



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Wordsworth
Respondent: Medical and Legal Admin Services Limited
Heard at: Sheffield **On:** 7 and 8 July 2021
24 September 2021
8 December 2021
(in chambers).

Before: Employment Judge Brain
Members: Mr K Smith
Mr G Harker

Representation

Claimant: In person
Respondent: Ms K Hodson, solicitor

RESERVED JUDGMENT

1. At all material times, for the purposes of section 6 of the Equality Act 2010, the claimant was a person with a disability by reason of the physical impairments of osteoarthritis and chronic obstructive pulmonary disease.
2. The claimant's complaints of direct disability discrimination and harassment related to disability were brought within the limitation period provided for by section 123 of the 2010 Act. Accordingly, the Tribunal has jurisdiction to consider them.
3. The complaint that the respondent failed to make a reasonable adjustment was brought outside the limitation period provided for by section 123 of the 2010 Act. It not being just and equitable to extend time to consider it, the Tribunal has no jurisdiction to consider the complaint.
4. The claimant's complaints brought under the 2010 Act of direct discrimination because of disability fail.
5. In the alternative to the ruling in paragraph 3, the claimant's complaint that the respondent failed to make a reasonable adjustment fails.
6. The claimant's complaint that she was subjected to harassment related to disability fail.

REASONS

Introduction

1. This case benefited from a case management preliminary hearing which came before Employment Judge Morgan on 30 October 2020. He identified the issues in the case, made case management orders and listed the matter to be heard in the Sheffield Employment Tribunal on 7 and 8 July 2021.
2. In the course of the second day of the hearing on 8 July 2021, it transpired that the respondent had failed to give disclosure of all documents in their possession relevant to the issues in the case. Therefore, the Tribunal gave further case management directions at the conclusion of the hearing that day. The matter was re-listed for a third day of hearing.
3. At the conclusion of the third day of hearing (on 24 September 2021) the Tribunal reserved judgment. We now give reasons for the judgment that we have reached.
4. As Employment Judge Morgan observed, in her claim form, the claimant advanced a number of allegations. For the reasons which he explained (in paragraph 3 of the notes of discussion reproduced in the bundle at page 21C) the Tribunal has no jurisdiction to consider her complaints of unfair dismissal as she lacks the necessary qualifying service. The Tribunal has no jurisdiction to consider her claims of defamation and that the respondent was in breach of the Data Protection Act 2018.

The issues in the case

5. The matters over which the Tribunal has jurisdiction are her complaints brought under the Equality Act 2010. Broadly, these are complaints of discrimination upon the grounds of age and disability and harassment related to age.
6. It is, we think, worth setting out here the claims to which this claim gives rise of which the Tribunal has jurisdiction. These are copied in the bundle at pages 21F and 21G:
7. The issues requiring determination by the Tribunal are now set out (*per* Employment Judge Morgan's minute):

“Direct discrimination contrary to section 13 of the Equality Act 2010 on the grounds of the protected characteristic of age and/or disability:

- i. Extending the claimant's probationary period in November 2019;*
- ii. Changing the claimant's status and position in December 2019;*
- iii. In the period August 2019 to March 2020, allocating to the claimant tasks which were menial and beneath the nature of her role;*
- iv. In the period November 2019 to March 2020 referring the claimant as “mother” or “granny”;*
- v. Notifying the claimant of her dismissal with notice on 2 June 2020;*

- vi. *Dismissing the claimant's appeal against dismissal on 7 June 2020;*
- vii. *Failing to uphold the claimant's grievance;*
- viii. *Failure to comply with the claimant's DSAR ['Data Subject Access Request' made under the Data Protection Act 2018];*
- ix. *Citing the claimant as a witness in a disciplinary or investigatory process.*

1. A failure to make reasonable adjustments contrary to section 20 of the Equality Act 2010

The claimant considers the respondent operated a PCP which precluded her use of a stair-lift. It is said that this placed her at a substantial disadvantage on account of her disabilities. She asserts the respondent ought to have permitted the use of this equipment as a reasonable adjustment.

2. Harassment contrary to section 26 of the Equality Act 2010

The claimant says she was subjected to harassment on account of her age. This is alleged to have taken the form of being greeted or referred to as "mother" or "granny". She accepts that she did not at any time make known that this conduct was unwelcome or unacceptable.

3. Issues requiring determination by the Tribunal

Disability

Was the claimant at the time of the alleged unfavourable treatment a person with a disability for the purposes of section 6 of the Equality Act 2010 by reason of COPD [chronic obstructive pulmonary disease] or osteoarthritis.

Direct discrimination (section 13)

- 4.1. *Was the claimant subjected to less favourable treatment by the respondent because of the protected characteristic of disability or disability in the form of:*
- i. *Extending the claimant's probationary period in November 2019;*
 - ii. *Changing the claimant's status and position in December 2019;*
 - iii. *In the period August 2019 to March 2020, allocating to the claimant tasks which were menial and beneath the nature of her role;*
 - iv. *In the period November 2019 to March 2020 referring to the claimant as "mother" or "granny";*
 - v. *Notifying the claimant of her dismissal with notice on 2 June 2020;*
 - vi. *Dismissing the claimant's appeal against dismissal on 7 June 2020;*
 - vii. *Failing to uphold the claimant's grievance;*
 - viii. *Failure to comply with the claimant's DSAR;*
 - ix. *Citing the claimant as a witness in a disciplinary or investigatory process.*
- 4.2. *Insofar as such discrimination was on the grounds of the protected characteristic of age, can the respondent show such treatment to be a*

proportionate means of achieving a legitimate aim, namely: operational efficiency and financial savings during the currency of the pandemic.

Section 20

- 4.3. Did the respondent apply to the claimant a policy, criterion or practice by restricting the use of a stair-lift to clients only. [We interpose here to say that this should say "provision, criterion or practice" to reflect the statutory language].*
- 4.4. Did the application of the PCP place the claimant at a material disadvantage in comparison to others?*
- 4.5. Did the respondent at that time know (or ought to have known) of the disability relied upon by the claimant?*
- 4.6. Was there a duty upon the respondent to take reasonable adjustments to remove the disadvantage identified?*
- 4.7. Was the use of the stair-lift by the claimant a reasonable adjustment?*

Section 26

- 4.8. Did the respondent participate in unwanted conduct in the calling of the claimant the names "mother" or "granny" related to the claimant's protected characteristic of age?*
- 4.9. Did the conduct have the purpose or effect of: (i) violating the claimant's dignity; or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?*
- 4.10. Having regard to all of the circumstances, was it reasonable for such conduct to have such an effect?*

Time Limits

- 4.11. Were the allegations of less favourable treatment and/or breach of duty brought within the relevant time limit?*
- 4.12. If the claims were not brought within the statutory time limit, is it just and equitable for the Tribunal to extend time under section 123 of the Equality Act 2010.*

Remedy

- 5.1. Has the claimant suffered injury to feelings and/or financial losses as a result of any or all of the acts of discrimination complained of?*
 - 5.2. What level of compensation should be awarded to the claimant in respect of such treatment and/or losses."*
8. We shall consider the relevant law in further detail in due course. However, it is worth saying at this point that the alleged conduct prohibited by sections 13, 20 and 26 are made unlawful within the workplace under Part 5 of the 2010 Act. In particular, section 39 of the 2010 Act provides that it is unlawful for an employer to discriminate against an employee by dismissing the employee or subjecting the employee to any detriment. For the purposes of section 39, the term 'discrimination' includes direct discrimination under section 13 of the 2010 Act. By section 39(5), a duty to make reasonable adjustments applies to an employer. By section 40, an employer must not, in relation to employment, harass an employee.

Findings of fact

9. The Tribunal heard evidence from the claimant upon the first day of the hearing. She was recalled in order to give evidence upon the third day. This was in order to give her the opportunity of advancing evidence germane to the further disclosure given by the respondent pursuant to the order made at the conclusion of the second day. On behalf of the respondent, the Tribunal heard evidence from:
- (1) Colette Benn. She is a director of the respondent. At the time of the claimant's employment, she was head of operations.
 - (2) Sarah Massa. She is employed as client relations manager. Throughout the claimant's period of employment, she was the claimant's team leader and line manager.
 - (3) Gavin Rimmer. He is a director of the respondent.
10. In paragraph 2 of her witness statement, Colette Benn introduces the respondent as follows:
- "The respondent is one of three companies jointly owned by Unity Health Group; Rehab Direct which provides rehabilitation services; Pure Physio which provides physio services across the country and the respondent, which provides end to end administrative service for expert witnesses, including a full PA service, preparation and collation of case records in personal injury and clinical negligence cases, organising appointments, travel, accommodation and meetings, promotion and marketing, invoicing and account handling"*.
11. The claimant worked for the respondent from 28 August 2019 to 31 July 2020. There is no dispute that the claimant was recruited to work as an administrator. As Mrs Benn says in paragraph 5 of her witness statement, *"this role would work in one of the operational teams and would carry out the end to end service as described in paragraph 3..."* In paragraph 3 Mrs Benn explains that, *"At the time the claimant joined in 2019, we had two operational teams and each team would work with approximately 10 expert witnesses. The individuals in each team would start the process by liaising with the expert, instructing the parties, organising the venue, checking the diaries and making appointments. Once the expert dictated the report, this would be uploaded to Server/SharePoint and individuals in the typing pool would pick this up, type it on the expert's template and send back to the team for proof reading who would then send this out to the expert for final review"*.
12. Although there is no dispute that the claimant was recruited to work as an administrator, there is a significant dispute between the parties as to the work which the claimant undertook. In short, the respondent says that the claimant worked as and performed the duties of an administrator between August and December 2019 at which point she was effectively demoted (with consent) to the role of administrative assistant. The respondent's case is that this was a bespoke role created for the claimant. The claimant's case is that although she was appointed to the role of administrator, at no stage did she undertake the duties of an administrator and that effectively nothing changed (aside from a salary reduction) when she agreed to accept the position of administrative assistant. The claimant's case is that she was undertaking administrative assistant duties throughout.

