluding the claimant from the American visit 31 July – 2 August 2018

11.6 We conclude that the claimant was excluded and not allowed to attend the three-day training meeting for Vice Presidents of Sales held in the United States of America on the above dates. We accept that this was an international meeting for experienced sales staff employed by the respondent and that the course was presented by an external consultant paid for by the respondent to deliver highly relevant training and strategy advice to employees of the respondent holding positions similar to that of the claimant. As a new director of sales in a new market area - the UK - everything points to the logic, and indeed necessity, for the

claimant to attend this meeting. We accept the evidence of the claimant that he indicated that he was prepared to pay himself for the appropriate insurance cover for the period of the trip or to sign a waiver in respect of any liability arising from the absence of insurance. We accept that the document produced to us (page 249) clearly evidences the claimant's understanding that his inability to attend related to his issues with mobility and therefore with his disability.

11.7 We test this allegation by considering if the hypothetical comparator relied on by the claimant would have been treated in the same way. We conclude without difficulty that he would not. The course in America was designed to help employees of the claimant's level of seniority with selling skills. The claimant was fulfilling a new role in a new market and clearly the skills being trained were highly relevant. The hypothetical comparator, who would have had no mobility issues and thus no difficulty with insurance cover, would have attended that course. The denial of permission to attend the course is clearly a detriment within section 39(2)(d) of the 2010 Act.

11.8 We look to the respondent for an explanation – there being several reasons for us to do so as we set out in paragraph 10 above. RS stated in cross examination that one of the reasons for the claimant's non-attendance was that he was too experienced to attend. That explanation is rejected. It is clear that it was originally intended that the claimant should attend the course and that others employed by the respondent at a similar level of seniority and experience to the claimant did attend it. The explanation is frankly risible. The respondent through RS also stated in cross examination that others of the claimant's level did not attend because that was their own choice and also that the claimant could have gone if he had wanted to go. Those explanations are contradictory. It was also asserted that the respondent could not obtain insurance cover for the claimant to travel. That last explanation was patently untrue when close consideration is given to the such of the insurance documents of the respondent as were produced. The various explanations advanced are rejected and we infer that the issues with the claimant's mobility and hence his disability were at the heart of the reason for his exclusion from the USA course. It was LH who was clearly charged within the respondent for dealing with insurance cover and liaising with insurers in respect of the claimant's ability or otherwise to travel. We did not hear from LH. We infer the claimant could have travelled on the respondent's insurance but that a decision was taken that he should not attend because of his disability. The claimant's disability was a material factor in his non-attendance on that course.

11.9 We have considered if there are time issues in relation to this particular claim. The exclusion of the claimant from the USA course was clear by the end of July 2018 and thus the claim is some 23 days out of time. We have considered if time should be extended to enable this claim to be considered. Any delay in advancing this particular claim is a short one, we accept that the claimant only had realisation that his disability had become a factor in his treatment by the respondent in mid-August 2018 and in particular when the PIP was imposed at the end of August 2018. The respondent has been able to deal with this allegation without any apparent difficulty in terms of the evidence relied on and available to it. The prejudice to the claimant in not extending time would be greater than that to the respondent if time was extended. We conclude that, should an extension of time be

required to enable this claim to be advanced, it would be just and equitable for the period to be extended to 23 August 2018 to enable this claim to be considered.

11.10 The claim for disability discrimination is well-founded and the claimant is entitled to a remedy.

Excluding the claimant from the presentation in respect of Cargotec in Sweden in August 2018

11.11 We conclude that it had clearly been the intention of the respondent that the claimant should attend the presentation to Cargotec. This is evidenced in an email (page 246) sent by RS to the claimant on 6 July 2018 and from the claimant's reply on the same day making it clear he would fly into Sweden from his holiday to make the presentation given the importance of the deal. The claimant had led the preparation for the pitch to Cargotec and when that exchange of emails took place DC was not employed. Whilst this lead had been obtained for the respondent by RS, it was the claimant who had led on the "working up" of the lead and this lead was central to the claimant being able to meet his interim targets. We conclude the claimant was excluded from the presentation by deliberate decision of RS and that that decision was a detriment to the claimant falling within section 39(2)(d) of the 2010 Act.

11.12 We test this allegation by considering how the hypothetical comparator relied on by the claimant would have been treated. We conclude that the comparator would have journeyed to Sweden to make the presentation. It was logical for the person who had been leading the work on the bid to make the presentation and for his offer to break into his holiday in order to attend to be accepted – particularly given the importance of the project for the respondent in general and for the claimant in particular. In not being allowed to attend the presentation the claimant was treated less favourably by the respondent in comparison to the hypothetical comparator.