13. The claimant applied for a role both with the respondent and Rehab Direct in August 2019. She sent her CV to both companies. She was interviewed by David Craig, a director of Rehab Direct. Although she was unsuccessful with that application, it appears (from paragraph 4 of Colette Benn's witness statement) that Mr Craig commended the claimant to the respondent. What Mrs Benn describes as "*an informal interview process*" then ensued whereupon the claimant was offered a position.
14. The claimant's application form is at pages 56 and 57 of the bundle. She declared that she had osteoarthritis in her spine and went on to say that such does not affect her work. Her CV is at page 58. This shows that the claimant has around 36 years of experience working as a legal secretary for three prestigious Sheffield law firms. She worked in that capacity between 1976 and 2012. She then worked as a medical receptionist for a general practitioners' surgery in Sheffield between 2013 and 2019. She declared that she was looking for 20 hours of work a week spread over three days.
15. Following the informal interview, the claimant was offered a position as administrator working three days a week upon Monday, Wednesday and Friday of each week. The job offer is at page 67. The claimant's acceptance of the offer is at page 69.
16. There is a dispute of fact as to whether Sarah Massa attended the informal interview conducted by Colette Benn. Mrs Massa and Mrs Benn say that she did so. The claimant disputes this. Mrs Massa makes no mention of seeing the claimant in interview in her printed witness statement. Colette Benn makes no mention of the composition of the informal interview panel. The interview notes that have been produced for the benefit of the Tribunal (pages 59 to 66) are those produced during the formal interview which the claimant underwent for the job with Rehab Direct. It is a feature of this case that the respondent's record keeping is poor. There are no notes of the interview which the claimant underwent with the respondent in order to corroborate the respondent's case.
17. The respondent attached some importance to Mrs Massa having interviewed the claimant and seen her in order to help rebut the age discrimination claim and the claimant's case that Mrs Massa did not welcome the claimant being a member of her team as the claimant did not match the age profile. However, we find as a fact that Mrs Massa did not attend the interview with the claimant for the reasons given in paragraph 16. We shall go on to determine the significance (if any) of this finding upon the claimant's complaints in due course.
18. Mrs Benn says in paragraph 6 of her witness statement that, "*We noted in the claimant's application form that she mentions she suffered with osteoarthritis in her spine (page 56). We mentioned this in the interview and asked her how it affected her and whether there was anything she would need us to put in place at work to assist her. She responded that she did not need us to do anything as it would not affect her carrying out her duties*". The Tribunal accepts this aspect of Mrs Benn's evidence. It reflects the claimant's answer to the relevant question in the application form at page 56 where she declared the condition but said that it had no impact upon her at work.
19. The offer letter to which we have referred (at page 67) says that the claimant's "*duties and responsibilities are as discussed with you at your recent*

interview.” Given the core dispute of fact between the parties as to the work that the claimant ended up undertaking, it is unfortunate that proper notes were not taken by the respondent of the interview.

20. During cross examination, the claimant was taken to the administrators’ job description at pages 70A and 70B of the bundle. The claimant said that she had not seen this document before it was produced by the respondent in the course of these proceedings. The Tribunal accepts the claimant’s account, there being no evidence to the contrary. This is consistent with the poor quality of the respondent’s record keeping.

21. We shall not set out within these reasons the job description in full. It is familiar to the parties and is in the bundle at pages 70A and 70B. Ms Hodson, the respondent’s solicitor, drew the Tribunal’s attention to the fact that amongst the duties and responsibilities were:

“Carrying out general clerical duties to include filing, typing, photocopying and scanning.

Maintaining internal computer records and filing systems.

Ensuring up to date knowledge of policies, procedures, services and relevant legislation.”

22. Sarah Massa summarised the role of administrator in paragraph 2 of her witness statement. She said that, *“this role consisted of working within an operational team and [the] duties would consist of:*

(a) Working directly with a specific expert;

(b) Arranging venues;

(c) Sorting diaries and making appointments;

(d) Arranging for a report to be typed by the typing pool and proof reading.”

23. Upon the first day of her employment, the claimant was asked to complete some personal details in the form that we see at page 70. In answer to the question as to whether there were any health concerns of which the respondent needed to be aware to support her in her role, the claimant again drew attention to her osteoarthritis and also to her emphysema/COPD [*chronic obstructive pulmonary disease*] – Stage 1.

24. This notwithstanding, Mrs Massa says (in paragraph 3 of her witness statement) that she *“did not witness any issue with [the claimant’s] mobility, strength or flexibility. She would ask if there was anything anyone needed from upstairs and she would often offer to make everyone a cup of tea which she would then bring in on a tray.”* Mrs Benn gave similar evidence in paragraphs 6 and 7 of her witness statement. She said that she did not witness the claimant exhibiting any signs of physical struggle with any of her role nor was she aware of the claimant requesting physical assistance with any part of her duties.

25. The claimant’s account (in paragraph 18 of her witness statement), was that she was *“required to move between two desks, move heavy boxes and files, move heavy sacks full of shredding and go up/downstairs without the use of the stairlift, thereby giving me pain, discomfort and breathlessness.”* In paragraph 25 of her witness statement she says that when a colleague brought her a full box of files to scan she *“would place this on the floor beside*

the desk. As I had limited movement and struggled to lift, I would lower my chair, take out one file, put it on my knees then raise my chair to the correct working height and move the file on to the desk". In paragraph 26 she describes moving heavy sacks of shredding across the floor until someone routinely saw her and came to assist. In paragraph 28 she describes having to push heavy boxes across the floor with her feet. She fairly observes that, "*someone always came to assist*".

26. In evidence given under cross-examination, Mrs Massa said that she did see the claimant pushing boxes with her feet. However, she agreed with the claimant that others would assist her with carrying the boxes or the heavy shredding (which is an acknowledgement that the claimant needed help with such tasks).
27. Employment Judge Morgan identified that the respondent was putting in issue the question of whether the claimant was at all material times (that is to say, throughout her employment) a disabled person for the purposes of the 2010 Act. We shall come to the legal issues to which this matter gives rise in due course. The claimant gave evidence about this both in her disability impact statement at pages 36 to 39 of the bundle and in the witness statement prepared for the hearing. Paragraphs 1 to 18 of the latter are almost identical to the impact witness statement at pages 36 to 39. (The claimant attested to both statements upon taking the oath when she came to give evidence).
28. In evidence given under cross-examination, the claimant said that her description in paragraph 3 (of both witness statements) of suffering from tremendous pain and discomfort was a reference to her current condition and not that which prevailed during the currency of her employment with the respondent. She gave a similar account upon paragraphs 6 and 7 where she describes the impact of her osteoarthritis upon the day to day activities of cooking, shopping and attending to personal hygiene.
29. However, in paragraph 8 of her witness statements she says, "*In or around 2007, I had occupational therapists to assess me in my home. As a result of limited movement and ability to carry out certain tasks, my bathroom was converted into a wet room and I had grabrails fitted around my home both inside and outside. I also have a stairlift at my property and both upstairs and downstairs toilets to assist me*". She describes (in paragraph 9) undergoing regular injections every six months from 2010 in order to assist with the pain relief. She goes on to say (in paragraph 11) that in or around 2018 she started having respiratory problems and that "*any type of exertion left me breathless*". She says that she was prescribed with inhalers in early 2019 and was diagnosed with COPD in January 2020.
30. In paragraph 15 of her witness statements she says that she struggles to walk 20 metres due to a combination of back pains and breathing difficulties. Ms Hodson put it to her that this must be a description of her current condition and not that prevailing at the material time given that the toilet facilities within the respondent's building were more than 20 metres away from her workstation. The claimant accepted this to be the case.
31. In addition to her complaint about being required to move heavy items, the claimant said that she was required to move between desks during the working day in order to use the scanners. This requirement created difficulty for her in and of itself but was compounded by difficulties which the claimant

had in returning to her desk if the telephone rang. Mrs Benn fairly accepted that it would be difficult if not impossible for the claimant (given her condition) to move back to her own desk in time (when she was scanning) to answer the telephone in compliance with the respondent's target of doing so within three rings.

32. At page 40 of the bundle is a brief report prepared by the claimant's general practitioner dated 12 November 2020. This says that the claimant's *"back pain has had a significant impact on her quality of life and mobility for many years. In 2007 she had occupational therapists assess her home and she had her bathroom converted to a wet room as she was struggling to get into a bath. She now also has a stairlift due to real difficulty climbing the stairs and has grabrails positioned around her house. She struggles to travel by car due to her back pain. She also struggles to bend down to pick things up and stretch for anything at height. Since 2010 she has had six monthly lumbar facet joint injections and has undergone annual lumbar facet radio frequency, the latest being in September 2020. Her COPD was diagnosed in January 2020 and she takes two inhalers to treat this which she began to use in June 2018. She gets breathless on any type of exertion and she cannot walk further than 20 metres due a combination of her back pain and breathing"*.
33. The respondent sought to impugn the claimant's evidence about the impact of her conditions upon her day to day activities by reference to her participation in the respondent's Christmas party in December 2019. The respondent produced six photographs which are shown in the bundle at page 101A. These show the claimant socialising with work colleagues. The difficulty for the respondent upon this issue is that they did not lead any evidence about the party and the claimant's conduct at it.
34. It was legitimate for Ms Hodson to put questions to the claimant about the Christmas party. However, in the absence of any evidence from the respondent by way of rebuttal they are for the purposes of the law of evidence fixed with the claimant's answers (the respondent having failed to adduce any evidential foundation of their own). The claimant accepted they visited a couple of public houses during the course of the evening. She did not accept that she spent a lot of the evening standing up. She said that she was able to manage to reach the toilet facilities in the public house and in one of them had utilised a lift in order to do so.
35. The evidence in the photographs (doing the best that we can, as they only show a snapshot of the evening) appear to demonstrate the claimant as appearing to be somewhat physically fitter than she presented to us during the hearing. This is consistent with the claimant's account that her condition unfortunately has worsened since she left the respondent's employment.
36. That being said, given the contents of the claimant's general practitioner's letter, Mrs Massa's evidence that she witnessed the claimant having to move boxes with her feet, needing help to move heavy items and the longstanding nature of both conditions, the Tribunal accepts the claimant's account that she struggled physically with the work that she was being asked to do by the respondent. We also accept that the osteoarthritis and COPD had a substantial impact upon the claimant's day-to-day activities. Her evidence upon this is credible and is corroborated by her general practitioner.

37. It is convenient, at this juncture, to deal with an issue which arose around the stairlift within the building.
38. The building where the respondent is based is shared with other businesses. There is a stairlift within the common parts. Photographs of the stairlift were produced for the benefit of the Tribunal. Mrs Benn says in paragraph 8 of her witness statement that, *"I understand that the claimant has ... stated in her Tribunal claim that she requested permission from the respondent to use the stairlift on the premises due to her difficulty using the stairs. At no point did she request permission to use the stairlift. The building is not owned by the respondent company and it houses approximately 15 businesses"*. She then refers to the photographs of the stairlift at pages 282 to 285.
39. On 11 November 2020, Sarah Branston, finance director of Hydra Park Properties Limited (presumably the landlord of the building or their agent) emailed Mr Rimmer to the effect that the stairlift is open for use by all tenants and visitors. The email is at page 281. Given the date, it appears that this email was obtained as evidence for this case. We did not hear from Ms Branston but have no reason to question what she said as it is corroborated by the email referred to in the next paragraph.
40. Within the supplemental bundle prepared prior to the third day of the hearing is an email from Lisa Howard, senior administrator, addressed to a number of individuals within the respondent including the claimant. This is dated 24 October 2019. Thus, it was sent during the claimant's employment with the respondent. The email is at page 88 of the supplemental bundle. It says, *"should you, or any visitor wish to use the stairlift, the key is kept in the key cupboard in the MLAS office. It is the only key there is, so please could you make sure it is put back after each time it is used."* When asked about this, the claimant said that it was *"possible"* that it was a forgery.
41. Mrs Massa, in paragraph 26 of her witness statement, gives a similar account to Mrs Benn and says that she was not aware of any policy or rule that staff were not permitted to use the stairlift and she did not witness the claimant exhibiting difficulties with climbing the stairs. She says that she witnessed the claimant *"on multiple occasions going up and down the stairs with no difficulties whatsoever"*.
42. The claimant says that she made an enquiry of a member of staff who worked at the same level as her about the possibility of using the stairlift. This was Catherine Page-Howard who is or was an administrator. The respondent had tasked Ms Page-Howard with giving the claimant her (informal) induction. The claimant says in paragraph 107 of her witness statement that she was told by Ms Page-Howard (when being shown the post-distribution system) that the stairlift was for clients' use only. She says, *"I therefore did not ask again – I had asked, was told "no" so had to manage the stairs in the best possible way that I could, which left me breathless"*. She says in paragraph 28 that she was only required to go upstairs once a day.
43. The respondent did not call evidence from Ms Page-Howard. The cross examination of the claimant upon this point was focussed not on what the claimant had been told by her but rather upon the issue of Ms Page-Howard's authority to convey such information and the claimant having failed to raise the issue with anyone else. We therefore find as a fact that the claimant was told that the stairlift was for clients' use only.

44. The claimant's account, in paragraph 28 of her witness statement, is that her post-distribution duties were the reason for her having to ascend the stairs. This was in order to deliver the post that had arrived for those parts of the business that were stationed upstairs. Whereas the respondent itself was stationed downstairs, Rehab Direct and accounts department were stationed upstairs.
45. Upon the basis of the corroborative account given by the claimant's GP of her respiratory condition, the Tribunal accepts that the claimant experienced some difficulties with using the stairs. We accept that the claimant had to do so one a day in order to distribute the post. (Indeed, this does not appear to be in dispute). It is entirely credible that an individual who needs to have a stairlift and grabrails installed in her home to assist with climbing the stairs would find some difficulty with undertaking this task at work.
46. However, the claimant did not avail herself of the stairlift after 24 October 2019. The email of that date (referred to in paragraph 40) disabused the claimant of the notion that the stairlift was for the use of clients only. That the claimant did not use the stairlift is evidence that she was able to use the stairs without recourse to that facility, such that her disability had no more than a minor or trivial impact upon this aspect of her duties.
47. Indeed, this finding is corroborated by a remark made by the claimant during the grievance appeal hearing before Mr Rimmer held on 10 July 2020 (copied into the bundle at page 199). She was asked to elaborate on a point raised in her appeal dated 2 July 2020, point six of which read, "*Having COPD does not have any impact of day to day working (or social) activities, however, having COPD did put me at an extremely high risk given the current situation [with the pandemic] and it was for this reason I was kept away from the office firstly by [Mrs Massa] and then put on furlough by [Mrs Benn]...*" In the appeal before Mr Rimmer, the claimant said that she does "*not really have any difficulties with my job having COPD...it does not have any impact whatsoever unless I am doing anything physical and strenuous which I am not*". [Emphasis added by the Tribunal]. The claimant's focus was not upon the impact of COPD upon her in the workplace when undertaking her duties but rather upon how it affected her standing with the respondent in the redundancy process to which she will come.
48. We reject the claimant's suggestion that the email referred to in paragraph 40 was a forgery. Such would be a profound step for the respondent to take, with a potential for very serious repercussions. Around forty individuals are copied into the email. If it were to have been fabricated, any one of that large group would be able to testify against the respondent. It is simply not credible that the respondent would embark upon such a hazardous undertaking which would have left them exposed to criminal charges.
49. The claimant says that she was recruited to work as an administrator for Lynda Lee who is a nursing medico-legal expert. The claimant made a valid point when, in seeking to corroborate her account, she drew to the Tribunal's attention that in paragraph 2 of the respondent's grounds of resistance, the respondent pleaded that the claimant's role "*was to deal with the administration in relation to a nursing expert*".
50. Mrs Massa said, in evidence given under cross-examination, that at interview, the claimant had been told that there was a possibility that she would work for

Lynda Lee. She pointed out (correctly) that no reference is made to this aspiration in any of the contemporaneous documents which accompanied the claimant's employment or the contractual documents. Mrs Massa said in evidence given under cross examination that, "*the idea was to get you to the point to work with an expert autonomously*".

51. The Tribunal accepts the claimant's account that she had been led to believe that she would work for Lynda Lee effectively as her medico-legal PA. Indeed, that is the respondent's pleaded case. However, we also accept the respondent's case that this was an aspiration rather than a contractual entitlement and that before she would be assigned to work for a particular medico-legal expert the claimant needed to acquire familiarity in the role. While the Tribunal can appreciate the claimant's disappointment, it is in our judgment simply unrealistic for her to have expected to simply walk into a role working autonomously with a medico-legal expert with a demanding workload without training or familiarisation.
52. In paragraphs 20 to 29 of her witness statement, the claimant describes the duties which she undertook up to the point of her probationary review at the end of November 2019. It is not necessary, we think, to recite these paragraphs in full. They are succinctly summarised in paragraph 30 of her witness statement where the claimant says that, "*The only duties I did from day one was scanning for [Lynda Lee] and several other experts, post and distribution, clinic office for various different experts and typing which was certainly not being an administrator for Lynda Lee – the role I had joined the respondents to do*".
53. The claimant was clear from her written evidence and in evidence before the Tribunal that she was disappointed with her role and considered that she was carrying out menial tasks beneath the role of administrator. Predominately, on the claimant's case, her work consisted of undertaking large amounts of scanning of the "*backlog of [Lynda Lee's] completed work that required scanning into the system.*" She went on to say (in paragraph 20 of her witness statement) that, "*I now realise it was my job to clear this backlog, not to be the administrator to [Lynda Lee] – the role I had joined the respondents to do*".
54. It was suggested to the claimant by Ms Hodson that general clerical duties including scanning were part of the duties and responsibilities of an administrator pursuant to the job description at pages 70A and 70B. We accept this to be the case but not to the extent those duties were undertaken by the claimant to the exclusion of much else in the job description.
55. The claimant kept a daily record in a spiral bound notebook. She said that it had been her practice to keep a daily record of her work activities from time that she commenced work in 1976. The notebook appears to be incomplete as we have entries from 28 August 2019 (being the claimant's first day in work) to 9 October 2019 and then entries from 9 December 2019 until 11 March 2020. The claimant's record corroborates her case that a large amount of her time was spent undertaking scanning (not just for Lynda Lee but for other experts as well). (It is not the claimant's case that she was doing nothing other than scanning. For example, the entry on page 345 date 20 September 2020 shows her undertaking administrative duties for other experts).
56. During the course of Sarah Massa's evidence on the second day of the hearing, it emerged that the respondent maintains a record of the work carried

out by staff upon each day. It is each member of staff's responsibility to complete the work record. The work is recorded upon what is known as the 'Toggl' system. It was the respondent's failure to disclose these documents which led to an adjournment of the case upon the second day.

57. In her second witness statement Sarah Massa explains that, any work carried out must be recorded and assigned to a specific project on Toggl. These projects (or work types) are 'individual experts', 'training' and 'administration etc'. She said that, "*Where work is assigned to an expert, these records are then used to quantify time spent on each expert and whether we were in profit with regards to time spent for the administrators/expert ratio. We would then use this data to apportion percentage increases to the experts*". She goes on to say in paragraph 6 that, "*the heading 'admin general' would cover duties such as dealing with the post, replying to emails and enquiries, taking calls, downloading documents and entering information into Clinic office.*"
58. Mrs Massa (in her second witness statement) then undertook an analysis of the claimant's Toggl's records for the period from 30 September to 22 December 2020.
59. The claimant's summary reports upon Toggl are at pages 38 to 58 of the supplemental bundle. These feature two pie charts. The top pie chart records the project upon which the work was undertaken. The bottom pie chart records the work actually being done. Unfortunately, the bottom pie chart simply records "*no description*" of the work undertaken up to 11 November 2019 (save for two hours of typing pool work undertaken by the claimant during week commencing 21 October) (page 44). The summary reports after 11 November 2019 are more illuminating. Scanning took up the majority of the claimant's time during weeks commencing 11 November, 18 November and 25 November 2019. For weeks commencing 9 December and 16 December 2019 the majority of the time appears to have been taken up undertaking a typing review of a medical report. Post and distribution tasks feature in those pie charts for which a description is given, albeit that such tasks do not take up much time each day.
60. It is unfortunate that, for whatever reason, the description of work undertaken is missing from the earlier tranche of the Toggl reports up to 11 November 2019. Some assistance may be derived from comparing the claimant's handwritten note in her notebook with the Toggl report. For example, the Toggl report for week commencing 30 September 2019 shows the claimant as undertaking around half of her time working for Mark Miller, a medical expert. The salient entry in her notebook for 30 September 2019 shows that this consisted of undertaking scanning work. A similar observation may be made upon the entry of 2 October 2019 (page 347). This shows the claimant as undertaking scanning work for another expert, Dimitri Leschinsky. Again, this is shown in the relevant Toggl report at page 38. A similar observation may be made about work undertaken by the claimant for Mark Miller on 4 October 2019 (page 348).
61. Doing the best that we can with less than comprehensive information, the Tribunal finds that the majority of the claimant's time up to the end of November 2019 was occupied undertaking scanning. However, we do not accept the claimant's case that she was not given the opportunity of undertaking any other kind of work. Some time (albeit certainly the minority

of the time) was spent undertaking typing reviews of the reports which had been typed in the typing pool prior to dispatch of the report to the experts. We accept the claimant's case that she was not assigned to work for Lynda Lee. Although she did some tasks for Lynda Lee, she did no more work for her than for other experts.