11.13 We look to the respondent for an explanation. In cross examination and for the first time, RS sought to explain the decision on the basis that the claimant had been away on holiday in the days leading up to the presentation and the fact that the respondent was only to present to a team of four people and did not want to take a disproportionately large party. If that was the reason, then the question arises why was the claimant not told that was the case at the time – for no explanation was offered to him and he was left to deduce his presence was not required and was not told directly by RS or anyone else from the respondent that that was the case. The evidence of RS on this point was confused and unreliable and no cogent explanation was given for the claimant's absence from the presentation which logically he needed to attend.

11.14 The explanations advanced by the respondent for the claimant's non-attendance are rejected. We infer that the claimant was not allowed to attend the presentation to Cargotec because he was a wheelchair user, and as such, was not wanted at an important and prestigious presentation. There is no cogent explanation advanced by the respondent for the claimant's treatment and no documentary evidence supplied of any kind to support what the respondent asserts

to be the explanation. We infer that the disability of the claimant was a material factor in the decision to exclude the claimant from the presentation.

11.15 We have considered if there are time issues in relation to this particular claim. The exclusion of the claimant from the presentation was notified on 22 August 2018 (page 251) and occurred on 28 August 2018. Given the date of the presentation, there are no time issues in relation to this particular allegation. If that decision should be wrong then we have considered if time should be extended. Any delay in advancing this particular claim is a short one, we accept that the claimant only had realisation that his disability had become a factor in his treatment by the respondent in mid-August 2018 and in particular when the PIP was imposed at the end of August 2018. The respondent has been able to deal with this allegation without any apparent difficulty in terms of the evidence relied on and available to it. The prejudice to the claimant in not extending time would be greater than that to the respondent if time was extended. We conclude that, should an extension of time be required to enable this claim to be advanced, it would be just and equitable for the period to be extended to enable this claim to be considered.

11.16 The claim for direct disability discrimination is well-founded and the claimant is entitled to a remedy.

The claim of failure to make reasonable adjustments: sections 20/21 of the 2010 Act

Knowledge of Disability

11.17 At the outset of the hearing the respondent conceded that there was no issue to be resolved in respect of its knowledge of the claimant's disability in respect of the claims advanced under sections 13 and 15 of the 2010 Act. No such concession was made in respect of the reasonable adjustment claims and thus we consider that matter at the outset of our consideration of these claims. The second strand relating to knowledge of the substantial disadvantage to the claimant of any PCP imposed will be considered when we deal with each individual claim.

11.18 We note we must decide if the respondent had knowledge, and if so when, of the facts constituting the disability of claimant – the respondent does not need to know that as a matter of law the consequences of such facts are that the claimant was a disabled person for the purposes of section 6 of the 2010 Act. We must consider whether and when the respondent knew the claimant had a physical impairment which had a substantial and long-term adverse effect on his ability to carry out normal day to day activities. We find that the respondent knew or should reasonably have known by not later than the first day of his employment on 26 March 2018 that the claimant had a spinal injury, that he was a wheelchair user and could not walk. We accept that the claimant at interview on 21 February 2018 tried to make light of his injury but he did not tell the respondent that he was going to be able to walk again. The respondent was aware at interview that the claimant had been injured in an accident over 7 months previously. When completing a personal details data form for the respondent on his first working day, the claimant advised that he had a spinal cord injury. The respondent knew the claimant needed a disabled parking bay on a long-term basis before his employment even began and would need the use of an evacuation chair to leave the Building in the event of an

emergency. When completing a BUPA form for the respondent on 1 April 2018 the claimant declared that he had a spinal cord injury and paraplegia. On 12 April 2018 the claimant provided the respondent with a report from his consultant in spinal cord injury which confirmed the claimant had a spinal cord injury and was a paraplegic. A letter from the claimant's GP dated 26 April 2018 sent to LH confirmed that the claimant had paraplegia "at the T9 level". We conclude that the respondent could reasonably have been expected to know of the disability of the claimant by the first day of work for the claimant on 26 March 2018 given that the claimant arrived for work in a wheelchair. It fell to the respondent to do all that was reasonably expected of it to find out if the claimant had a disability. There was every basis for the respondent to make discrete enquiry of the claimant about the matter. The respondent could reasonably have been expected to know of the claimant's disability by 26 March 2018 at the latest. The impairment was obvious and the substantial and long term adverse effects on day to day activities should reasonably have been known by that point.

Requirement for home working

11.19 It is accepted by the respondent that the claimant was required to work from home from 5 April 2018 and that from 1 June 2018 the claimant provided himself at his own expense with a home office in a cottage close to his home. This requirement for the claimant not to work at Station House was re-iterated time and again during the brief period of the claimant's employment. We conclude that this requirement was a PCP falling within section 20(3) of the 2010 Act.