62. During cross-examination of Mrs Benn, the claimant referred her to paragraph 2 of Sarah Massa's witness statement (cited in paragraph 22 above). It was suggested to Mrs Benn that she (the claimant) did not undertake work arranging venues, sorting diaries and making appointments or arranging for a report to be typed up by the typing pool and proof reading. Further, she did not work directly with a specific expert.
63. By way of reply, Mrs Benn said that the "*original idea*" was for the claimant to work for Lynda Lee. However, Mrs Benn said that she and Sara Massa formed the view that she was struggling in her role and also there had been unfavourable feedback from Lynda Lee about those interactions which she (Lynda Lee) had had with the claimant. Mrs Benn fairly accepted that "*there was a lot of scanning*". Save for undertaking some proof reading, there was no evidence that the claimant did much (if any) of the kinds of work to which Mrs Massa referred in paragraph 2 of her witness statement and we accept her case upon this issue.
64. We do not accept the claimant's case that she did no proof reading of medical reports. The Toggl evidence (in particular at pages 57 to 60) is to the contrary. That said, this exchange during cross-examination between Mrs Benn and the claimant referred to in paragraph 63 corroborates our finding that the majority of the claimant's duties involve scanning and that at no point was she assigned to work for Lynda Lee as was each party's aspiration at the outset. We accept the claimant's case that the majority of her time was spent doing mundane administrative tasks and find that her disappointment in her role was justified.
65. As has just been said, Mrs Benn and Mrs Massa had misgivings about the claimant's performance in her role. In paragraph 4 of her witness statement Mrs Massa said, "*... while I found the claimant to be pleasant enough, it was noticeable that she was not able to carry out certain tasks to the standards expected of her.*"
- *She required extended periods of training on our in-house case management system*
 - *She struggled to respond to calls in the required timeframe*
 - *The speed and accuracy of work carried out was below expectations and fed back on numerous occasions with very little improvement demonstrated."*
66. Sarah Massa goes on to say in paragraph 5 of her witness statement that, "*I found that [the claimant] was not always particularly receptive to any training that we provided, she would sigh and tut and I felt that she believed she did not need or require the training given her background. I knew that previously she had been a legal secretary but working within the medical field is a completely different situation. I did discuss this with her at one point and she explained that she often felt bogged down with the information and training being given to her*".

67. At page 86 of the supplemental bundle is an email from Sarah Massa to Lisa Howard dated 25 November 2019. This sets out a number of issues around the claimant's work. It is contemporaneous corroboration of Sarah Massa's account in her witness statement of misgivings which she had about the claimant's performance.
68. A three months' review was held on 27 November 2019 attended by the claimant and Mrs Massa. This is at page 101. The claimant observed that this was not signed by her. Ms Hodson asked whether she was accusing the respondent of having fabricated the document. The claimant replied in the affirmative.
69. The document records that a number of training issues were identified. The claimant was not in fact scored as "poor" upon any of the competences listed at the top of the form. It is recorded that the probationary period was extended by four weeks.
70. The Tribunal rejects the claimant's case that the form at page 101 was fabricated by the respondent. As with the issue of the email at page 88 of the supplemental bundle, such is an extremely serious allegation to make. If true, it would be tantamount to the commission by the respondent of a number of criminal offences which would have serious consequences for them and for the individuals concerned. Accordingly, the Tribunal can only be satisfied upon such an allegation with the strongest evidence. Such is lacking in this case. Firstly, the claimant accepts that it was agreed that there would be a four weeks' extension of her probationary period. This is recorded within the form which, even on the claimant's case, is therefore reflective of what was discussed within the meeting. Secondly, the claimant was not categorised as performing poorly against any of the relevant competencies. If the respondent were to fabricate a document supportive of their case one may expect a "poor" categorisation to feature in at least some of the competencies. This is supportive of the respondent's case that the form is genuine. Thirdly, the work undertaken by the claimant after 27 November 2019 included some of the training and development work identified within the form as being required. In particular, the claimant was given the task of undertaking a typing review for a personal injury claimant.
71. There is no reference within the review document of any issues arising from disability. Further, there is no record of any complaint raised by the claimant about unwanted remarks related to her age. The claimant, she said that she had mentioned these issues in her one-to-one reviews but not in the three months' probationary review. In particular, the claimant maintained that a one-to-one a review had been held in December 2019.
72. The respondent did not dispute that such a review was held that month. However, the respondent was unable to locate any record of it following a search after the conclusion of the second day of the hearing. Mrs Massa said that Lisa Howard (who, it seems, is no longer with the respondent) did not file documents in the correct place hence the respondent's difficulty in locating it. (This is additional evidence of the respondent's poor record keeping which provided corroboration of our findings that Sarah Massa did not attend the claimant's interview and about the work that the claimant undertook during the first three months of her employment).

73. Mrs Massa says in paragraph 7 of her witness statement that, *“In December, prior to the next review, I spoke with Colette Benn about the claimant’s continuing poor performance. We both agreed that she was not capable of carrying out the role of administrator and discussed our options. One option was dismissal, but Colette confirmed that we could create a new role for her called administrative assistant. This role would assist the administrators with the more basic tasks such as scanning, photocopying, dealing with reception etc”*. She goes on in paragraph 8 to say that, *“Both myself and Paula James, office manager, then held a review meeting with the claimant. We explained that it was clear that she was still struggling and she agreed. I explained that we wanted to reduce the pressure on her and I put forward the proposal to offer her the new role on a reduced salary. I set out the duties that would be expected of her and she was very receptive to this and confirmed that she would accept the role. A contract was sent to her confirming her new role and salary and she signed and returned it”*.
74. We cannot accept the respondent’s case that the claimant was performing poorly in her role as administrator. The performance review at page 101 does not say that she was. We are not surprised that the claimant was perceived to struggle with many of the administrator tasks given her limited opportunity to perform them, as the demands placed upon her by the respondent were to focus upon scanning. The claimant had in reality had only a limited opportunity to show her worth which led to a perception held by the respondent of an individual struggling with the role.
75. The contract to which Mrs Massa refers in paragraph 8 of her witness statement is at pages 102 to 110. The document is dated 1 December 2019. It was signed by the claimant and Lisa Howard on 18 December 2019. We can see from the Toggl documents that the claimant in fact continued to undertake the administrator role until around mid-December 2019, notwithstanding that the new contract has the claimant working as an administrative assistant from 1 December 2019. Mrs Massa accepted that there appeared to be a discrepancy and that the contractual document was not reflective of the date upon which the claimant commenced her new role.
76. Mrs Benn says in paragraph 11 of her witness statement that the role of administrative assistant was one created for the claimant. In paragraph 14 she describes as a *“new, stand-alone role for the claimant”*.
77. On 6 January 2020 the claimant had a week’s sickness absence for a respiratory tract infection (page 111). On 14 January 2020 she had a return to work interview with Lisa Howard. There is a question on the form (at page 112) which asks whether the employee considers that they have an underlying health issue. The claimant replied in the affirmative that she has COPD. The form goes on to ask whether the health issue has an impact upon their capability at work and if so, were any reasonable adjustments suggested or needed to be considered. Both of these questions have been answered in the negative. This further corroborates our findings upon the impact of the COPD upon the claimant’s ability to use the stairs and that she had no need of the stairlift. Her enquiry of Catherine Page-Howard about the stairlift at induction was reasonable given that she has one in her home and that was not familiar with the work system. That was not the case in January 2020. By that time, she knew what the work entailed. The omission to refer to the need to use the stairlift and difficulties with the stairs generally is telling and

significant. It corroborates our finding that the stairs presented only a minor or trivial issue for the claimant.

78. The return to work form at page 112 is consistent with the claimant's position before the Tribunal that her COPD and osteoarthritis did not affect her in the workplace (other than in having to push boxes with her feet and difficulty with moving heavy items such as sacks of shredding).
79. When the claimant was giving evidence upon the first day of the hearing, she was asked by Ms Hodson why she raised no issue at the return to work meeting about the impact of her disabilities upon her. The claimant maintained that these were raised in the one-to-one meetings (such as that in December 2019). The claimant went on to say, by way of evidence given in cross-examination, that the complaint that she made in the one-to-one meetings were solely about the osteoarthritis and not about the COPD. She said, "*I had problems moving between desks, moving boxes and files and shredding bags. They told me I'd have a scanner to save me moving things about*". (The latter is a reference to the claimant having to move from her desk to use one of the scanners within the workplace).
80. A further performance review meeting was undertaken on 17 February 2020 (page 115). This was carried out by Sarah Massa. She says in paragraph 11 of her witness statement that, "*This meeting was more positive than the previous probationary review, as I explained she had been doing well in her new role and she had reported to me that she had felt less pressured. I confirmed that her probationary period had now concluded*". In contrast to the review form dated 27 November 2019, the one of 17 February 2020 has been signed by the claimant. This is generally complimentary of the claimant's performance.
81. With effect from March 2020, the respondent undertook a reorganisation of their operating model. This is explained by Colette Benn. She says in paragraph 13 of her witness statement that, "*As part of my role, I was asked to look at the way in which the operational teams worked, focusing on the areas of concern. I found that because the administrators were dealing with everything from start to finish, with the exception of typing, they were dipping in and out and mistakes were being made. Therefore, I put together a different operating model. This split the work into four tiers; (a) tier 1 – administrators would deal with telephone calls and documentation; (b) tier 2 – administrators would deal with making appointments, booking venues, liaising between the parties and co-ordinating diaries; (c) tier 3 – typing pool which sat across all teams; and (d) tier 4 – expert liaison and they would liaise directly with the experts.*"
82. Mrs Benn goes on to say in paragraph 14 of her witness statement that, "*This was rolled out on 9 March 2020. As we had created a new, stand-alone role for the claimant, she was placed in tier 1, but her role was still administrative assistant and her job was to continue to assist the administrators across the tiers. Nothing changed for the claimant apart from her role being placed within tier 1 of the model*".
83. The Covid-19 pandemic of course took hold in the United Kingdom in March 2020. Mrs Benn explains in paragraph 15 of her witness statement that a member of staff had reported experiencing symptoms of Covid-19. She therefore asked the claimant to remain at home for seven days from 15 March

2020, recognising the claimant to be vulnerable because of her COPD. The claimant then in fact received a letter advising her to shield. The claimant therefore only worked for three days (during week commencing 9 March 2020) under the new system implemented by Colette Benn.

84. Mrs Benn goes on to say (in paragraph 16 of her witness statement) that the respondent asked all members of staff to work from home by the end of March 2020. Around one half of the workforce was put on furlough under the government's Coronavirus Job Retention Scheme.
85. Mrs Benn explains that there was no work for the claimant to do because her role was *"to assist the administrators and consisted of photocopying, scanning and reception duties, we did not require this role and she could not work from home"*. The claimant therefore consented to being put on furlough from 30 March 2020. Colette Benn's letter to the claimant to this effect of that date is at pages 132 and 133 of the bundle. Plainly, the impact of the pandemic led to an effective cessation of the claimant's role for the reasons given by Mrs Benn.
86. Unsurprisingly, the pandemic had a significant impact upon the respondent. As Mrs Benn explains in paragraph 18 of her witness statement, *"We had previously arranged for expert witnesses to meet face to face with individuals and prepare medical reports. Due to Covid, those meetings could now no longer take place and the facility at that time for video conferences was in its infancy. I would also note that these expert medical reports were being used during legal proceedings and therefore we found that the instructing parties were reticent about the idea of remote assessments rather than face to face so would postpone such dates until such time as the Covid rules relaxed. This resulted in a drastic reduction in new enquiries and instructions coming into the business."*
87. The claimant put in issue that the respondent was having difficulties during the first few months of the pandemic. She pointed to a letter sent to members of staff by Mrs Benn on 4 May 2020 (pages 140 and 141) in which she thanked staff for achieving record breaking figures in April 2020. Mrs Benn explained that she sent this email in order to motivate staff and in any case during the very early stages of the pandemic the respondent had a lot of work in the pipeline that had been carried out before the pandemic hit and which the respondent was then able to invoice.
88. Mrs Benn gave some figures to show that the number of new instructions during the first eight months of 2020 was well below the target figure of 200 per calendar month. She and Mr Rimmer therefore held discussions about how to maintain the viability of the respondent. Inevitably, perhaps attention turned to the possibility of making employees redundant.
89. Colette Benn advanced a proposal to the board that the claimant's role should be made redundant. She justifies this in paragraph 24 of her witness statement in the following terms:
- "[The claimant] had under two years' service and so she was not entitled to a redundancy payment. Also, this was a stand-alone role that had been created for her. As from March 2020, all documents were uploaded via an electronic system directly onto a portal and so going forward there was no requirement for scanning or photocopying documents that came in the post. As the office*

was closed and would be closed for the foreseeable future, there was no requirement for reception duties. The small amount of remaining duties could be absorbed by the administrators within the tiers. Therefore, I believed that we could have managed without this stand-alone role on a permanent basis, which would contribute towards reducing costs”.

90. In paragraph 5 of his witness statement, Mr Rimmer gives a corroborative account of the basis upon which it was decided that the claimant’s role was redundant. He says in paragraph 6 of his witness statement that, *“This was discussed at a Holdings Direct board meeting and we all agreed that we needed to reduce staffing levels to help the company survive through the pandemic. We agreed to go ahead with Colette [Benn]’s proposal to make three redundancies; the claimant’s stand-alone role and two of the typists’ roles selected by length of service.”*
91. On 2 June 2020 Mrs Benn and Mrs Massa telephoned the claimant. Mrs Benn led the discussion and explained the basis for the decision. The respondent gave her notice to expire on 31 July 2020. This in fact was longer notice than was contractually required.
92. Both Mrs Massa and Mrs Benn say that the claimant appeared surprised and shocked but was pleasant, calm and accepting through the conversation. A letter was sent to the claimant on 2 June 2020 confirming the position. This is at page 146.
93. Mrs Benn contacted the two typists who were to be made redundant. In the event, one of the redundancy notices was revoked because another member of the typing pool resigned. Thus, only one redundancy was needed from within the typing pool.
94. On 5 June 2020 the claimant wrote to Mrs Benn to thank her for the letter of 2 June (page 148). She said, *“If, as and when business does pick up, I will be grateful if you would keep my details on file with a view to eventually in the distant future returning to MLAS, a position I really enjoyed and made some good friends”.* She asked for the return of her personal belongings.
95. On 7 June 2020 the claimant appealed against her redundancy. She was not in fact given a right of appeal by Mrs Benn in the letter of 2 June 2020. Nonetheless, the respondent afforded her an appeal hearing.
96. On 11 June 2020, the claimant sent a further email. This set out her grounds of appeal against redundancy. She also raised a grievance. Her email of 11 June 2020 is at page 151.
97. The claimant raised 11 points of grievance and/or appeal. It is not necessary to set them all out here. In summary, the claimant appealed against the decision to make her redundant upon the basis that: there was no redundancy situation because the respondent had achieved record breaking figures (in April 2020); an unfair process had been carried out; that there was no adequate consultation with her; and the respondent had not made adequate efforts to find alternative employment. She raised a complaint that the respondent had not complied with the duty imposed upon them in the Equality Act 2010 to make reasonable adjustments (although she did not say how the respondent was in breach). She also mentioned that the respondent acted in breach of their duty of confidentiality in that others were made aware of her redundancy before she was.

98. The claimant's grievance was dealt with by Sarah Massa. A hearing took place by video on 19 June 2021. The minutes of the grievance hearing are at pages 161 to 168. Mrs Massa says in paragraph 20 of her witness statement that the claimant believed that she had been made redundant because of her COPD and that she should have been given a job in the typing pool or put in a pool for selection for redundancy along with the other administrators. That she was chosen for redundancy because of her COPD was not a claim raised by her in these proceedings. Her position was that because of her need to shield she was vulnerable to being chosen for redundancy. She made no reference to any failures in the past to make reasonable adjustments or to being referred to as "*mother*" or "*granny*."
99. Mrs Massa did not uphold the claimant's points of grievance. She sent a letter with her decision on 26 June 2020 (pages 156 to 160). Mrs Massa said that she was satisfied that the decision to dismiss the claimant upon the grounds of redundancy was reasonable and that her medical condition played no part in that decision.
100. Upon the issue of alternative employment, Mrs Massa concluded (as she says in paragraph 22 of her witness statement) that the claimant's, "*request for a typing role, however, due to the feedback and tracked change documents I had received from the typing supervisor ... [this] was not an option as accuracy and typing consistency is key for this role. The typing pool had no vacancies at the time and in fact, were looking to lose two roles due to redundancy. Therefore, we had nothing to offer her. Even if we had a vacancy, it is likely that she would not have been successful in her application for the role as it was clear from the limited amount of typing she had carried out previously, this was not of a high standard at all*".
101. In the grievance outcome letter Mrs Massa said (in paragraph 16) that the respondent was going to investigate the claimant's allegation that others had breached the claimant's confidentiality. Mrs Massa said that such an investigation may result in disciplinary action for the employees concerned.
102. Mrs Massa therefore rejected the claimant's appeal against the decision to make her redundant. She also rejected the claimant's grievance. The claimant then appealed against Mrs Massa's decision upon the grievance. This was dealt with by Mr Rimmer.
103. The grievance appeal hearing took place by video on 10 July 2020 (pages 194 to 221). The claimant maintained that her COPD was the reason or was a material reason for the respondent's decision to dismiss her. The claimant also argued before Mr Rimmer that she believed that she had carried out the same role as the administrators and therefore should have been pooled for redundancy with them. Again, she made no mention of any failure to make reasonable adjustments or of being subjected to any name-calling. The meeting lasted from 11:00 to 13:23. Hence, the claimant had ample opportunity to raise any concerns.
104. Mr Rimmer wrote to the claimant on 24 July 2020 setting out his decision to reject her appeal. The letter is at pages 187 to 193. Mr Rimmer said that he had investigated the amount of typing undertaken by the claimant. He confirmed that the respondent's records show that she had delivered five pieces of typed work before the change of role effective from 18 December 2019. After the change of role, a further eight pieces of work were delivered.

He found that the quality of work being produced by the claimant was not to the respondent's required standards.

105. In evidence given under cross-examination, Mr Rimmer accepted fairly that the claimant had done more than eight pieces of typing after the change of role. He said that he had been told by the head of the typing pool that the work was not to the requisite standard. He did not examine the documents himself.
106. The claimant sought to impugn the credibility of Mr Rimmer's account that the respondent was losing money (which formed the justification for the decision to make redundancies). She pointed to the fact that both Mrs Massa and Mrs Benn were promoted (as evidenced on pages 328 and 329) and that there were nine new starters, three of whom started that August. Mr Rimmer explained that there were indeed nine new starters but explained that six of the nine were apprentices whom the respondent could take at little or no cost. He attributed the recruitment generally and the promotions to an upturn as work picked up from around the late summer of last year.
107. On 25 August 2020 the claimant made a request for disclosure of documents from the respondent as is her right pursuant to the Data Protection Act 2018. The request is at page 231. The claimant was emailed on 10 September 2020 by Colette Benn (page 244). Mrs Benn said that the documentation had been collated and was ready for delivery. The claimant complained on 11 September 2020 that the documentation disclosed was incomplete (page 248). Mrs Benn emailed the claimant on 18 September 2020 (page 251) to say that the further documentation was ready for collection.
108. Unfortunately, the claimant again complained that the documentation was incomplete (page 259). These documents were delivered to the claimant on 29 September 2020. The claimant complained again that documentation was missing. Mrs Benn emailed her on 30 September 2020 to confirm that she held no further documents upon the respondent's paper or electronic filing systems.
109. When asked about the delays in complying with her data subject access request, Mrs Benn said in evidence that it was "*not a straightforward process. I had to ask IT for help. I was on annual leave*". She said that the delays were "*nothing to do with age or disability*". Mrs Benn fairly accepted criticisms from the claimant about the way in which the documents had been presented. It appears that odd but not even numbered copies of some of the documents had been produced and they were generally presented in a confusing way. She accepted that completion of the subject access request exercise had taken place not on 30 September (as she said in paragraph 43 of her witness statement) but rather on 5 October 2020.
110. On 18 September 2020 the claimant emailed Mrs Benn to complain about having "*received an extremely foul language telephone call*" from one of the respondent's employees. She says that she also received a (less heated) telephone call from a second employee complaining about the same matter. These arose out of the respondent's investigations into those two employees' conduct in allegedly breaching the claimant's confidence in connection with the decision to dismiss her because of redundancy. The

claimant complained that she had not given the respondent permission to disclose that it was she who had raised allegations of breach of confidentiality. It was put to the claimant by Ms Hodson that there was no realistic way in which the respondent could investigate the alleged breach of confidentiality without identifying the claimant. When asked for the connection between this issue on the one hand and the protected characteristics of age and disability on the other the claimant said that the respondent “*wanted to get rid of me*”.