11.20 We conclude that in order to assess the substantial disadvantage element of this claim, we should compare the claimant to a person holding the same position as the claimant within the respondent's organisation but one who was not a paraplegic. There would have been no question of the non-disabled employee being required to work from home as the claimant was required to do. The non-disabled employee would have had the option to work from home, as did several of the employees of the respondent, but there would have been no compulsion and, had that comparator employee wished to attend the office for any reason, he could have done so. That element of choice was wholly removed from the claimant by the PCP and that, in our judgment, amounts without more to a substantial disadvantage in the sense of a disadvantage which was more than minor or trivial. The role which the claimant fulfilled was intended to be office based as the claimant's contractual terms made clear. The PCP prevented the claimant from accessing the facilities available at the office of the respondent, prevented the claimant having direct and easy interaction with colleagues and prevented the claimant forging close links with colleagues which were all the more important in a new selling role which the claimant filled. We conclude that the PCP placed the claimant at a substantial disadvantage.

11.21 We conclude that the substantial disadvantage was known to the respondent or should reasonably have been known to the respondent. Both parties to the claimant's contract had intended the position held by him to be office based. The respondent knew the claimant was deprived of the choice whether or not to attend the office. The respondent knew the claimant wanted to attend the office because he did so in the first two weeks of his employment until finally prevented from doing so by the respondent. We agree with the submission of Ms Quigley to the effect

that there is no requirement for the claimant to grieve the matter before the respondent can be said to be fixed with knowledge of the disadvantage. The claimant was in a new post and was trying to fulfil his duties without “*rocking the boat*” as he put it. He was “*being humble*” as he also put it. That does not mean the respondent can say that it was unaware of the disadvantage which is blatant and obvious. In any event the claimant made plain his wish to return to the office not least on 1 May 2018 when he wrote to the respondent (page 177) that he was “*eager to get back in the office this week*”. The respondent also knew that the claimant had no viable home office at his home in the period from 5 April 2018 until 31 May 2018 and had no separate room in which to work. The respondent knew that the claimant took it upon himself to find an alternative property where he was able to have a home office – notwithstanding that there were other domestic reasons for that alternative property to be found. We conclude that the respondent did have the requisite knowledge of the substantial disadvantage caused to the claimant by this PCP.

11.22 The reasonable adjustment contended for by the claimant was to be allowed to work in the office. This brings into sharp focus the various and changing reasons relied on by the respondent to prevent the claimant working in the office at Station House. The first reason relied on by the respondent related to the fact that the claimant needed help on his arrival at, and departure from, the office to move his wheelchair from the boot of his vehicle to his driver’s door. In fact, this was only the situation until 9 April 2018 for after that date the claimant made it known that he had mastered lifting the chair into his vehicle himself and did not require assistance. The second reason relied on for preventing the claimant attending the office was that he had revealed on 9 April 2018 that he had autonomic dysreflexia (“AD”) and that as a result the respondent needed to consider adjustment of its policies and consent from the claimant’s GP. However, this overlooks the fact that the claimant’s GP made it plain that the claimant was fit to work and that the claimant told the respondent that in fact his reference to AD was out of an abundance of caution and that he did not suffer any ill effects from that condition. We further accept that, even for the brief period of time when it might have been reasonable for the respondent to be concerned about the AD condition, the claimant made it clear that, if an attack occurred, he would need only to lie down and would not need assistance as such. The respondent relied on the need for clarity as to the claimant’s medical condition. However, the action taken by the respondent to seek such clarity was unreasonable. The respondent did not seek its own referral of the claimant to occupational health nor did it carry out a risk assessment in relation to the claimant’s occupation of the Building. By 30 May 2018 the respondent relied on the need for it to engage with its employment attorneys in order to consider the question of the claimant’s attendance but there was no evidence before us that any such engagement took place. As time moved into June 2018 the respondent relied on the need to recruit additional staff and the fact of a forthcoming office move (to the third or, as it turned out, the second floor of the Building) before the claimant could be allowed to work in the Building. We do not accept the evidence of the respondent with regard to these matters. The evidence as to which members of staff worked at Station House, and when, was confused and we can make no firm findings on that point: it is for the respondent to satisfy us that there were insufficient staff numbers working there to allow the claimant to be assisted from the building in the case of emergency and it has failed to do so. There was an office

at Station House throughout the time the claimant was employed and it was manned by more than one member of staff. SD worked mainly from the office when he started work for the respondent in July 2011 but no attempt was made to return the claimant to the workplace. We conclude that there were more than 2 staff working in the office at all times during the claimant's period of employment.

11.23 The respondent sought also to rely on the requirement of the landlord of the Building for there to be a personal evacuation plan for the claimant in the event of an emergency as a reason why he could not work in the Building. Any such requirement or plan was not produced to us and nothing other than vague assertions as to its contents and requirements were given to us. The fact remains that the claimant did work in the Building for two weeks with the knowledge of the landlord, who was instrumental in asking other occupiers to change car parking spaces in order to accommodate the claimant, and so any such objection did not apply at that time. We had no explanation as to why it should have suddenly become an issue after two weeks of the claimant working in the Building. We infer and conclude that there was no such objection from the landlord and that this was further evidence of delay and obfuscation on the part of the officers of the respondent who clearly did not know how to deal with the issues arising from the claimant's disability.

11.24 We conclude that the respondent saw the claimant's attendance at the office as a problem once it came to realise that the claimant was disabled, as it did, at the outset of his employment. With that knowledge came a realisation that it had duties to fulfil towards the claimant as a disabled employee – duties with which it was not familiar and which it did little, if anything, to inform itself about. We find ourselves in agreement with the submission of Ms Quigley that the respondent really had no reason to exclude the claimant from the office at Station House – other than perhaps for a short time whilst it made appropriate enquiries and carried out appropriate risk assessments. We agree that the picture painted, through the emails we have seen and from the evidence of RS in particular and from the absence of LH as a witness, is one of inaction and shifting nebulous reasons of an employer who did not know how to address the problems posed to it by the claimant's disability. The picture also emerges of an employer who did not know or understand its duties towards its disabled employee, who took no meaningful steps to inform itself of those duties and who chose to find a solution by removing the claimant from the office and then, with the problem out of sight, put the issue out of mind to the extent that nothing was done at all which could have resulted in the return of the claimant to the office environment. The letter and spirit of the 2010 Act is to enable disabled employees to work on a level playing field with non-disabled employees so far as possible and to be retained in the workplace. In this case the respondent achieved the exact opposite of that position and failed in its duty to make reasonable adjustments to the PCP which was so obviously in play and which caused such obvious substantial disadvantage to the claimant. The adjustment contended for of being allowed to work in the office with appropriate policies and plans in place would have removed the disadvantage from the claimant. The claim of failure to make a reasonable adjustment to this PCP is well-founded.

11.25 This being a claim of failure by the respondent to comply with its duty to make adjustments, we have considered for time purposes and section 123 of the 2010 Act when the respondent might reasonably have been expected to comply with the duty to make reasonable adjustments to this PCP. We have noted the submission of the claimant that there was in this case a discriminatory regime in play such that time does not run until the end of the employment. Given that is a submission before us we will address the time issue when we have considered all the allegations of failure to make reasonable adjustments which are before us.

Requirement for other members of staff to be present in order for the claimant to work in the office.

11.26 It is accepted by the respondent that the claimant was not permitted to work in its office in the Building unless other members of staff were present with him in order to deal with the question of emergency evacuation. This did amount to a policy which was asserted by the respondent on more than one occasion. We conclude that this requirement was a PCP falling within section 20(3) of the 2010 Act.

11.27 We conclude this PCP did place disabled employees at a substantial disadvantage as it prevented disabled employees from being able to attend the office when they wished to do so. The claimant was affected by this PCP as his attendance at the office was denied.

11.28 We conclude that the respondent did know that the claimant was placed at that disadvantage as the respondent knew the claimant was prevented from attending its offices and that he wished to do so.

11.29 We conclude that the adjustments contended for by the claimant were reasonable and were not taken by the respondent. The respondent imposed a full exclusion on the claimant. The respondent could reasonably have ensured that there were sufficient staff in the office at all times to ensure the claimant would have any necessary assistance in the event of emergency. The respondent allowed its staff to work from home from time to time but it could reasonably have imposed a requirement that there should always be a minimum number of staff present, said to be two, to assist the claimant in the event of an emergency. The necessity to pre-book working from home and for a restriction on numbers allowed to do so would have been a reasonable adjustment. The respondent could have purchased an EVAC chair for use by the claimant and trained its staff in the use of that chair. The respondent could have undertaken a risk assessment in respect of the claimant's presence in the office and implemented any reasonable recommendation resulting from such assessment. We accept the submission of the claimant that the respondent elected not to ask employees to assist the claimant or to put in place a plan to assist the claimant because its employees were not paramedics and because RS did not feel it was appropriate to ask able bodied and non-disabled employees to assist the claimant in the case of emergency. That approach revealed a bias towards disabled employees and stereotypical assumptions that employees would be unwilling to assist in the unlikely event of an emergency. With proper equipment and training, which could reasonably have been provided, any objections could reasonably have been overcome and in the event of unwillingness to assist, further measures put in place to assist the claimant. Failing to address

these reasonable steps to plan and educate meant the respondent failed to make reasonable adjustments – and adjustments which would have removed from the claimant the substantial disadvantage suffered by him. This claim of failure to make reasonable adjustments is well-founded.