111. Mrs Massa and Mrs Benn both denied that the claimant had ever been referred to as “*mother*” or “*granny*”. The Tribunal has no record of this being put by the claimant to either of them in the course of cross examination.
112. Mrs Massa was asked about this in evidence in chief by Ms Hodson. She said that the respondent operates a professional concern, with solicitors and experts telephoning all the time. It would not be in keeping with the respondent’s professional image for “*name calling*” (as Mrs Massa put it) to be going on in the background while calls are being taken from professionals. The Employment Judge asked Mrs Massa whether she had called or heard anyone else call the claimant “*mother*” or “*granny*”. Mrs Massa said that she had not.
113. The respondent collated evidence in the form of emails from members of staff all of whom denied referring to the claimant as “*mother*” or “*granny*”. These are at pages 48 to 55. These were collated for the purposes of the Employment Tribunal proceedings. The Tribunal did not have the benefit of hearing from any of these individuals. Accordingly, little weight can be attached to this evidence.
114. Having said that, it is noteworthy that the claimant did not raise the issue of being referred to in these pejorative terms in her grievance document of 11 June 2020. The claimant impressed the Tribunal as an individual who is not afraid to pursue matters in her own interests and to stand up for her rights. In the circumstances, it is surprising that such a serious allegation was omitted from the grievance document. In a similar vein, the issue appears not to have been raised at the grievance meeting with Sarah Massa or within the grievance appeal hearing before Gavin Rimmer. (At any rate, the Tribunal was not taken to any relevant passages where mention is made of these matters).
115. For these reasons, we do not accept that the claimant raised the name calling as an issue in the one-to-ones. It is unfortunate that the records of them are missing. However, on any view, there is no evidence that any action was taken to investigate as may be expected if such a serious issue had been raised. There is no evidence that the claimant pursued the issue as we find she would have done had she raised the matter in a one-to-one without follow-up action being taken. Upon the same logic, we find that the claimant did not raise any disability related matters with the respondent in the one-to-one sessions.
116. The Tribunal finds that the claimant was not referred to as “*mother*” or “*granny*”. Firstly, we have little doubt that had such pejorative terms been used the claimant would have complained about them (just as she complained about being named in connection with the employer’s investigation into breach of confidence). Secondly, the claimant’s evidence

was generalised and unspecific as to the dates, times and individuals concerned. Thirdly, all of the respondent's witnesses from whom we heard impressed the Tribunal as being professional and reasonable in their dealings with the claimant. In particular, the respondent created a bespoke role for the claimant which is at odds with hostility towards the claimant upon the grounds of her age or her disability (or anything else for that matter). Fourthly, the claimant's credibility is tainted by the unsubstantiated allegation of forgery of the three months' review form which she raised against the respondent and her suggestion that the email of 24 October 2019 was a forgery. That Sarah Massa did not attend the interview of the claimant and thus did not discover the claimant's age until she was in post (as we found in paragraph 17) does not detract from these findings given the weight of the evidence in the respondent's favour upon this issue.

117. Finally, upon our factual findings the respondent sought to impugn the claimant's credibility upon the question of disability by reference to the claimant making application for a role as a cleaner with Rehab Direct. Colette Benn says that Rehab Direct are upon the first floor of the building. She expresses surprise that the claimant was making such an application "*given the difficulties she now states she had with bending, stretching, lifting, muscle spasms, breathlessness, inability to walk further than 20 metres and difficulties in using the stairs*". The claimant denied that she had applied for the role. She said that she had simply asked for further information. We can see at page 286 that the claimant had emailed Faye Deakin of Rehab Direct saying that she was interested in the position of office cleaner and asking Miss Deakin to provide her with further details. The claimant did not pursue her application. She said that she was interested to see how much the respondent would "*fork out salary wise*". It appears therefore as if the claimant was on something of a fishing expedition seeking to elicit information about the group of companies of which the respondent formed part. This does not therefore detract from the compelling evidence which she gave upon the question of disability. The claimant was not seeking the role but was attempting to source information.

118. This concludes the Tribunal's findings of fact.

The relevant law and the Tribunal's conclusions

119. Pursuant to section 6 of the 2010 Act, a person has a disability for the purposes of the Act if they have a physical or mental impairment and the impairment has a substantial and long term adverse effect on their ability to carry out normal day to day activities. The relevant impairments in this case are osteoarthritis and COPD. Both are physical impairments. The term "*mental or physical impairment*" is to be given its ordinary meaning. It is not necessary for the cause of the impairment to be established nor does the impairment have to result from an illness.

120. The impairment must have a substantial adverse effect on the complainant's ability to carry out normal day to day activities. The word "*substantial*" in this context means "*more than minor or trivial*".

121. The substantial effects must be long term. This means that the impairment: is one which has (at the material time) lasted for at least 12 months; or (where it has not yet lasted for 12 months) the total period for which it lasts (from the time of the first onset) is likely at the material time to be at least

12 months; or the impairment is likely to last for the rest of the life of the person affected.

122. The impairment must have a substantial adverse effect upon the ability to carry out normal day to day activities. In general, day to day activities are things people do on a regular or daily basis. Examples given in paragraph D3 of the *'Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)'* published by the Secretary of State include, *"shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities."* The appendix to the guidance gives a non-exhaustive list of factors which if they are experienced by a person would reasonably be regarded as having a substantial adverse effect on normal day to day activities. The list includes difficulty in going up and down stairs, difficulty with moving around a building and carrying objectives of moderate weight such as a bag of shopping.
123. The Tribunal's findings of fact upon the issue of disability are at paragraphs 29 to 36. Upon the basis of the evidence produced by the claimant the Tribunal has little hesitation in determining in her favour that at all material times she was a disabled person for the purposes of the 2010 Act.
124. The osteoarthritis is of longstanding. As long ago as 2007, an occupational therapy assessment was undertaken of her home and adaptations to it were made. These adaptations were to assist with day to day activities around the home, in particular moving up and down stairs and attending to the day to day activity of washing and bathing. The osteoarthritis affected her day to day activity of driving a motor vehicle, cooking and shopping. These are all examples of day to day activities.
125. On any view, the osteoarthritis has had a long-term impact upon the claimant's ability to carry out such day to day activities. The corroborative evidence from her GP is supportive of her case upon this issue. That she has gone to the (doubtless not inconsiderable) expense of adapting her home is very strong evidence in the claimant's favour that the osteoarthritis has had a more than minor or trivial impact upon her day to day activities.
126. The COPD was diagnosed in January 2020. However, it is not necessary for there to be a diagnosis in order to determine the existence of a physical impairment. The claimant says that she was prescribed with inhalers in early 2019. Again, she describes the impact of the COPD upon her very well in her witness statements.
127. We accept that her ability to walk now is significantly more impaired than it was during the currency of her employment with the respondent (which is the material time at which we have to assess whether she meets the definition of disability in the 2010 Act). That said, we are satisfied from the evidence that the day to day activity of walking was substantially impacted by the COPD at the material time.
128. The material time with which we are concerned is the whole of the currency of the claimant's employment from 28 August 2019 until 31 January 2020.

Plainly, the COPD was not diagnosed until January 2020 which was during the currency of her employment. There is in fact a discrepancy between the claimant's account and that of her GP upon the issue of when she was prescribed inhalers for the COPD. The GP says that this was in June 2018. We think this is more likely to be definitive given that the GP would have been preparing the report of 12 November 2020 from the records. Therefore, as at August 2019 the claimant had been using inhalers for a period of over 12 months thus satisfying the requirement for the physical impairment of COPD to be long term. The day to day activity of walking is substantially impacted.

129. Even if the claimant is correct and she only started using the inhalers in January 2019 then upon the basis of the evidence, she continued to use them throughout the period of her employment with the respondent such that it could be said to be likely as at August 2019 that the COPD would last for at least 12 months. (We know, of course, that in the event it has done so. However, the test in circumstances where a condition has not lasted 12 months already at the material time is whether it is likely that it would last for a period of over 12 months. We find on these facts that for the period between August 2019 and January 2020 the claimant's COPD could be said to be likely to last longer than 12 months as she had been using inhalers by then for eight months with no sign of improvement).
130. It follows therefore that the claimant is a disabled person for the purposes of the 2010 Act and may therefore pursue her complaints upon this basis. We shall therefore take each of her complaints of disability related discrimination in turn along with the age discrimination complaints. We shall start with the complaint of direct discrimination.
131. Direct discrimination occurs when a person treats another less favourably than they would treat or would treat others because of a protected characteristic. The relevant protected characteristics in this case are of course disability and age.
132. To decide whether an employer has treated a worker less favourably, a comparison must be made with how the employer has treated other workers or how the employer would have treated them in similar circumstances. Upon complaints of direct disability discrimination, the relevant circumstances of the comparator and the disabled person, including their abilities, must not be materially different.
133. An appropriate comparator in a disability case will be a person who does not have the disabled person's impairment but who has the same abilities or skills as the disabled person. An example is given in the Equality and Human Rights Commission's *Code of Practice on Employment* of a disabled man with arthritis who can type at 30 words per minute and who applies for an administrative job which includes typing. He is rejected on the grounds that his typing is too slow. The correct comparator in a claim for direct discrimination will be a person without arthritis who has the same typing speed with the same accuracy rate.
134. It is for the claimant to show that she was less favourably treated than comparators and that the reason for the less favourable treatment was because of her disability or age. The critical question is why, if less favourable treatment is established, she was treated as she was? Was it

upon the grounds of disability or age? Or was it for some other reason? The claimant needs to show more than simply a difference of treatment and a difference in status between her and her chosen comparators.

135. It is for the claimant to establish facts from which the Tribunal could decide that an unlawful act of discrimination has taken place. Should she succeed in doing so then the burden of proof shifts to the respondent to provide a non-discriminatory explanation.
136. Direct discrimination is made unlawful in the workplace pursuant to the provisions in Part 5 of the 2010 Act. By section 39, it is unlawful to subject an employee to discrimination by subjecting them to a detriment or by dismissing them.
137. We now turn to a consideration of each of the grounds of complaint of direct discrimination. The first is the respondent's decision to extend the claimant's probationary period in November 2019. The relevant findings of fact are at paragraphs 52 to 74.
138. We found as a fact that the claimant's probationary period was extended in November 2019. The claimant did not seek to rely upon any actual comparator (being another employee in the same or similar circumstances who is not disabled or who is of a different age group) but who was not subjected to an extended probationary period. The question for the Tribunal therefore is how the respondent would have treated a non-disabled comparator or a comparator of a different age or age group in such circumstances.
139. As we intimated in paragraph 74, we have a great deal of sympathy with the claimant. She was justifiably disappointed with the role and with the tasks that she was expected to perform. Given the preponderance of scanning work which she undertook, it follows that she had not been able to demonstrate her abilities. However, the difficulty for the claimant is that there is simply no evidential basis upon which the Tribunal may find that a non-disabled and/or a younger employee (whose career with the respondent was being stymied by being given mundane work) would have been treated better by the respondent passing them through probation after three months.
140. We are satisfied from the evidence that we heard that the misgivings entertained by Mrs Benn, Mrs Massa and Lisa Howard were unconnected with the claimant's disability and age and were based entirely upon their assessment of how the claimant was performing in the role. In our judgment, the claimant has a justified complaint that the respondent treated her unreasonably in failing to give her a fair opportunity of proving her worth. However, unreasonable conduct is not the same as discriminatory conduct. The claimant has not satisfied the burden of proof upon her to show at least a *prima facie* case that a non-disabled comparator burdened with mundane tasks would not have had their probation period extended.
141. The same principles as we have outlined apply to the age discrimination complaint. For the same reasons, we see no basis upon which we can determine in the claimant's favour that a person of a different age or age group to the claimant but undertaking the same work profile would have been treated better than was the claimant.

142. The second issue is the allegation that the respondent changed the claimant's status and position in December 2019. Again, the claimant does not seek to rely upon any actual comparators of a different age or age group or who are not disabled in seeking to establish a *prima facie* case that she was less favourably treated than them. Again, the claimant seeks to rely upon a hypothesis as to how the respondent would have treated somebody of a different age or age group or without a disability in the same or similar circumstances.
143. Again, we find that the claimant was subjected to the treatment of a change of status and position in December 2019. As we found in paragraph 73, the claimant was in fact very receptive to the idea of taking on the new role of administrative assistant albeit that this came with a reduced salary. In evidence given under cross-examination, the claimant accepted that she did "*express happiness in the new role*" (as it was put by Ms Hodson) albeit the claimant qualified this by reference to an aspiration to work as administrator in the future. Upon this basis, the Tribunal cannot find that the claimant was in fact subjected to any less favourable treatment at all in comparison to how others would have been treated given that she welcomed the move into her new role.
144. Even if we are wrong upon this, and the effective demotion was against the claimant's wishes, there is simply nothing that points to a conclusion that the respondent would have treated an individual in the claimant's circumstances of a different age group or who was not disabled any better than the claimant was treated.
145. A favourable inference is drawn in favour of the respondent upon the basis that the administrative assistant role was created for the claimant. The clear inference to be drawn from Colette Benn's witness statement is that otherwise consideration would have been given to the dismissal of the claimant at that stage. Given that this was the first time that a new role had been created of administrative assistant one may infer therefore that others who had performed as did the claimant have been dismissed. Accordingly, there is simply no basis upon which the Tribunal may make a finding against the respondent of a *prima facie* case of direct discrimination related to the protected characteristics of age and disability.
146. The third allegation is that between August 2019 and March 2020 the claimant was allocated tasks that were menial and beneath the nature of the role. The Tribunal has made findings of fact in favour of the claimant upon this issue. The claimant was, in our judgment, unreasonably treated by the respondent in not being given work of the quality which the claimant was led to expect that she would be undertaking. We do not find however that the claimant was in any sense duped by the respondent into taking the role. After all, had the respondent simply wanted to engage an individual to undertake the scanning work necessitated by the backlog caused by Linda Lee's work as a medico-legal expert the respondent may have engaged an administrative assistant from the outset at a lower salary than was paid to the claimant. We do therefore accept that the respondent recruited the claimant in good faith with the ultimate ambition of the claimant working for Linda Lee (as we have found). However, in the event the claimant found herself undertaking a preponderance of scanning work and the respondent appears to have been content to allow her so to do.

147. Upon this issue, we find that the claimant has made out a case that she was less favourably treated than actual comparators in the same or similar circumstances. Colleagues working for the respondent who are younger than her (and hence of a different age or age group) and colleagues who are not disabled were doing better quality work than did the claimant. Accordingly, there was less favourable treatment of the claimant when her circumstances are compared to those in the same or similar circumstances who were also engaged by the respondent as administrators.
148. The difficulty for the claimant however is upon the question of the reason why she found herself undertaking a preponderance of menial tasks. It is not enough for her simply to point to a difference in protected characteristic and a difference in treatment. Something more must be shown in order to establish a *prima facie* case that it was disability and/or age which were the reasons for the less favourable treatment.
149. The Tribunal determines that the reason why the claimant was treated as she was is simply because there was a significant backlog of scanning work to be undertaken on behalf of Linda Lee and that there was a need for an administrator ultimately to work for Linda Lee upon which basis the claimant was recruited. The found herself very much in the wrong place at the wrong time. There is nothing to suggest that somebody younger than the claimant or somebody without a disability recruited instead of her in August 2019 with the ultimate aspiration of working for Linda Lee would have been treated any better than was the claimant and would have escaped the preponderance of scanning work that the claimant found herself doing. Upon this basis, therefore, the claimant's direct discrimination claim upon this issue fails.
150. The next issue is the complaint raised by the claimant that between November 2019 and March 2020 she was referred to as "*mother*" or "*granny*". Our findings of fact upon this issue and our conclusions are in paragraphs 111 to 116. This allegation fails on the facts as the claimant has failed to establish upon the balance of probability that she was referred to in these pejorative terms.
151. It is convenient to take the fifth and sixth allegations of direct discrimination together. These are that the claimant was notified of her dismissal with notice on 2 June 2020 and that her appeal against dismissal was not upheld on 7 July 2020. At the time that the respondent took the decision to dismiss the claimant, she was in a stand-alone role as administrative assistant. It follows therefore that there are no actual comparators in the same or similar circumstances with whom the claimant can compare her treatment. The Tribunal therefore has to construct a hypothesis as to how somebody of a different age or somebody without a disability but in the same circumstances as the claimant (working as an administrative assistant) would have been treated.
152. We have little doubt that a non-disabled administrative assistant or a younger administrative assistant carrying out the same work as the claimant was undertaking after the middle of December 2019 would, regrettably, have been made redundant. The need to make redundancies was well explained by Colette Benn and Gavin Rimmer: (see paragraphs 83 to 90).

153. The claimant's position appears to be that the COPD required her to shield which took her out of the workplace and therefore left her more vulnerable to being made redundant. However, the respondent made a strong case that the reason for redundancy was because the administrative assistant's duties had ceased altogether following the closure of the office and was unconnected with the COPD. The decision to make the claimant redundant was therefore unconnected with her age or her disability.
154. We are satisfied that upon the hypothesis that if the administrative assistant role was occupied by somebody of a different age or age group to the claimant or without a disability then they would have been treated the same. There was simply no need any longer for an administrative assistant. The role was redundant within the definition to be found in section 139 of the Employment Rights Act 1996. The decision to make the claimant redundant was therefore unconnected with the protected characteristics of age and disability. A non-disabled comparator and/or a younger comparator who appealed against the decision to dismiss in such circumstances would also have had their appeal turned down upon this basis.
155. The seventh allegation of direct discrimination is of a failure to uphold the claimant's grievance. The claimant did not point to any evidence of another employee who had raised a grievance of a similar nature but which was upheld. Again therefore the Tribunal must hypothesise as to how the respondent would have treated an individual with a different protected characteristic from the claimant in the same or similar circumstances. In our judgment, the grievance and the grievance appeal were conscientiously considered by Mrs Massa and Mr Rimmer. The conclusions reached by them were reasonable and sustainable. There is simply no evidence from which the tribunal can conclude anything other than that an individual raising a grievance of a similar nature in similar circumstances would have been treated the same.
156. The eighth complaint of direct discrimination is that the respondent failed to comply with the claimant's data subject access request under the Data Protection Act 2018. The factual findings upon this issue are at paragraphs 107 to 109. In our judgment, the claimant is right to suggest that the respondent failed to comply with the terms of the 2018 Act. However, the Tribunal cannot uphold the claimant's contention that this was discriminatory conduct. In particular, during cross-examination, the claimant conceded that age and disability were nothing to do with the way in which the respondent handled the DSAR. Mrs Benn gave explanations and excuses that the delays were attributable to annual leave and the difficulty in collating the documents and upon which the claimant's age and disability status had no bearing. In light of the claimant's concession, this contention must fail upon the facts.
157. The final allegation of direct discrimination is that the claimant was cited as a witness in the disciplinary or investigatory process. Our findings of fact upon this issue are in paragraph 110.
158. In our judgment, this contention must fail. There is no basis for any suggestion that the respondent would have anonymised an informant without a disability and/or of a different age or age group in similar circumstances. The respondent took the view that the claimant needed to

be named in order to be fair to the two employees under investigation. Had the respondent not done so, then those employees may have levelled an allegation of unfairness against the employer upon the basis that there was no reason to anonymise the identity of the claimant. Such a step will normally only be a reasonable step for the employer to take in circumstances where the claimant may reasonably apprehend repercussions from the employees in question.

159. In the event, the claimant was on the receiving end of an unpleasant telephone call from one of the employees and a complaint from the other. However, when raising the issue initially the claimant did not request anonymisation upon the basis of a fear of reprisal from either of the two employees in question. The respondent could therefore reasonably take the view that there was nothing untoward in them citing the claimant as the witness against them for breach of confidence. The respondent's actions were therefore unconnected with disability or age.
160. We now turn to the allegation that the respondent failed to make reasonable adjustments contrary to section 20 of the 2010 Act. By section 20, employers are required to take reasonable steps to avoid a substantial disadvantage where a provision, criterion or practice applied by or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled. The phrase "*provision, criterion or practice*" is not defined by the 2010 Act but should be construed widely to include for example any formal or informal policies, rules, practices or arrangements.
161. A substantial disadvantage is one which is more than minor or trivial. Whether such a disadvantage exists in a particular case is a question of fact and is assessed on an objective basis.
162. The purposes of the comparison with people who are not disabled of the impact of a PCP is to establish whether it is because of disability that a particular provision, criterion or practice disadvantages the disabled person in question. There is therefore no requirement to identify a comparator whose circumstances are the same or nearly the same as the disabled persons. This contrasts with the concept of direct discrimination which has just been examined upon the claimant's complaints brought under section 13 of the 2010 Act.
163. A duty to make reasonable adjustments only arises where the employer knows or could reasonably be expected to know that the employee has a disability and is likely to be placed at a substantial disadvantage by reason of the application of the relevant provision, criterion or practice. There is nothing to prevent a disabled person from keeping a disability confidential but doing so may afford an employer with the defence of lack of knowledge unless the employer may have been expected to know about the disability anyway.
164. Where an employer's agent or employee knows, in that capacity, of an employee's disability then the employer will not usually be able to claim that they did not know of it.
165. The duty to make adjustments requires employers to take such steps as is reasonable to have to take in all the circumstances of the case. There is no

onus on the disabled person to suggest what adjustments should be made. Paragraph 6.28 of the EHRC's *Code of Practice on Employment* sets out the following factors which might be taken into account when deciding whether a step is a reasonable one for an employer to have to take:

- Whether taking any particular steps would be effective in preventing the substantial disadvantage;
- The practicability of the step;
- The financial and other costs of making the adjustment and the extent of any disruption caused;
- The extent of the employer's financial or other resources;
- The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- The type and size of the employer.

166. Ultimately, the test of reasonableness is an objective one and will depend upon the circumstances of the case. Paragraph 6.32 of the EHRC's *Code of Practice* provides a number of examples of reasonable adjustments in practice. These include the allocation of some of the disabled person's duties to another worker or acquiring or modifying equipment. Although not specifically mentioned, permitting the use of existing equipment must, as a matter of logic, also be an example of a reasonable adjustment in practice.
167. The duty upon employers to make reasonable adjustments is to be found in section 39(5) of the 2010 Act.
168. The complaint made by the claimant in this case of a failure to make reasonable adjustments centres upon the stairlift. The claim raised by the claimant is that the respondent operated a provision, criterion or practice which precluded her from using it.
169. Our findings of fact upon the stairlift at the relevant place of work which we are concerned is at paragraphs 37 to 46 and 77.
170. In our judgment, the respondent did have a provision criterion or practice (which we shall now call a "PCP") of prohibiting the claimant from using the stairlift. We accept the claimant's account that this was what she was told by Catherine Page-Howard.
171. We accept that Miss Page-Howard is an administrator and therefore was at the same level of hierarchy as was the claimant (at least until the point when the claimant took up the administrative assistant role). However, in our judgment the respondent vested Catherine Page-Howard with authority to speak on their behalf. She was delegated the task of inducting the claimant into the role. She was showing the claimant around in that capacity when she made the comment in reply to the claimant's enquiry about the use of the stairlift. The respondent is therefore in our judgment fixed with what was said to the claimant by Miss Page-Howard. There was nothing to put the claimant upon notice that what she was being told appeared to warrant further investigation on her part.