11.30 This being a claim of failure by the respondent to comply with its duty to make adjustments, we have considered for time purposes within section 123 of the 2010 Act when the respondent might reasonably have been expected to comply with the duty to make reasonable adjustments to this PCP. We have noted the submission of the claimant that there was in this case a discriminatory regime in play such that time does not run until the end of the employment. Given that is a submission before us, we will address the time issue when we have considered all the allegations of failure to make reasonable adjustments which are before us.

Not engaging with Access to Work until the office move was complete

11.31 It is clear that the respondent declared itself through RS and LH unwilling to engage with “Access to Work” until it had completed the move of its office from the sixth floor of the building to the second floor (as it turned out to be). This did amount to a policy which was asserted by the respondent on more than one occasion. We conclude that this requirement was a PCP falling within section 20(3) of the 2010 Act.

11.32 We conclude that this PCP did place disabled employees at a substantial disadvantage as its implementation prevented those employees having the benefit of the services provided by Access to Work (“AW”) which are specifically designed to assist disabled employees to remain in or to return to the workplace. The claimant was himself placed at this substantial disadvantage.

11.33 The respondent clearly knew or reasonably ought to have known that the claimant was placed at that substantial disadvantage as he had requested to have the respondent engage with AW and the actions of the respondent alone prevented that engagement from taking place over a period of several months.

11.34 We conclude that a reasonable adjustment to this PCP would have been for the respondent to engage with AW to secure the assistance which AW could have provided to identify the issues preventing the claimant’s return to the workplace and to remove those issues. The assessments provided by AW are cost neutral and there was no reasonable basis to refuse to engage with AW pending an office move which did not occur until some five months after the claimant first requested the respondent to engage with AW. We accept that in cross examination RS could provide no reason why engagement with AW could not have taken place when the matter was first raised by the claimant. In our judgment this is another example of the respondent choosing not to engage with the issues raised by the claimant’s disability and with its duty to make adjustments for the claimant in the workplace. Engaging with AW would have removed from the claimant the substantial disadvantage arising from the PCP. This claim of failure to make a reasonable adjustment is well-founded.

11.35 This being a claim of failure by the respondent to comply with its duty to make adjustments, we have considered for time purposes within section 123 of the

2010 Act when the respondent might reasonably have been expected to comply with the duty to make reasonable adjustments to this PCP. We have noted the submission of the claimant that there was in this case a discriminatory regime in play such that time does not run until the end of the employment. Given that is a submission before us, we will address the time issue when we have considered all the allegations of failure to make reasonable adjustments which are before us.

Meetings should not be conducted with colleagues at home office

11.36 We conclude that the equivocal position of the respondent in respect of the claimant having meetings with colleagues at his home or otherwise did not have the character of a PCP. The respondent initially allowed such meetings to take place and then on one occasion altered its position and included the matter as an issue in the PIP. We do not accept that this matter took on the character of a PCP within section 20(3) of the 2010 Act and thus the matter need not be considered further by us. This claim is not well-founded.

Time points on the reasonable adjustment claims

11.37 We have considered the submission of the claimant that there was a discriminatory regime in play throughout the time of the claimant's employment with the respondent. We have considered the time at which it would have been reasonable for the respondent to have complied with its duties in respect of the three PCPs which we have found established in this matter. We consider that the duty to make adjustments to the PCPs referred to at 11.19 and 11.26 above should have reasonably been applied from the claimant's perspective by the end of May 2018 at the latest. We conclude that the adjustment to the PCP referred at 11.31 above should have been applied by the end of June 2018. Thereafter further acts of direct discrimination and/or discrimination arising from disability took place when the claimant's team was effectively removed from him by mid-August 2018, the claimant was denied the opportunity to attend the course in the USA at the end of July 2018 and was denied the opportunity to present to Cargotec in Sweden at the end of August 2018. There were several serious acts of discrimination inflicted on the claimant in the relatively short period of his employment with the respondent and certainly by 23 August 2018 and thereafter. We conclude that there was a discriminatory regime in play which adversely affected the claimant throughout his employment with the respondent. The respondent was responsible for an ongoing situation or, put another way, a continuing state of affairs, in which the claimant was subjected time and again throughout the short period of his employment to disability discrimination such as to amount to conduct extending over a period of time within section 123(3) of the 2010 Act. This culminated with the act of dismissal in October 2018 which is in time for the purposes of section 123 of the 2010 Act. That being so there are no time issues in respect of any of the claims advanced for failure to make reasonable adjustments.

11.38 Should that conclusion be wrong, then we have considered if time should be extended under the provisions of section 123 of the 2010 Act to enable the claims of failure to make reasonable adjustments to be considered for remedy. Should a further period of time be allowed which is just and equitable as provided for by section 123(1)(b) of the 2010 Act? Any delay in presenting any claim is a short one extending only from the end of May 2018 until 23 August 2018. The claimant was

strung along by the respondent in respect of the reasonable adjustments claims as the respondent did not make clear to the claimant in unequivocal claims that it would not comply with its duty to make reasonable adjustments. The respondent was not transparent in its dealings with the claimant in this regard. Realisation that his disability was a factor only came to the claimant in mid-August 2018 when he wrote to the respondent drawing its attention to its duties under the 2010 Act for the first time. Any claim in respect of a date on or after 23 August 2018 is in time. The respondent was able to deal with all the claims advanced by the claimant without any apparent difficulty in terms of witness evidence. The prejudice to the claimant is not extending time is patently greater to the claimant than to the respondent in extending time. Having assessed all the relevant matters, we conclude that it is appropriate to extend time to 23 August 2018 to enable claim which is out of time to be considered for remedy. Accordingly, the three well-founded claims referred to above for failure to make reasonable adjustments will be considered for remedy.

Claims of Discrimination arising from disability: section 15 of the 2010 Act

11.39 We propose to deal with the question of unfavourable treatment and the necessary causal link to the claimant's disability. We will then address the question of justification in respect of each well-founded allegation as a separate matter at the end. The respondent did not press the question of justification in final submissions in light of the evidence of the respondent particularly in cross examination. However, the point was not withdrawn and it will be dealt with. We will deal with any time issues in respect of these allegations together at the end of this section of our judgment. The respondent conceded there were no issues arising in respect of its knowledge of the claimant's disability in respect of these claims.

Imposition of the PIP

11.40 It is agreed that a PIP was imposed on the claimant in August 2018 and that this amounted to unfavourable treatment.

11.41 We have considered whether the PIP was imposed because of something arising from the disability of the claimant. We remind ourselves again that the "something" which causes the unfavourable treatment need not be the main or sole reason for the unfavourable treatment but must have a significant (meaning a more than trivial) influence on the unfavourable treatment. In addition, we note that there may be more than one link between the disability and the unfavourable treatment. There is no necessity that the respondent be aware of the causal link.

11.42 The PIP was imposed to deal with perceived issues relating to the claimant's performance. It also contained a reference to the claimant requiring a colleague to attend his home office for a meeting. This was a conduct issue. The central matter raised by the PIP was the claimant's performance.

11.43 Our central conclusion on this matter is that the PIP was imposed as a device to remove the claimant from the respondent's employment. The outcome of the PIP was pre-ordained. The claimant's employment was to end and this was the device used to secure that outcome. We conclude that the respondent had decided that the claimant should leave its employment not just because of his performance but also because of his disability which brought with it into the workplace problems

which the respondent simply did not know how to address and did not trouble itself to find out how to address. That being so the causal connection between the disability and the PIP is clear and made out.

11.44 However, we engage with the question of the claimant's performance in case our conclusion that the PIP was simply an artificial device is wrong. The claimant gave evidence (which we accept) that his performance was adversely affected in his relatively short period of employment by the fact that he could not work in the office at Station House and so avail himself of the facilities and interaction with staff which would have resulted from his presence there. It was also affected by his working part time in April and May 2018 due to his disability which negatively impacted his performance in those months. In April 2018 he worked 12 noon until 5pm at home for the majority of the time and from 3.30pm was inevitably interrupted by his young son returning from school and the claimant then having nowhere to work effectively at home after that time. The claimant's performance was affected by his exclusion from the training course in the USA in July 2018 and from the Sweden trip to make the presentation to Cargotec in August 2018. We accept the evidence of the claimant that all these matters, which all arose as a consequence of his disability, were significant and cumulatively affected his performance. That that is so can be tested by the unchallenged evidence that the claimant is a very experienced salesman with an excellent record – such that RS was persuaded to take him on in the first place without any probationary period in his contract. Something affected his performance and we conclude that that "something" was all the matters referred to above which all arose as a consequence of his disability. Those matters which adversely affected the performance of the claimant arose in consequence of his disability and led to the imposition of the PIP and thus the imposition of the PIP falls squarely within section 15 of the 2010 Act.