172. The respondent did not call evidence from Catherine Page-Howard. We infer from the fact that she was giving the claimant an induction that she had some experience in the role of administrator. Therefore, although technically at the same level as the claimant, her experience and the delegation to her of the task of induction vested her with ostensible authority to speak on behalf of the respondent from the claimant's perspective. The Tribunal can also understand the claimant's reticence about taking the issue over the head of a well-established member of staff who she would be working alongside. It is for the respondent to ensure that chains of communication are established to enable someone in Ms Page-Howard's position to report to management upon any issues of concern.
173. We accept that the respondent did not in fact have a PCP prohibiting the use of the stairlift by employees generally. However, that is not what the claimant was told. The issue is the application of a PCP to the particular employee in question. We have little doubt that confining the use of a piece of equipment (such as a stairlift) to a particular category of persons (such as clients or visitors only) can constitute a PCP and that Catherine Page-Howard therefore informed the claimant that such a PCP operated in her case.
174. We accept that the PCP disadvantaged the claimant. We have seen that the claimant has had grab rails and other adaptations undertaken to her home to help her to move around and to go up and down stairs at home. Indeed, she has had a stairlift installed in her home. We therefore accept the claimant to have been disadvantaged by reason of the application of the PCP to her. Plainly, not being able to use the stairlift is disadvantageous to an individual with the physical impairments of COPD and osteoarthritis in comparison to an employee without those conditions. The latter would be more easily able to go up and down stairs.
175. The difficulty for the claimant is that in order to establish a breach of duty to make reasonable adjustments the relevant PCP must cause a substantial disadvantage. As has been said, this means a disadvantage which is more than minor or trivial.
176. We do not accept that the requirement to go up and down stairs to distribute post created more than a minor or trivial disadvantage for the claimant. We say this because upon 24 October 2019, the claimant was disabused of the notion that she was thereafter subjected to the PCP imparted to her by Catherine Page-Howard at the outset of her employment. Upon 24 October 2019 the message conveyed to the claimant (and all other employees) was that the stairlift was there to be used: page 88 of the supplemental bundle. That notwithstanding, the claimant did not use it. From this, we draw an inference that the claimant suffered no more than a trivial or minor disadvantage when using the stairs in the course of her work. Had the disadvantage to her been substantial (as more than minor or trivial) one may have expected the claimant to utilise the facility of the stairlift.
177. From the Toggl reports, we see that generally the claimant spent only small amounts of time undertaking post and distribution. For example, she spent 33 minutes during week commencing 11 November 2019, 11 minutes during week commencing 18 November 2019, 10 minutes during week commencing 9 December 2019 and 23 minutes during week commencing

16 December 2019. Not all of this time would of course be used ascending or descending the stairs. Much of the time attributed to this task would be visiting the relevant offices to drop off the post. In her witness statement (in paragraph 28) she said that she only had to use the stairs once a day. She raised no complaint at the time of a failure to make reasonable adjustments. She told Gavin Rimmer during the grievance appeal hearing that she was undertaking no physically strenuous tasks.

178. Doing the best we can therefore upon the basis of the evidence available we conclude that the claimant only spent a small amount of time each day having to go up and down the stairs. She had to do so far less frequently than she would at home. As the relevant PCP therefore did not create a substantial disadvantage but only a minor or trivial one the duty to make reasonable adjustments was not engaged.
179. In any case, the relevant PCP ceased to apply to the claimant with effect from 24 October 2019. Therefore, even if we are wrong to say that there no substantial disadvantage was caused to the claimant by the application of the relevant PCP, then the disadvantaging PCP ceased to exist with effect from the end of October 2019 in any case. From then on, the claimant was able to use a stair lift as the information given to her at induction had been countermanded.
180. The impugned disadvantage and PCP therefore operated for a period of two months from the end of August to the end of October 2019. Were the Tribunal to have found in favour of the claimant that the impugned PCP created a substantial disadvantage for her then such complaint has been presented outside of the limitation period provided for by section 123 of the 2010 Act. Time would start to run against the claimant from 24 October 2019. She did not commence early conciliation until 18 August 2020. The failure to make reasonable adjustments ceased to operate well before 18 May 2020. Therefore, even if the claimant had succeeded in establishing substantial disadvantage the claim was presented outside the relevant limitation period and the Tribunal would only be able to entertain it if the claimant satisfied the Tribunal that it was just and equitable so to do.
181. The claimant did not advance anything to satisfy the Tribunal that time ought to be extended upon just and equitable grounds. An extension of time is the exception rather than the rule and it is for the complainant to convince the Tribunal that time ought to be extended.
182. Although the claimant's case was not framed in this way, another way of looking at it would have been to say that the relevant provision criterion or practice was the requirement for her to undertake the duties of her role. As this involved ascending and descending stairs, she would have been able to argue that it created a substantial disadvantage for her in comparison with those without a disability.
183. We have found as a fact that there was no substantial disadvantage in any case. If wrong on that, then the respondent made a reasonable adjustment with effect from 24 October 2019 by allowing the use of the stairlift which would have had a reasonable prospect of alleviating the disadvantage. If we had been satisfied that there was a substantial disadvantage then the respondent may have been held liable for the failure to make that adjustment for the first two months of the claimant's employment. However,

such a consideration does not arise given our findings upon the issue of substantial disadvantage. In any case, the Tribunal would still not have jurisdiction to consider the claimant's complaint by reason of the operation of the limitation period.

184. We observe that the claimant's case may also have been framed as one where a physical feature of the employer's premises (being the stairs) disadvantaged the claimant. It may also have been put as one where an absence of an auxiliary aid (being a stairlift) created a substantial disadvantage. However, the claims would have foundered upon the absence of substantial disadvantage and (if wrong upon that) the limitation issue in any case.
185. The other issue which arises upon the reasonable adjustment complaint is the question of the respondent's knowledge. We accept that the respondent had no actual knowledge of the claimant's need to use the stairlift at the outset of employment. The claimant made a positive statement that her osteoarthritis had no impact upon her work. We refer to paragraph 14. She made no reference to COPD in the course of her application for employment.
186. However, we are satisfied that the respondent acquired constructive knowledge for the purposes of the reasonable adjustments complaint in August 2019. Firstly, the claimant made mention of her condition of osteoarthritis in the recruitment process. Secondly, she asked Catherine Page-Howard about whether she could use a stairlift. The claimant would not have asked this had she had there been no possibility of her having any need for it. When she said in her application form that the osteoarthritis had no impact upon her work, she would not of course have known at that stage the demands of the role which she was applying for. Her reference to the osteoarthritis having no impact upon work cannot therefore have been by reference to the layout of the respondent's building. Her mentioning osteoarthritis and enquiring about being allowed to use the stairlift in our judgment was sufficient to put the respondent on notice of an issue about which enquiry ought to have been made.
187. The claimant also drew the respondent's attention to her condition of emphysema/COPD upon the first day of her employment. We refer to paragraph 23. For the same reasons, therefore, we conclude that the respondent was on constructive notice that the claimant was likely to be impacted within the workplace by the operation of the PCP conveyed to her by Catherine-Page Howard of the likely disadvantage caused to her by the prohibition upon her use of the stairlift.
188. Therefore, were it to be the case that the claimant was placed at a substantial disadvantage the respondent would not have been able to avail themselves of the defence of a lack of constructive knowledge of the disability in the impact of it upon the claimant. However, this does not avail the claimant given our finding that there was no substantial disadvantage caused to her and that in any case the relevant disadvantaging PCP ceased to operate from 24 October 2019 and the jurisdictional issue that arises.
189. In conclusion, therefore, the Tribunal finds that we have no jurisdiction to consider the reasonable adjustment complaint and in the alternative that the

respondent was not in breach of the duty to make reasonable adjustments. We now turn to the harassment complaint.

190. The harassment of an employee occurs where an employer engages in unwanted conduct which is related to a relevant protected characteristic and which is done for the purpose of or which has the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
191. The harassment complaint relates only to the protected characteristic of age. On the face of it, we accept the claimant's case that the use of the pejorative terms "*mother*" and "*granny*" are inherently related to age. We have little doubt that had we found as a fact that these terms were directed at the claimant then this would have been unwanted conduct related to age.
192. The difficulty for the claimant is that we have determined as a fact that these terms were not used. We refer to our findings of fact at paragraphs 111 to 116. It follows therefore that the complaint of harassment related to age must fail on the facts.
193. The final issue to determine is whether the claimant has brought her complaints in time. We have considered the reasonable adjustments complaint already. We have determined that that complaint was not brought in time. It is for the claimant to satisfy the Tribunal that the claim should be permitted to proceed upon just and equitable grounds. The claimant did not advance any explanation or make any submissions in support of her case that time ought to be extended. We are satisfied that the reasonable adjustment complaint was brought out of time. Although, as we have found, it fails upon the merits it follows that the Tribunal does not have jurisdiction to determine it in any case.
194. We find that the remainder of the claimant's complaints were brought in time. Proceedings upon a complaint may not be brought after the end of a period of three months starting with the date of the acts to which the complaint relates. Conduct extending over a period is to be treated as done at the end of that period.
195. The claimant's complaint, in essence, is about her treatment throughout her employment and, indeed, after it concluded. As we have said, the claimant commenced early conciliation on 18 August 2020 and presented her claim form on 1 September 2020. This was well within three months of the determination by Mr Rimmer of the claimant's appeal. In fact, the claimant was, at the time that the claim form was presented, in the course of dealing with the data subject access request which had not yet concluded. The claimant's dealings were predominately with Sarah Massa and Colette Benn. From her perspective, it was the same individuals who subjected her to alleged acts of discrimination and harassment. We are satisfied therefore that it was reasonable for the claimant to consider there to be a continuing course of conduct. Although the complaints have failed, we are satisfied upon this basis that the claimant brought all of her claims (save for the reasonable adjustments complaint) within the limitation period and the Tribunal has jurisdiction to consider them.

196. All of that being said, the claims nonetheless stand dismissed upon their merits.

Employment Judge Brain

Date: 16 December 2021