11.45 The PIP was also imposed for an alleged act of misconduct. This was further evidence of the lack of a genuine reason for its imposition in the first place. RS accepted in cross examination that the claimant would not have been dismissed for this matter alone and that conduct matters had no place in a plan designed to improve performance in terms of capability. However, it is clear that that conduct allegation also arose from the fact that the claimant was working at home as he was required to do by the respondent. That requirement was imposed because of the health and safety concerns which arose in the mind of the respondent because of the disability of the claimant. The causal connection required by section 15 of the 2010 Act is clearly established and, subject to any defence of justification, the allegation is well-founded.

Failure to allow the claimant to attend the USA Meeting and the failure to allow the claimant to attend the Cargotec presentation in Sweden.

11.46 We take these two matters together. We have already concluded that these actions by the respondent were acts of direct disability discrimination and are thus actionable as such under the provisions of sections 13 and 39(2)(d) of the 2010 Act. In case those conclusions should either individually or collectively be wrong, we test these allegations under section 15 of the 2010 Act.

11.47 The respondent's written position for the claimant not being allowed on either trip was his inability to be insured as a consequence of his ongoing treatment which was clearly connected to his disability. In cross examination, that evidence was changed and the respondent sought to explain the claimant's exclusion from the USA trip by his inability to sell in the USA and his exclusion from the Sweden trip by the necessity for a small presentation team and the claimant's absence on holiday when the presentation was prepared. We do not accept that changed evidence and conclude that the claimant was not permitted to attend because of general concerns in respect of his disability and concerns in respect of insurance cover in particular. Those matters clearly arose in consequence of the claimant's disability. These alternative claims under section 15 of the 2010 Act are well-founded under that provision. The respondent did not seek to identify any legitimate aim in respect of this unfavourable treatment and thus any question of justification in respect of these particular allegations does not arise.

Failure to support or adequately support the claimant

11.48 We find that there was a failure to offer support to the claimant by the respondent during his employment generally and during the currency of the PIP in particular. The respondent took no steps whatever to facilitate the return of the claimant to the office at Station House, it refused to engage with Access to Work, it refused to allow the claimant to attend the course in the USA to improve his selling skills and it refused to allow the claimant to attend the presentation to Cargotec in Sweden despite the fact that the claimant had led on that project and that its successful outcome would have impacted very considerably, for the good, on achieving his target figures. Furthermore, the respondent did not offer the claimant any meaningful support at all during the currency of the PIP and its assertions to the contrary are roundly rejected by this Tribunal. It is abundantly clear that the PIP was a device to remove the claimant from the employ of the respondent and that the respondent had no intention of offering support to the claimant during the currency of the PIP and did not effectively do so. The claimant was set up to fail the PIP by the respondent.

11.49 We accept the submission of the claimant that the failure to support the claimant was intrinsically linked to the decision to dismiss the claimant. The failure to support was unfavourable treatment of the claimant which arose because of the performance of the claimant and because of the problems which the respondent perceived were visited on it by reason of the claimant's disability and thus because of something arising as a consequence of the claimant's disability. This claim under section 15 of the 2010 Act is well-founded under that provision subject to any defence of justification.

Dismissal of the claimant

11.50 The dismissal of the claimant was unfavourable treatment.

11.51 The dismissal was inextricably linked to the claimant's performance which was inextricably linked to the claimant's disability. In addition, the dismissal was pre-ordained when the PIP was imposed because of the problems the respondent perceived the claimant's presence in its workforce brought to them – problems which it was not prepared to address or to attempt to resolve. The dismissal of the

claimant clearly and without question falls within the provisions of section 15 of the 2010 Act.

Justification

11.52 We have considered whether the respondent has established that the unfavourable treatment referred to above was a proportionate means of achieving a legitimate aim. This matter was not advanced with any conviction by the respondent in submissions with good reason.

11.53 The legitimate aim contended for by the respondent as set out in the list of issues was to ensure the respondent had sales people that contribute to the income of the company and do so at a level commensurate with their status and experience.

11.54 This aim was only advanced by the respondent in respect of the decision to dismiss the claimant and not with any conviction. We agree with the submission of Ms Quigley for the claimant to the effect that the respondent does not establish that the dismissal and before it the lack of support of the claimant and the imposition of the PIP were proportionate means of achieving that aim. We remind ourselves that any procedural issues in respect of the dismissal have no relevance in this assessment at all. We conclude that there are several factors which point to the dismissal and the other unfavourable treatment established as not being proportionate means of achieving the respondent's stated aim. Those factors include the short period of the PIP and its clearly pre-ordained outcome, the absence of any support to the claimant during the currency of the PIP, the fact that the respondent failed to make reasonable adjustments to assist the claimant during the short period of his employment, the fact that the claimant was dismissed at the end of the PIP without any attempt at discussion or further support, the fact that the claimant had a viable pipeline of customers and sales but was not allowed what was accepted in the industry as the recognised period of nine months to come good on targets and the fact that the respondent indicated a potential willingness to keep on the claimant as a consultant salesman rather than an employee – as we accept the respondent did. The defence of justification does not even get off the ground. It follows that the allegations of unfavourable treatment established above are all well-founded under section 15 of the 2010 Act and the claimant is entitled to a remedy in respect of all of them. There can be no double recovery in respect of those matters which are also actionable under section 13 of the 2010 Act.

Time points on the allegations under section 15 of the 2010 Act

11.55 We refer to and repeat the provisions of paragraphs 11.37 and 11.38 above. If and insofar as any of the matters complained of by the claimant under section 15 of the 2010 Act are out of time, namely occurring on or before 22 August 2018, then in all cases we have concluded that given the short period of employment of the claimant that in fact the allegations of discrimination are a continuing act. From the beginning of the employment until the end of it, there was in place in the respondent's organisation a discriminatory state of affairs such as to mean that there was a continuing act falling within section 123 of the 2010 Act.

11.56 Should that conclusion be wrong then it is our judgment that it is just and equitable for time to be extended to enable any out of time allegation to be considered for remedy. We reach that decision for the same reasons as we set out at paragraph 11.38 above. We conclude that the prejudice to the claimant will be considerable if time is not extended. The respondent was able to deal with all these allegations without difficulty at the hearing and the prejudice is minimal. The reasons for the delay also relate to the fact that the claimant was a new employee of the respondent and was keen not to “rock the boat” and did not do so. It was only on 10 August 2018 that the claimant first had realisation that disability discrimination might be in play in the workplace as evidenced by his correspondence to the respondent on that day.

11.57 In those circumstances we consider that it is just and equitable to extend time to enable any allegation of discrimination under section 15 of the 2010 Act to be considered for remedy - if indeed time is an issue in this case. It is clear that there are in fact no time issues at all in relation to the central allegations of unfavourable treatment concerning the imposition of the PIP at the end of August 2018 and the dismissal of the claimant at the end of October 2018. Those matters are clearly advanced in time within section 123(1)(a) of the 2010 Act.

Claim of Wrongful Dismissal

11.58 The respondent accepts that the claimant was dismissed in breach of his contractual notice provisions and therefore wrongly.

11.59 Surprisingly that concession was only made at the outset of the hearing before this Tribunal.

11.60 The damages due to the claimant in this regard will be assessed at the remedy hearing.

Claim for unfair dismissal

11.61 The claim for ordinary unfair dismissal was withdrawn by the claimant on the basis that he lacked the qualifying service to advance such a claim as required by section 108 of the 1996 Act. That claim was withdrawn at the preliminary hearing on 1 March 2019. It is now formally dismissed on withdrawal by the claimant.

Final Comments

11.62 A remedy hearing is required and case management orders are issued separately to enable that hearing to be arranged.

11.63 With this Judgment in place an opportunity arises for the parties to seek to resolve this matter. In case it is of assistance to the parties, we set out our preliminary views in respect of remedy but make it absolutely plain that we have reached no conclusion on remedy but simply set out matters which may be of assistance to them to resolve this matter without a further hearing. Given that both

parties are professionally represented that should be a real possibility, and the parties are urged to make every effort so to do.

11.64 It seems to us that at the remedy hearing we shall have to consider in particular the question of future loss. The claimant has a track record of successful selling and there would appear no reason why he should not obtain employment in the relatively near future notwithstanding his disability. We will need to consider at what level of remuneration the claimant is likely to achieve such employment. We will need to consider whether the claimant has mitigated his loss to date. We will need to consider if we can begin to assess if and when a non-discriminatory dismissal of the claimant could and would have taken place – this will be a very difficult exercise but a percentage chance of such a situation could be considered: our initial view is that if such an exercise can be undertaken at all then any percentage chance of a non-discriminatory dismissal would be at a very low level. We will need to assess compensation for injury to feelings, and if any claim is advanced in respect of personal injury, damages for such injury as is established. Our very preliminary view is that, given the extent of the discrimination claims established, any award for injury to feelings will lie in a position not less than the upper quartile of the middle Vento band as adjusted. There would seem to be no reason why interest should not be applied to any award pursuant to the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Grossing up for tax purposes of any award will need to be considered. We will need to assess any pension loss. If the parties seek any orders in relation to those calculations, the case management orders, which are issued separately, provide for any appropriate application to be made to the Tribunal.

**EMPLOYMENT JUDGE A M BUCHANAN
JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 7 January 2020**

**JUDGMENT SENT TO THE PARTIES ON
9 January 2020**

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL